VICTORIA.

VOTES AND PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

SESSION 1888.

COUNCIL CHAMBER

VICTORIA.

VOTES AND PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

DURING THE SESSION

1888,

WITH COPIES OF THE VARIOUS DOCUMENTS ORDERED BY THE COUNCIL TO BE PRINTED.

By Authority:
ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

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1888.

RETURN OF MEMBERS OF THE LEGISLATIVE COUNCIL AT THE OPENING OF PARLIAMENT, 19TH JUNE, 1888.

Names arranged in Order of Retirement.	Elected at—		Dates of Retirement.	Remarks.
	Nomination.	Polling.		
MELBOURNE PROVINCE:				
The Honorables—				
Cornelius Job Ham	27 Aug. 1886	...	1892	Retired by rotation, and re-elected.
Sir James Lorimer	2 Mar. 1886	...	1890	Accepted an office of profit and was re-elected.
James Service	...	22 May 1888	1888	Elected in place of the late Hon. W. E. Hearn, deceased.
NORTH YARRA PROVINCE:				
The Honorables—				
William Henry Roberts	...	9 Sept. 1886	1892	
James George Beaney	...	11 Sept. 1884	1890	Retired by rotation, and re-elected.
George Le Fevre	...	4 Nov. 1887	1888	Elected in place of the late Hon. F. E. Beaver, deceased.
SOUTH YARRA PROVINCE:				
The Honorables—				
Simon Fraser	27 Aug. 1886	...	1892	
Frederick Thomas Sargood ...	29 Aug. 1884	...	1890	Retired by rotation, and re-elected.
Sir James MacBain	17 Nov. 1882	...	1888	Retired by rotation, and re-elected.
SOUTHERN PROVINCE:				
The Honorables—				
Donald Melville	27 Aug. 1886	...	1892	Retired by rotation, and re-elected.
Charles Henry James	...	20 Oct. 1887	1890	Elected in place of the late Hon. T. Henty, deceased.
Sir William John Clarke, Bart. ...	17 Aug. 1878	...	1888	Assigned from original South Province.
SOUTH-EASTERN PROVINCE:				
The Honorables—				
James Buchanan	...	9 Sept. 1886	1892	
James Balfour	17 Aug. 1880	...	1890	Assigned from original South Province.
Frank Stanley Dobson	17 Nov. 1882	...	1888	Assigned from original South Province, retired by rotation, and re-elected for the South-Eastern Province.
NELSON PROVINCE:				
The Honorables—				
Thomas Dowling	...	9 Sept. 1886	1892	
James Phillip MacPherson ...	...	8 Nov. 1887	1890	Elected in place of the late Hon. T. Bromell, deceased.
James Williamson	...	30 Nov. 1882	1888	Elected in place of Hon. R. Simson. Assigned from original Western Province.
WESTERN PROVINCE:				
The Honorables—				
Nathan Thornley	27 Aug. 1886	...	1892	Retired by rotation, and re-elected.
Thomas Forrest Cumming ...	...	2 May 1881	1890	Assigned from original Western Province.
William Ross	29 Aug. 1878	...	1888	
WELLINGTON PROVINCE:				
The Honorables—				
Henry Gore	...	9 Sept. 1886	1892	
Henry Cuthbert	2 Mar. 1886	...	1890	Accepted an office of profit and was re-elected.
David Ham	...	30 June 1886	1888	Elected in place of Hon. J. Campbell, resigned.
SOUTH-WESTERN PROVINCE:				
The Honorables—				
Francis Ormond	27 Aug. 1886	...	1892	Retired by rotation, and re-elected.
Joseph Henry Connor	15 May 1886	...	1890	Elected in place of Hon. Philip Russell, resigned.
William Robertson	20 July 1886	...	1888	Elected in place of Hon. C. J. Jenner, resigned.

RETURN OF MEMBERS—*continued.*

Names arranged in Order of Retirement.	Elected at—		Dates of Retirement.	Remarks.
	Nomination.	Polling.		
NORTH-EASTERN PROVINCE:				
The Honorables—				
Frederick Brown	27 Aug. 1886	...	1892	Retired by rotation, and re-elected.
John Alston Wallace	29 Aug. 1884	...	1890	Retired by rotation, and re-elected.
Patrick Hanna	17 Nov. 1882	...	1888	
GIPPSLAND PROVINCE:				
The Honorables—				
William Pearson...	...	9 Sept. 1886	1892	Retired by rotation, and re-elected.
William McCulloch	...	16 Sept. 1880	1890	Assigned from original Eastern Province.
John George Dougharty	...	7 Aug. 1880	1888	
NORTH-CENTRAL PROVINCE:				
The Honorables—				
William Edward Stanbridge ...	...	9 Sept. 1886	1892	Retired by rotation, and re-elected.
Nicholas FitzGerald	29 Aug. 1884	...	1890	Retired by rotation, and re-elected.
William Austin Zeal	17 Nov. 1882	...	1888	Retired by rotation, and re-elected.
NORTHERN PROVINCE:				
The Honorables—				
David Chaplin Sterry	27 Aug. 1886	...	1892	Retired by rotation, and re-elected.
William Irving Winter	10 Dec. 1884	...	1890	Elected in place of Hon. Sir W. H. F. Mitchell, deceased.
Walter Peacock Simpson	...	9 April 1886	1888	Elected in place of Hon. F. Robertson, deceased.
NORTH-WESTERN PROVINCE:				
The Honorables—				
David Coutts	27 Aug. 1886	...	1892	Retired by rotation, and re-elected.
George Young	29 Aug. 1884	...	1890	Retired by rotation, and re-elected.
James Bell	...	30 Nov. 1882	1888	

JOHN BARKER,
Clerk of the Legislative Council.

Legislative Council,
Melbourne, 19th June, 1888.

INDEX.

NOTE.—*For reference to the Proceedings on Bills, subsequent to their initiation, see "Summary of Proceedings on Bills.'*

*** To facilitate reference to Papers ordered to be printed, the Cypher (as A 1) at the bottom of the title-page of each Paper has been inserted in the Index and Table of Contents.

VICTORIA.

SUMMARY OF PROCEEDINGS ON BILLS IN THE LEGISLATIVE COUNCIL DURING THE SESSION 1888.

No.	SHORT TITLES OF BILLS.	By whom and when initiated.	PROGRESS.																	Number of Act.	REMARKS.
				First Reading.	Second Reading.	Committal.	Report.	Re-committal.	Report after Re-committal.	Adoption of Report.	Third Reading.		Passing.	Sent to Legislative Assembly.	Returned to Legislative Assembly with Amendments, or with Amendments insisted on.	Returned from Legislative Assembly:		Amendments considered.	Amendments recommended by Governor.	Amendments considered.	Assent.	Published in Government Gazette.		
											With Amendments.	Without Amendments.				Without Amendments, or with Amendments agreed to.	With Amendments disagreed to.							
			1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.	1888.		
1	Statute of Gaols 1864 Further Amendment Bill	Honorable H. Cuthbert	19 June	19 June	24 July	24 July	18 Sept.	..	..	18 Sept.	..	9 October	9 October	..	..	28 Nov.	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXVI.	
2	Instruments and Securities Statute 1864 Amendment Bill	Honorable W. A. Zeal	20 June	20 June	14 Aug. 18 Sept.	18 Sept.	9 October	16 October	16 October	16 October	..	17 October	17 October	17 October	..	15 Nov.	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXII.	
3	Distress for Rent Law Amendment Bill	Honorable H. Cuthbert	24 July	24 July	14 Aug. 11 Sept.	11 Sept.	18 Sept	25 Sept.	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Discharged 18 Dec. 1888.
4	Noxious Insects Bill	Honorable H. Cuthbert	24 July	24 July	14 Aug. 11 Sept.	11 Sept.	23 October	31 October	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Discharged 18 Dec. 1888.
5	Lunacy Statute Further Amendment Bill	Honorable H. Cuthbert	24 July	24 July	24 October	24 October	31 October	13 Nov.	13 Nov.	14 Nov.	14 Nov.	..	14 Nov.	14 Nov.	..	13 Dec.	6 Dec.	12 Dec.	..	..	17 Dec.	21 Dec.	DCCCCLXXXVI.	
6	Consolidated Revenue Bill	Message from Legislative Assembly	25 July	25 July	25 July	25 July	25 July	..	..	25 July	..	25 July	25 July	..	..	..	..	..	..	..	27 July	27 July	DCCCCLXIV.	
7	Sparrows Destruction Bill	Honorable J. H. Connor	11 Sept.	11 Sept.	20 Nov.	20 Nov.	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Discharged 19th Dec. 1888.
8	Ballarat Trustees Executors and Agency Company Bill	Message from Legislative Assembly	18 Sept.	18 Sept.	9 October	9 October	16 October	..	..	27 Nov.	..	27 Nov.	27 Nov.	..	..	..	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXV.	
9	Members of Council Bill	Honorable H. Cuthbert	2 October	2 October	5 Dec. 6 Dec.	6 Dec.	11 Dec.	..	..	12 Dec.	..	12 Dec.	12 Dec.	12 Dec.	..	18 Dec.	..	..	..	..	22 Dec.	28 Dec.	DCCCCXCV.	
10	Sandhurst and Northern District Trustees Executors and Agency Company Limited Bill	Message from Legislative Assembly	2 October	2 October	16 October	16 October	27 Nov.	..	..	27 Nov.	..	27 Nov.	27 Nov.	..	..	..	..	..	4 Dec.	4 Dec.	10 Dec.	14 Dec.	DCCCCLXXIX.	
11	Australasian Natives Trustees Executors and Agency Company Limited Bill	Message from Legislative Assembly	2 October	2 October	16 October	16 October	27 Nov.	..	..	28 Nov.	..	28 Nov.	28 Nov.	..	28 Nov.	6 Dec.	..	..	..	..	10 Dec.	14 Dec.	DCCCCLXXXI.	
12	Mercantile Finance Trustees and Agency Company of Australia Limited Bill	Message from Legislative Assembly	2 October	2 October	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Discharged 18 Dec. 1888.
13	Equity Trustees Executors and Agency Company Limited Bill	Message from Legislative Assembly	2 October	2 October	16 October	16 October	27 Nov.	..	..	27 Nov.	..	27 Nov.	27 Nov.	..	..	..	..	..	4 Dec.	4 Dec.	10 Dec.	14 Dec.	DCCCCLXXVIII.	
14	Municipal Overdrafts Indemnity Bill ..	Message from Legislative Assembly	2 October	2 October	2 October	2 October	2 October	..	..	2 October	..	2 October	2 October	..	..	..	..	..	..	..	4 October	4 October	DCCCCLXVI.	
15	Consolidated Revenue Bill (2).. ..	Message from Legislative Assembly	9 October	9 October	9 October	9 October	9 October	..	..	9 October	..	9 October	9 October	..	..	..	..	..	..	..	16 October	16 October	DCCCCLXVII.	
16	Marine Board Act Amendment Bill ..	Message from Legislative Assembly	9 October	9 October	23 October	23 October	23 October	..	..	23 October	..	23 October	23 October	..	..	..	..	..	..	..	29 Oct.	..	DCCCCLXVIII.	
17	Deposit of Silt Bill	Honorable W. H. Roberts	9 October	9 October	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Discharged 20 Dec. 1888.
18	Guardian Trustees and Executors Company Bill	Message from Legislative Assembly	16 October	17 October	14 Nov	14 Nov.	27 Nov.	..	..	28 Nov.	..	28 Nov.	28 Nov.	..	28 Nov.	6 Dec.	..	..	..	..	10 Dec.	14 Dec.	DCCCCLXXXII.	
19	Australasian Dramatic and Musical Association Fund Bill	Message from Legislative Assembly	16 October	17 October	14 Nov.	14 Nov.	14 Nov.	..	..	14 Nov.	..	14 Nov.	14 Nov.	..	..	..	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXI.	
20	Police Franchise Bill	Message from Legislative Assembly	23 October	23 October	13 Nov.	13 Nov.	13 Nov.	..	..	13 Nov.	..	13 Nov.	13 Nov.	..	..	..	..	..	..	..	26 Nov.	26 Nov.	DCCCCLXIX.	
21	Trustees Companies Bill	Honorable H. Cuthbert	23 October	23 October	30 October	30 October	30 October	30 October 31 October	30 October 31 October	31 October	..	31 October	31 October	31 October	..	21 Nov.	..	..	13 Dec.	13 Dec.	20 Dec.	21 Dec.	DCCCCLXX.	
22	Richmond City Lands Bill	Message from Legislative Assembly	30 October	30 October	14 Nov	14 Nov.	14 Nov.	..	..	14 Nov.	..	14 Nov.	14 Nov.	..	..	..	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXIV.	
23	Zoological and Acclimatization Society Incorporation Act Amendment Bill	Message from Legislative Assembly	13 Nov.	14 Nov.	20 Nov.	20 Nov.	2 Nov.	..	..	21 Nov.	..	21 Nov.	21 Nov.	..	21 Nov.	27 Nov.	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXIV.	
24	Public Officers Employment Bill ..	Message from Legislative Assembly	13 Nov.	13 Nov.	20 Nov.	20 Nov.	20 Nov.	20 Nov.	20 Nov.	29 Nov.	..	6 Dec.	6 Dec.	..	6 Dec.	11 Dec.	..	..	..	..	14 Dec.	14 Dec.	DCCCCLXXXIV.	
25	Irrigation and Water Supply Trusts Election Bill	Message from Legislative Assembly	13 Nov.	13 Nov.	29 Nov.	29 Nov.	29 Nov.	..	..	29 Nov.	..	29 Nov.	29 Nov.	..	29 Nov.	4 Dec.	..	..	..	..	14 Dec.	14 Dec.	DCCCCLXXXIII.	
26	North Melbourne Lands Bill	Message from Legislative Assembly	13 Nov.	13 Nov.	20 Nov. 21 Nov.	20 Nov.	20 Nov.	..	..	21 Nov.	..	21 Nov.	21 Nov.	..	21 Nov.	27 Nov.	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXIII.	
27	Electoral Districts Alteration Bill ..	Message from Legislative Assembly	15 Nov.	15 Nov.	28 Nov.	28 Nov.	5 Dec.	5 Dec. 12 Dec.	5 Dec. 12 Dec.	5 Dec. 12 Dec.	..	13 Dec.	13 Dec.	..	13 Dec. 19 Dec.	..	19 Dec.	19 Dec.	..	..	22 Dec.	28 Dec.	MVIII.	
28	Mining Accidents Inquests Bill ..	Message from Legislative Assembly	15 Nov.	15 Nov.	12 Dec.	12 Dec.	12 Dec.	..	..	18 Dec.	..	18 Dec.	18 Dec.	..	18 Dec. 20 Dec.	20 Dec.	..	19 Dec. 20 Dec.	..	..	..	..	..	Not returned from Legislative Assembly.
29	Cape Patterson and Kilcunda Junction Railway Bill	Message from Legislative Assembly	20 Nov.	21 Nov.	28 Nov.	28 Nov.	5 Dec.	..	..	5 Dec.	..	5 Dec.	5 Dec.	..	..	..	..	..	..	..	10 Dec.	14 Dec.	DCCCCLXXX.	
30	Electoral Act 1865 Amendment Bill ..	Message from Legislative Assembly	27 Nov.	27 Nov.	13 Dec.	13 Dec.	19 Dec.	19 Dec.	19 Dec.	19 Dec.	..	19 Dec.	19 Dec.	..	19 Dec. 20 Dec.	21 Dec.	..	20 Dec.	20 Dec.	..	22 Dec.	..	MIV.	
31	Railway Loan Application Bill ..	Message from Legislative Assembly	27 Nov.	27 Nov.	28 Nov.	28 Nov.	28 Nov.	..	..	28 Nov.	..	28 Nov.	28 Nov.	..	..	..	..	..	..	..	3 Dec.	3 Dec.	DCCCCLXXVII.	
32	Marine Stores Bill	Message from Legislative Assembly	29 Nov.	29 Nov.	12 Dec.	12 Dec.	13 Dec.	18 Dec.	18 Dec.	18 Dec.	..	18 Dec.	18 Dec.	..	18 Dec.	..	19 Dec.	19 Dec.	20 Dec.	20 Dec.	22 Dec.	28 Dec.	DCCCCXCVII.	
33	Banking Companies Registration Bill ..	Message from Legislative Assembly	29 Nov.	29 Nov.	13 Dec.	13 Dec.	13 Dec.	..	..	18 Dec.	..	18 Dec.	18 Dec.	..	..	..	..	..	..	..	20 Dec.	21 Dec.	DCCCCXCI.	
34	Banking Companies Securities Bill ..	Honorable W. A. Zeal	5 Dec.	5 Dec.	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Discharged 21 Dec. 1888.
35	Amalgamation of Companies Bill ..	Honorable H. Cuthbert	5 Dec.	5 Dec.	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Discharged 21 Dec. 1888.
36	State School Teachers Bill	Message from Legislative Assembly	6 Dec.	6 Dec.	18 Dec.	18 Dec.	18 Dec.	..	..	18 Dec.	..	19 Dec.	19 Dec.	..	19 Dec.	..	..	20 Dec.	20 Dec.	..	22 Dec. 20 Dec.	28 Dec. 21 Dec.	MI. DCCCCXCIII.	
37	Residence Areas Act Further Amendment Bill	Message from Legislative Assembly	6 Dec.	6 Dec.	18 Dec.	18 Dec.	18 Dec.	..	..	18 Dec.	..	18 Dec.	18 Dec.	..	..	..	..	..	..	..	22 Dec.	28 Dec.	MV.	
38	Chinese Immigration Restriction Bill ..	Message from Legislative Assembly	11 Dec.	11 Dec.	13 Dec.	13 Dec.	21 Dec.	..	..	21 Dec.	..	21 Dec.	21 Dec.	..	21 Dec.	..	21 Dec.	21 Dec.	..	..	20 Dec.	21 Dec.	DCCCCXCII.	Amendments insisted on for reasons given. Conference took place on the subject 21st Dec. 1888.
39	Officers of Parliament Bill	Message from Legislative Assembly	11 Dec.	11 Dec.	13 Dec.	13 Dec.	13 Dec.	..	..	13 Dec.	..	13 Dec.	13 Dec.	..	13 Dec.	18 Dec.	..	..	..	..	22 Dec.	28 Dec.	DCCCCXCVI.	
40	Auction Sales Statute Amendment Bill	Message from Legislative Assembly	11 Dec.	11 Dec.	12 Dec.	12 Dec.	12 Dec.	18 Dec.	18 Dec.	18 Dec.	..	18 Dec.	18 Dec.	..	18 Dec.	19 Dec.	..	..	..	..	22 Dec.	28 Dec.	DCCCCXCVIII.	
41	Mining on Private Property Act Amendment Bill	Message from Legislative Assembly	11 Dec.	11 Dec.	18 Dec.	18 Dec.	18 Dec.	..	..	18 Dec.	..	18 Dec.	18 Dec.	..	18 Dec.	19 Dec.	..	..	..	..	17 Dec.	21 Dec.	DCCCCLXXXV.	
42	Expiring Laws Continuance Bill ..	Message from Legislative Assembly	11 Dec.	11 Dec.	12 Dec.	12 Dec.	12 Dec.	..	..	12 Dec.	..	12 Dec.	12 Dec.	..	..	..	..	..	..	..	17 Dec.	21 Dec.	DCCCCLXXXVII.	
43	Water Supply Loans Bill.	Message from Legislative Assembly	11 Dec.	11 Dec.	13 Dec.	13 Dec.	13 Dec.	..	..	13 Dec.	..	13 Dec.	13 Dec.	..	..	..	..	..	..	..	17 Dec.	21 Dec.	DCCCCLXXXVIII.	
44	Gembrook Lands Revesting Bill ..	Message from Legislative Assembly	11 Dec.	11 Dec.	13 Dec.	13 Dec.	13 Dec.	..	..	13 Dec.	..	13 Dec.	13 Dec.	..	..	..	..	..	..	..	22 Dec.	..	MVII.	
45	Licensing Act Amendment Bill ..	Message from Legislative Assembly	12 Dec.	12 Dec.	18 Dec.	18 Dec.	18 Dec.	..	..	18 Dec.	..	19 Dec.	19 Dec.	..	19 Dec.	20 Dec.	..	..	22 Dec.	22 Dec.	22 Dec.	..	MVI.	
46	Appropriation Bill	Message from Legislative Assembly	12 Dec.	12 Dec.	18 Dec.	18 Dec.	18 Dec.	..	..	19 Dec.	19 Dec.	..	19 Dec.	..	..	..	..	..	..	..	22 Dec.	..	DCCCCLXXXIX.	
47	Railway Loan Bill	Message from Legislative Assembly	12 Dec.	12 Dec.	13 Dec.	13 Dec.	13 Dec.	..	..	13 Dec.	..	13 Dec.	13 Dec.	..	..	..	..	..	..	..	17 Dec.	21 Dec.	MX.	
48	Stamp Duties Amendment Bill ..	Message from Legislative Assembly	18 Dec.	18 Dec.	20 Dec.	20 Dec.	20 Dec.	..	..	20 Dec.	..	20 Dec.	20 Dec.	..	20 Dec.	20 Dec.	..	..	22 Dec.	22 Dec.	22 Dec.	28 Dec.	MI.	
49	Discipline Act Amendment Bill ..	Message from Legislative Assembly	18 Dec.	18 Dec.	20 Dec.	20 Dec.	20 Dec.	..	..	20 Dec.	..	20 Dec.	20 Dec.	..	..	..	..	..	..	..	22 Dec.	28 Dec.	DCCCCXCIV.	
50	Melbourne Harbor Trusts Acts Amendment Bill	Message from Legislative Assembly	18 Dec.	18 Dec.	18 Dec.	18 Dec.	18 Dec.	..	..	18 Dec.	..	18 Dec.	18 Dec.	..	..	..	..	..	..	..	20 Dec.	21 Dec.		
51	Pleuro-pneumonia Extermination Bill ..	Message from Legislative Assembly	19 Dec.	19 Dec.	20 Dec.	20 Dec.	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Lapsed in Committee.
52	Lands Vesting Bill	Message from Legislative Assembly	19 Dec.	19 Dec.	20 Dec.	20 Dec.	20 Dec.	..	..	20 Dec.	..	20 Dec.	20 Dec.	..	..	..	..	..	..	..	22 Dec.	28 Dec.	MIII.	
53	Trustees Companies Amalgamation Bill	Message from Legislative Assembly	19 Dec.	19 Dec.	19 Dec.	19 Dec.	19 Dec.	..	..	19 Dec.	..	19 Dec.	19 Dec.	..	19 Dec.	20 Dec.	..	..	..	..	22 Dec.	28 Dec.	DCCCCXCIX.	
54	Banks and Currency Statute Amendment Bill	Message from Legislative Assembly	19 Dec.	19 Dec.	20 Dec.	20 Dec.	20 Dec.	..	..	20 Dec.	..	20 Dec.	20 Dec.	..	..	20 Dec.	20 Dec.	20 Dec.	..	..	..	..	MII.	
55	Port Melbourne Lagoon Nuisance Suppression Bill	Message from Legislative Assembly	19 Dec.	19 Dec.	21 Dec.	21 Dec.	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..		Lapsed in Committee.
56	Inebriates Bill	Honorable H. Cuthbert	19 Dec.	19 Dec.	19 Dec.	19 Dec.	19 Dec.	20 Dec.	20 Dec.	19 Dec. 20 Dec.	..	20 Dec.	20 Dec.	20 Dec.	..	..	20 Dec.	20 Dec.	..	..	22 Dec.	..	MIX.	
57	Public Health Law Amendment Bill ..	Message from Legislative Assembly	20 Dec.	20 Dec.	20 Dec.	20 Dec.	20 Dec.	..	..	20 Dec.	..	20 Dec.	20 Dec.	..	20 Dec.	21 Dec.	..	..	22 Dec.	22 Dec.	22 Dec.	..	MXI.	

NOTE.—The Marine Board Act (reserved 17th December, 1887. Royal assent proclaimed 10th September, 1888) takes the number DCCCXCV.

RECAPITULATION.

Bills initiated during the Session		57
Passed and assented to	47	
Order of the day discharged	7	
Lapsed in committee of the whole Council	2	
Not returned from Assembly	1	
	57	

VICTORIA.

No. 1.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 19TH JUNE, 1888.

1. The Council met pursuant to the Proclamation of His Excellency the Governor, bearing date the 18th day of May, 1888, which Proclamation was read by the Clerk, and is as follows :—

THIRD SESSION OF THE THIRTEENTH PARLIAMENT.

PROCLAMATION

By His Excellency SIR HENRY BROUGHAM LOCH, Knight Grand Cross of the Most Distinguished Order of Saint Michael and St. George, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over the Colony of Victoria and its Dependencies, &c., &c., &c.

WHEREAS by *The Constitution Act* it was amongst other things enacted that it should be lawful for the Governor to fix such places within Victoria and, subject to the limitation therein contained, such times for holding the first and every other Session of the Council and Assembly, and to vary and alter the same respectively in such manner as he might think fit; and also from time to time to prorogue the said Council and Assembly, and to dissolve the said Assembly, by Proclamation or otherwise, whenever he should deem it expedient: and whereas the said Council and Assembly, called "The Parliament of Victoria," stand prorogued until Tuesday the twenty-second day of May instant, and it is expedient further to prorogue the same, and to fix the time for holding the next Session thereof: Now therefore I, the Governor of Victoria, in exercise of the power conferred by the said Act, do by this my Proclamation further prorogue the said Parliament of Victoria from Tuesday the twenty-second day of May instant until Tuesday the nineteenth day of June next ensuing; and also I do hereby fix Tuesday the nineteenth day of June aforesaid as the time for the commencement and holding of the next Session of the said Council and Assembly, called the Parliament of Victoria, for the despatch of business, at Two o'clock in the afternoon, in the Parliament Houses, situate in Parliament place, Spring street, in the City of Melbourne: And the Honorable the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

Given under my Hand and the Seal of the Colony, at Melbourne, this eighteenth day of May, in the year of our Lord One thousand eight hundred and eighty-eight, and in the fifty-first year of Her Majesty's reign.

(L.S.)

HENRY B. LOCH.

By His Excellency's Command,
D. GILLIES,
Premier.

GOD SAVE THE QUEEN!

2. APPROACH OF HIS EXCELLENCY THE GOVERNOR.—The Approach of His Excellency the Governor was announced by the Usher.

His Excellency came into the Council Chamber, and commanded the Usher to desire the attendance of the Legislative Assembly in the Council Chamber, who, being come with their Speaker, His Excellency was pleased to speak as follows :—

MR. PRESIDENT AND HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

I have to congratulate you on the continued prosperity of the country.

Although hitherto the temperate counsels of statesmen have succeeded in maintaining peace in Europe, there have been moments when it seemed as if war was imminent; and my Advisers have followed the course of events with unremitting attention. Much has been done during the year to improve and strengthen our various means of defence, and the forts are rapidly being completed and armed with breech-loading guns of the latest type. The naval and military forces

are more efficient than they have ever been, and regulations have been framed for the establishment of a first-class militia reserve, and for the formation of corps of rifle volunteers from the rifle clubs in the country districts. My Advisers are also prepared to submit a plan for the establishment of a cartridge factory in Victoria, which it is hoped will supply the wants of all Australia.

The patriotic sentiment which led your two Houses to pass the Imperial Defence Bill by acclamation has been characteristically responded to in Great Britain, where a larger sum than was covenanted for has been voted for the equipment of better ships than were promised.

The House of Assembly put a resolution on record last year that greater restrictions should be placed on the incoming into this Colony of the Chinese; and my Advisers then explained that this could be most effectually carried out by subjecting letters of naturalization to a rigid scrutiny. Unfortunately, attempts have been made to frustrate the avowed intentions of the Government. It has been the care of my Advisers to carry out their promise to Parliament, and by a strict application of the existing law they have been enabled to make the actual influx inconsiderable. As it is evident that the necessary restriction can be best secured through the diplomatic action of the Imperial Government, and by uniform Australasian legislation, the Premier and Chief Secretary have attended an Intercolonial Conference at Sydney, and the important conclusions there arrived at will be embodied in a Bill and submitted to you for consideration and approval. The proceedings of the Conference will also be laid before you.

The approaching Centennial Exhibition is receiving even larger support than was at first calculated on, especially from Foreign Governments. There is reason to believe that it will far transcend anything that has yet been seen on this Continent.

The impulse given to irrigation is being widely felt. Many districts that have suffered in times past for want of water have availed themselves of the powers lately conferred by Parliament, and have borrowed money, and are projecting or executing works of great national importance.

The liberality which the present Parliament has displayed in its endowment of Technical Education has borne excellent fruit. Within the past two years the number of schools in operation, or on the point of being opened, has increased from two to seven, and the number of scholars in attendance has been multiplied threefold.

An important Commission has been appointed during the recess, which is now investigating the vital question of Public Health. It is hoped the opportunity will offer for some legislation during the Session. My Government has also appointed members to attend the Conference on Rabbit Extirpation at Sydney.

The application of the munificent votes which the present Parliament has granted for the promotion of the mining industry has been attended with beneficial results in many instances, and there is reason to believe that the course of systematic prospecting now entered on will be even more productive of good in the future.

The Postal Conference held in Sydney was, for the first time, attended by representatives of every colony of Australasia. Several questions of interest were disposed of, embracing amongst others an affirmation of the principle of a proportionate distribution of the cost of the various cable services, and a determination to authorize the survey of a new cable route to the United Kingdom by way of the Pacific.

MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

The Estimates have been framed with as much economy as the necessary requirements of the Public Service will admit.

MR. PRESIDENT AND HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

The necessity of revising our present Tariff has been admitted for some time past. Proposals to this effect will be submitted to you, and the endeavour has been made to enlarge the area of native industry in this community.

Since the Electoral Act was last revised there have been great changes in the settlement of population, with the result that a redistribution of seats has become necessary. My Advisers have prepared a Bill for accomplishing this object.

During the recess considerable additions have been made to our Forest reservations; a competent Conservator of Forests has been appointed, and a Bill will be submitted dealing with the whole question of improved Forest Management.

The great subject of Codification of the Law has been more than once under the consideration of the Legislature, and a Code which is the result of years of labour and research was recommended last Session for your adoption by a Joint Committee of both Houses. It is the opinion of my Advisers that an effort should be made in the direction of utilizing this work, and a proposal will be made to you which, it is trusted, will effect this object without incurring the risk of unsettling any branch of the law. The Probate Duties are found to press vexatiously upon very small estates, owing to the fees and expenses incurred in filing the necessary statements. Bills will be presented to you dealing with this defect and effectually relieving such estates. The law relating to Lunacy has long needed revision, and a Bill, which is largely based on the suggestions of the Lunacy Commission, will be submitted to your consideration, as will also be Bills for amending the Patent Act and making the procedure under it more effective, for improving the law relating to Trade Marks, for materially modifying the rigour of the Law of Distress, and for improving the efficiency of the Audit Act. The Bill for constituting a Metropolitan Board of Works, and that for amending Local Government, represent a preparation and revision that extend over years.

The extension of Horticultural and Viticultural interests throughout the Colony renders increased care necessary in connexion with the prevention of diseases inimical to plant growth, and a Bill to that end will be submitted.

The joint administration of the Rabbit Suppression Act by the Government and the municipal bodies has been found inadequate in its operation. A Bill will be introduced which will relieve the municipal bodies of the cost, and by promoting simultaneous and more complete action materially reduce or extirpate this national pest.

The death of the Emperor of Germany, after a long illness endured with heroic fortitude, has thrown our own Royal Family into mourning, and deprives England of one who was a warm friend as well as a loyal ally. The whole community will sympathize with the German people over the untimely death of one from whom much was hoped.

At no time since the Colony was founded has the prosperity been so marked. The national credit is higher than ever; the revenue has never been more elastic; and almost every industry is successful or reasonably hopeful of success. I pray that by the blessing of Divine Providence your counsels may add to the continuance of this general well-being.

Which being concluded, a copy of the Speech was delivered to the President, and a copy to Mr. Speaker, and His Excellency the Governor left the Chamber.

The Legislative Assembly then withdrew.

3. The President took the Chair, and read the Prayer.

4. DECLARATIONS OF MEMBERS.—The Honorables The President, J. Balfour, Dr. Beaney, J. Bell, F. Brown, J. Buchanan, Sir W. J. Clarke, J. H. Connor, H. Cuthbert, D. Coutts, Dr. Dobson, J. G. Dougharty, T. Dowling, N. FitzGerald, H. Gore, C. J. Ham, D. Ham, P. Hanna, C. H. James, G. Le Fevre, M.D., Sir J. Lorimer, J. P. MacPherson, D. Melville, F. Ormond, W. Pearson, W. H. Roberts, F. T. Sargood, W. P. Simpson, W. E. Stanbridge, D. C. Sterry, N. Thornley, J. A. Wallace, J. Williamson, G. Young, and W. A. Zeal severally delivered to the Clerk the declaration required by the thirteenth clause of the Act 45 Victoria, No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES MACBAIN, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Three hundred and eighty pounds, above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such land or tenements are situated in the municipal district of Prahran, and are known as land containing 7 acres 2 roods and 5 perches or thereabouts, part of Crown portion 27, in parish of Prahran, county of Bourke, with dwelling-house, out-houses, stable, &c., &c., erected thereon, in my own occupation.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Three hundred and eighty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAS. MACBAIN."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES BALFOUR, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Four hundred and fifty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Prahran, and are known as 'Tyalla,' Toorak.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Four hundred and fifty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES BALFOUR."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES GEORGE BEANEY, M.D., do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One thousand five hundred and sixty-eight pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Melbourne, and are known as 'Cromwell House,' and five others adjoining, and situate in Collins and Russell streets, in the city of Melbourne.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Melbourne are rated in the rate-book of such district upon a yearly value of One thousand four hundred and eighty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES GEO. BEANEY, M.D."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES BELL, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and twenty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Dunolly, and are known as my private residence, being allotments 4, 5, 6, 7, and 9 of section 26, town of Dunolly.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Dunolly are rated in the rate-book of such district upon a yearly value of One hundred and twenty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES BELL."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, FREDERICK BROWN, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and ten pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Beechworth, and are known as 'Shrublands'—Allotments 2, 3, and 4 of section A, with dwelling-house and out-houses, occupied by me; also allotments 8 of section P 1, 17 of section 4, and part of allotment 3 of section B, all in the town and parish of Beechworth.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of United Shire of Beechworth are rated in the rate-book of such district upon a yearly value of One hundred and ten pounds ten shillings.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements or any part thereof for the purpose of enabling me to be returned a Member of the Legislative Council.

"FRED$^{K.}$ BROWN."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES BUCHANAN, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and five pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Berwick, and are known as house and land in my own occupation.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Berwick are rated in the rate-book of such district upon a yearly value of One hundred and five pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES BUCHANAN."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, SIR WILLIAM JOHN CLARKE, Baronet, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Nine hundred and eighty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further that such lands or tenements are situated in the municipal district of the shire of Merriang, and are known as—Three thousand four hundred and sixty-one acres, in the parishes of Kalkallo, Mickleham, and Darraweit Guim, No. 130 in the rate-book.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of the shire of Merriang are rated in the rate-book of such district upon a yearly value of Nine hundred and eighty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. J. CLARKE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JOSEPH HENRY CONNOR, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and thirty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of shire of Colac, and are known as 57 A and 57 B, parish of Cundare, county of Grenville.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of Colac, shire of Colac, are rated in the rate-book of such district upon a yearly value of One hundred and thirty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements or any part thereof for the purpose of enabling me to be returned a Member of the Legislative Council.

"JOSEPH HENRY CONNOR."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, HENRY CUTHBERT, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the parish of Ballarat, in the county of Grenville, the description of which lands and tenements are as follows:—

"Part of allotment 4 of sec. 9, city of Ballarat, county of Grenville; and

"Allotment 2 of sec. 14, parish of Cardigan, county of Grenville.

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"And I further declare that such of the said lands or tenements as are situate in the municipal district of the city of Ballarat are rated in the rate-book of such district upon a yearly value of £80; and that such of the said lands or tenements as are situate in the shire of Ballarat are rated in the rate-book of such district upon a yearly value of £120.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"HENRY CUTHBERT."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, DAVID COUTTS do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of over One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Korong, and known as 'Salisbury Estate,' and in the municipal district of East Loddon, and known as 'Elmswood Estate,' also freehold land, parish of Hayanmi.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of Korong are rated in the rate-book of such district upon a yearly value of Four hundred and eighty-two pounds ten shillings; and such of said lands or tenements as are situated in the municipal district of East Loddon are rated in the rate-book of such district upon a yearly value of Four hundred and fifty-eight pounds five shillings and ninepence.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"DAVID COUTTS."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, FRANK STANLEY DOBSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Prahran and Hawthorn, and are known as—

"House, No. 44 Darling-street, South Yarra, in my own occupation; also land in Denham-street, Hawthorn, unoccupied.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of One hundred and seventy-five pounds, and that such of the said lands or tenements as are situate in the municipal district of Hawthorn are rated in the rate-book of such district upon a yearly value of Fifty-two pounds ten.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"F. STANLEY DOBSON."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JOHN GEORGE DOUGHARTY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred and fifty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal shires of Wodonga, Bogong, and Benambra, and are known as and situated in the parishes of Noorongong, Burrowye, Walwa, and Belvoir.

Wodonga, rated £31 net annual value.
Noorongong, — £122 do.
Jinjellic, — £101 do.
" — £40 do.

"And I further declare that such of the said lands or tenements as are situate in the municipal districts of Wodonga, Noorongong, and Jinjellic are rated in the rate-books of such districts upon a yearly value of Two hundred and ninety-four pounds, as detailed above.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JOHN G. DOUGHARTY."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, THOMAS DOWLING, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Hampden and Mortlake, and are known as Jellalabad, situated on Mount Emu Creek, and bounded on the south by the town of Darlington, on the east by lands belonging to Messrs. Cole and Dodd, on the north by Station known as Terrinallum, and on the west by the Station known as Mount Fyans.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Mortlake are rated in the rate-book of such district upon a yearly value of One thousand seven hundred and twenty pounds, and that such of the said lands or tenements as are situate in the municipal district of Hampden are rated in the rate-book of such district upon a yearly value of Five hundred and forty-six pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"THOMAS DOWLING."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, NICHOLAS FITZ GERALD, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of St. Kilda, in the county of Bourke, and are known as—

"Dwelling-house, Alma-road, St. Kilda, in the county of Bourke.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of St. Kilda are rated in the rate-book of such district upon a yearly value of over Three hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"N. FITZ GERALD."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, HENRY GORE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Six hundred and forty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Korong, and are known as—

"Spring Hill and Richmond Plains pre-emptive rights, &c.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Korong are rated in the rate-book of such district upon a yearly value of Six hundred and forty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"HENRY GORE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, CORNELIUS JOB HAM, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Five hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Prahran, and are known as—

"Dwelling-house and premises (known as 'Lalbert') situated in the Orrong-road, Prahran, with about ten acres, in my own occupation.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Five hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"C. J. HAM."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, DAVID HAM, do declare and testify that I am legally or quitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Five hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Ballaarat East, and are known as houses and land in Victoria-street.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of Ballaarat East are rated in the rate-book of such district upon a yearly value of Three hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"DAVID HAM."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, PATRICK HANNA, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Six hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Melbourne, and are known as

"121, 123, William street; also, Shire of Wyndham, Bellarine, Berwick, and borough of Queenscliff.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Melbourne are rated in the rate-book of such district upon a yearly value of Three hundred and fifty pounds, and that such of the said lands or tenements as are situate in the

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municipal district of Wyndham are rated in the rate-book of such district upon a yearly value of Two hundred pounds; Bellarine and Queenscliff, Berwick, over Two hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements or any part thereof for the purpose of enabling me to be returned a Member of the Legislative Council.

"PATRICK HANNA."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, CHARLES HENRY JAMES, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two thousand four hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Heidelberg, and are known as 'The Rosanna Estate.'

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Heidelberg are rated in the rate-book of such district upon a yearly value of Two thousand four hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"CHAS. H. JAMES."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, GEORGE LE FEVRE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and fifteen pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Brunswick, and are known as 'Camla,' and situated upon the east side of Harrison street, Brunswick aforesaid, and containing about seven acres.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Brunswick are rated in the rate-book of such district upon a yearly value of One hundred and fifteen pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"GEO. LE FEVRE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES LORIMER, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Four hundred and seventy pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Malvern, and are known as 'Belcroft,' Albany-road, Toorak, in my own occupation.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Malvern are rated in the rate-book of such district upon a yearly value of Four hundred and seventy pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES LORIMER."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES PHILLIP MACPHERSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and forty-seven pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Brunswick, and are known as part of portion 126, Brunswick, parish Jika Jika, county Bourke, 21 acres 2 roods 26 perches and 8-10 perch, and part of portion 125, at Brunswick aforesaid, containing 26 acres 14 perches and 7-10 of a perch.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Brunswick are rated in the rate-book of such district upon a yearly value of One hundred and forty-seven pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES P. MAC PHERSON."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, DONALD MELVILLE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred and fifty-eight pounds (£258) above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Brunswick and Pyalong, and are known as—

"My residence, situate in Albion-street, W. Brunswick, with thirty (30) acres of land, and also two hundred and six acres of land within the municipal district of Pyalong.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Brunswick are rated in the rate-book of such district upon a yearly value of Two hundred and thirty pounds, and that such of the said lands or tenements as are situate in the municipal district of Pyalong are rated in the rate-book of such district upon a yearly value of Twenty-eight pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"D. MELVILLE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, FRANCIS ORMOND, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Four hundred and fifty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Prahran, and are known as 'Egoleen' house and land.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Four hundred and fifty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"FRANCIS ORMOND."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM PEARSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two thousand nine hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Rosedale, and are known as 'Kilmany Park,' near Sale, containing 14,741 acres more or less freehold land.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Rosedale are rated in the rate-book of such district upon a yearly value of Two thousand nine hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"WM. PEARSON."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM HENRY ROBERTS, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Williamstown and Melbourne, and are known as 'Tudor House,' Electra-street, Williamstown, and No. 90, Chancery-lane, Melbourne.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Williamstown are rated in the rate-book of such district upon a yearly value of One hundred pounds; and that such of the said lands or tenements as are situate in the municipal district of Melbourne are rated in the rate-book of such district upon a yearly value of Two hundred and sixty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"WM. H. ROBERTS."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, FREDERICK THOMAS SARGOOD, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the value of pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Caulfield, and are known as 'Rippon Lea', consisting of—

"Forty-six acres of land, with dwelling-house thereon.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Caulfield are rated in the rate-book of such district upon a yearly value of:—

Rate	...	£62	10	0	...	Valuation ...	£1,250 per annum.
„	...	15	0	0	...	„ ...	300

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"F. T. SARGOOD."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WALTER PEACOCK SIMPSON, do declare and testify that I am legally or equitably seised of er entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and ninety-four pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and

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further, that such lands or tenements are situated in the municipal district of Sandhurst, and are known as Sandhurst Horse Bazaar and Sale Yards, Charing Cross and Hargreaves-street, Sandhurst.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Sandhurst are rated in the rate-book of such district upon a yearly value of One hundred and ninety-four pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. P. SIMPSON."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM EDWARD STANBRIDGE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred and forty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Daylesford, and are known as allotment 4 of section 6, township of Daylesford.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Daylesford are rated in the rate-book of such district upon a yearly value of Two hundred and forty-two pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. E. STANBRIDGE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, DAVID CHAPLIN STERRY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and eight pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Sandhurst, and are known as lands and buildings in Inglewood-road, and land in Forest-street, Sandhurst.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Sandhurst are rated in the rate-book of such district upon a yearly value of One hundred and ten pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"D. C. STERRY."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, NATHAN THORNLEY, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Four hundred and ninety-four pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Dundas, and are known as 'Meadow Lands,' containing about 1826 acres.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Dundas are rated in the rate-book of such district upon a yearly value of Four hundred and ninety-four pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"N. THORNLEY."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JOHN ALSTON WALLACE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred and eighty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Towong, and Port Melbourne, and are known as—

"No. 1. Lands and tenements situate near Bethanga, parish of Berringa, electoral district of Benambra, shire of Towong, area, 639 acres.

"No. 2. Lands and tenements, the Bay View Hotel, situate Beach-street, Port Melbourne.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Towong are rated in the rate-book of such district upon a yearly value of One hundred pounds, and that such of the said lands or tenements as are situate in the municipal district of Port Melbourne are rated in the rate-book of such district upon a yearly value of One hundred and eighty pounds.

"And I hereby further declare that I have not colusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JOHN A. WALLACE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES WILLIAMSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Four hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Prahran, and are known as—

"'Tintern,' Toorak.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Four hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAS. WILLIAMSON."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, GEORGE YOUNG, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred and fifty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Horsham, and are known as land and premises situated in Wilson-street, Horsham.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Horsham are rated in the rate-book of such district upon a yearly value of Two hundred and fifty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"GEO. YOUNG."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM AUSTIN ZEAL, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria, of the yearly value of pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such land or tenements are situated in the municipal districts of Prahran and South Melbourne, and are known as—

"Parts of Crown portions 17 and 18, parish of Prahran (at Toorak), county of Bourke; and Crown allotment No. 4, section I, and Crown allotment No. 5, section L, city of South Melbourne, county of Bourke.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Three hundred and eighty pounds; and that such of the said lands or tenements as are situate in the municipal district of South Melbourne are rated in the rate-book of such district upon a yearly value of Four hundred and twenty-two pounds, or a total rating of Eight hundred and two pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. A. ZEAL."

5. ISSUE OF WRIT.—The President announced that, in consequence of the death of the Honorable W. E. Hearn, he had issued a Writ for the election of a Member to serve for the Melbourne Province.

6. RETURN TO WRIT.—The President announced to the Council that he had received a return to the Writ he had issued, by which it appeared that James Service had been elected in pursuance thereof.

7. STATUTE OF GAOLS FURTHER AMENDMENT BILL.—The Honorable H. Cuthbert moved, That he have leave to bring in a Bill to further amend the Statute of Gaols 1864.

Question—put and resolved in the affirmative.

Ordered—That the Honorable H. Cuthbert do prepare and bring in the Bill.

The Honorable H. Cuthbert then brought up a Bill intituled "*A Bill to further amend the Statute of Gaols* 1864," and moved that it now be read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-mrrow.

8. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by The Honorable H. Cuthbert, and the same was read and is as follows:—

HENRY B. LOCH,
Governor.

Message No. 1.

The Governor begs to inform the Legislative Council that he has received from The Honorable the Secretary of State for the Colonies the following Despatch intimating Her Majesty's Commands with reference to the Address of Congratulation which was presented by both Houses of the Parliament of Victoria to Her Most Gracious Majesty the Queen on the occasion of the 50th anniversary of Her Reign.

Government House,
Melbourne, 7th June 1888.

(Enclosure.)

VICTORIA.

Downing Street,
1st December 1887.

SIR,

I have the honour to acknowledge the receipt of your Despatch No. 132 of the 7th September, transmitting an Address from the Parliament of Victoria respectfully congratulating Her Majesty on the occasion of the 50th anniversary of Her accession to the Throne.

This Address has been laid before the Queen, and I am commanded to request that you will convey to the Parliament of Victoria Her Majesty's thanks for the expression of loyal attachment and good wishes which it contains.

Her Majesty has particularly noticed the beauty of the Address, containing a representation of the new Houses of Parliament and the Queen's Hall.

I have, &c.,

(Signed) H. T. HOLLAND.

Governor Sir H. B. Loch, G.C.M.G., K.C.B.,
&c., &c., &c.

9. PAPERS.—The Honorable H. Cuthbert presented by command of His Excellency the Governor—
Statistical Register of the Colony of Victoria for the Year 1886—
Part V.—Interchange.
Part VI.—Accumulation.
Part VII.—Production.
Part VIII.—Law, Crime, &c.
Part IX.—Social Condition.
Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented, pursuant to Act of Parliament—
Trades Unions—Second Annual Report of the Proceedings of the Government Statist in connection with—being report for the year 1887, with an appendix.
Friendly Societies—Ninth Annual Report of the Proceedings of the Government Statist in connection with—being report for the year 1886.
Supreme Court.—Regulæ Generales.
Justices of the Peace Act 1887.—Rules under.
Duties on the Estates of Deceased Persons Statute 1870—Rules under—
Resumption of Lands under the Act No. 933. Certificate approved by the Governor in Council dated 18th June 1888.
The County Court Rules 1888.
Severally ordered to lie on the Table.

The Honorable Sir Jas. Lorimer presented, pursuant to Act of Parliament—
Victorian Military Forces—Regulations for—Additions.
Victorian Permanent Naval Forces—Regulations for—Alterations and Additions.
Victorian Naval Brigade—Regulations for—Additions.
Rifle Clubs—Regulations for—Addition.
Severally ordered to lie on the Table.

10. NEW MEMBER.—The Honorable James Service, being introduced, took and subscribed the oath required by the 32nd clause of the Constitution Act, and delivered to the Clerk the declaration required by the 13th clause of the Act No. 702, as hereunder set forth:—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES SERVICE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Caulfield Shire, and known as 'Kilwinning,' being the house and lands occupied as a residence for myself, in Balaclava Road, corner of Hotham-street.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of Caulfield are rated in the rate-book of such district upon a yearly value of Four hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES SERVICE."

11. CHAIRMAN OF COMMITTEES—The Honorable H. Cuthbert moved, by leave of the Council, That the Honorable Dr. Dobson be Chairman of Committees of the Council.
Question—put and resolved in the affirmative.

12. SPEECH OF HIS EXCELLENCY THE GOVERNOR.—The President reported the Speech of His Excellency the Governor.
The Honorable Geo. Le Fevre moved, That a Committee be appointed to prepare an address to His Excellency the Governor in reply to His Excellency's Opening Speech.
Question—put and resolved in the affirmative.
The Honorable Geo. Le Fevre moved, That the Committee consist of the Honorables J. P. MacPherson, J. Bell, Lt.-Col. F. T. Sargood, D. Coutts, C. J. Ham, F. Brown, N. Thornley, H. Cuthbert, and the mover.
Question—put and resolved in the affirmative.
The Committee retired to prepare the Address.

The Honorable Geo. Le Fevre brought up the Address prepared by the Committee, which was read at the Table by the Clerk, and is as follows:—

To His Excellency SIR HENRY BROUGHAM LOCH, *Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-Chief in and over the Colony of Victoria and its Dependencies, &c., &c., &c.*

We, Her Majesty's most dutiful and loyal subjects, the members of the Legislative Council of Victoria, in Parliament assembled, beg leave to approach Your Excellency with renewed expressions of our loyalty and attachment to Her Majesty's Throne and Person.

We cordially reciprocate Your Excellency's congratulations on the continued prosperity of the country.

We concur with Your Excellency that although hitherto the temperate counsels of statesmen have succeeded in maintaining peace in Europe, there have been moments when it seemed as if war was imminent; and we are glad to learn that Your Advisers have followed the course of events with unremitting attention. It affords us satisfaction also to know that much has been done during the year to improve and strengthen our various means of defence, and that the forts are rapidly being completed and armed with breech-loading guns of the latest type. We also learn, with pleasure, that the naval and military forces are more efficient than they have ever been, and that regulations have been framed for the establishment of a first-class militia reserve, and for the formation of corps of rifle volunteers from the rifle clubs in the country districts. We learn, with satisfaction, that Your Excellency's Advisers are also prepared to submit a plan for the establishment of a cartridge factory in Victoria, which it is hoped will supply the wants of all Australia.

We are gratified to be informed that the patriotic sentiment which led the two Houses of Parliament to pass the Imperial Defence Bill by acclamation has been characteristically responded to in Great Britain, where a larger sum than was covenanted for has been voted for the equipment of better ships than were promised.

We learn with satisfaction that the House of Assembly put a resolution on record last year that greater restrictions should be placed on the incoming into this Colony of the Chinese, and that Your Excellency's Advisers then explained that this could be most effectually carried out by subjecting letters of naturalization to a rigid scrutiny. We regret to hear that, unfortunately, attempts have been made to frustrate the avowed intentions of the Government, but we are glad to be informed that it has been the care of Your Excellency's Advisers to carry out their promise to Parliament, and that by a strict application of the existing law they have been enabled to make the actual influx inconsiderable. As it is evident that the necessary restriction can be best secured through the diplomatic action of the Imperial Government and by uniform Australasian legislation, it affords us satisfaction to learn that the Premier and Chief Secretary have attended an Intercolonial Conference at Sydney, and we thank Your Excellency for informing us that the important conclusions there arrived at will be embodied in a Bill and submitted to us for consideration and approval; also that the proceedings of the Conference will be laid before us.

We beg to express our pleasure at learning that the approaching Centennial Exhibition is receiving even larger support than was at first calculated on, especially from Foreign Governments, and we concur with Your Excellency that there is reason to believe that it will far transcend anything that has yet been seen on this Continent.

We thank Your Excellency for informing us that the impulse given to irrigation is being widely felt, and that many districts that have suffered in times past from want of water have availed themselves of the powers lately conferred by Parliament, and have borrowed money and are projecting or executing works of great national importance.

It affords us satisfaction to learn that the liberality which the present Parliament has displayed in its endowment of Technical Education has borne excellent fruit, and that within the past two years the number of schools in operation, or on the point of being opened, has increased from two to seven, also that the number of scholars in attendance has been multiplied threefold.

We thank Your Excellency for informing us that an important Commission has been appointed during the recess, which is now investigating the vital question of Public Health, and we share the hope that the opportunity will offer for some legislation during the session. We are pleased to learn that Your Excellency's Government has also appointed members to attend the Conference on Rabbit Extirpation at Sydney.

We learn with satisfaction that the application of the munificent votes which the present Parliament has granted for the promotion of the mining industry has been attended with beneficial results in many instances, and that there is reason to believe that the course of systematic prospecting now entered on will be even more productive of good in the future.

We are glad to be informed that the Postal Conference held in Sydney was, for the first time, attended by representatives of every colony of Australasia, and that several questions of interest were disposed of, embracing amongst others an affirmation of the principle of a proportionate distribution of the cost of the various cable services, and a determination to authorize the survey of a new cable route to the United Kingdom by way of the Pacific.

The necessity of revising our present Tariff has been admitted for some time past, and we thank Your Excellency for informing us that proposals to this effect will be submitted to Parliament, and that the endeavour has been made to enlarge the area of native industry in this community.

We coincide with Your Excellency in the view that since the Electoral Act was last revised there have been great changes in the settlement of population, with the result that a redistribution of seats has become necessary, and we are glad to be informed that Your Excellency's Advisers have prepared a Bill for accomplishing this object.

We are also gratified to learn that during the recess considerable additions have been made to our Forest reservations; that a competent Conservator of Forests has been appointed, and that a Bill will be submitted dealing with the whole question of improved Forest Management.

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The great subject of Codification of the Law has been more than once under the consideration of the Legislature, and a Code which is the result of years of labour and research was recommended last session for adoption by a Joint Committee of both Houses. We coincide in the opinion of Your Excellency's Advisers that an effort should be made in the direction of utilizing this work, and we thank Your Excellency for informing us that a proposal will be made to us which, it is trusted, will effect this object without incurring the risk of unsettling any branch of the law. We concur with Your Excellency that the Probate Duties are found to press vexatiously upon very small estates, owing to the fees and expenses incurred in filing the necessary statements, and we learn with satisfaction that Bills will be presented to us dealing with this defect and effectually relieving such estates.

We concur with Your Excellency that the law relating to Lunacy has long needed revision, and it is satisfactory to us to know that a Bill which is largely based on the suggestions of the Lunacy Commission will be submitted to our consideration, as will also be Bills for amending the Patent Act and making the procedure under it more effective, for improving the law relating to Trade Marks, for materially modifying the rigour of the Law of Distress, and for improving the efficiency of the Audit Act. We recognise that the Bill for constituting a Metropolitan Board of Works, and that for amending Local Government, represent a preparation and revision that extend over years.

We agree with Your Excellency that the extension of Horticultural and Viticultural interests throughout the Colony renders increased care necessary in connexion with the prevention of diseases inimical to plant growth, and we are glad to be informed that a Bill to that end will be submitted.

As the joint administration of the Rabbit Suppression Act by the Government and the municipal bodies has been found inadequate in its operation, we beg to express our satisfaction at learning that a Bill will be introduced which will relieve the municipal bodies of the cost, and by promoting simultaneous and more complete action materially reduce or extirpate this national pest.

We receive with deep regret the tidings of the death of the Emperor of Germany, after a long illness endured with heroic fortitude. This event has thrown our own Royal Family into mourning, and deprives England of one who was a warm friend as well as a loyal ally. We agree with Your Excellency that the whole community will sympathize with the German people over the untimely death of one from whom much was hoped.

It affords us pleasure to know that at no time since the Colony was founded has the prosperity been so marked; that the National credit is higher than ever; that the revenue has never been more elastic; and that almost every industry is successful or reasonably hopeful of success; and we pray that by the blessing of Divine Providence, our counsels may add to the continuance of this general well-being.

The Honorable Geo. F. Le Fevre moved, That the Address be now adopted.
The Honorable W. A. Zeal moved, That the debate be adjourned.
Question—That the debate be now adjourned until to-morrow—put and resolved in the affirmative.

13. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council at its rising adjourn until to-morrow, at half-past four o'clock.
Question—put and resolved in the affirmative.
The Honorable H. Cuthbert moved, That the Council do now adjourn.
Question—put and resolved in the affirmative.

The Council adjourned at nineteen minutes past four o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.
(650 copies.)

VICTORIA.

No. 2.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 20TH JUNE, 1888.

1. The Council met in accordance with adjournment.
2. The President took the Chair.
3. The President read the Prayer.
4. THE LATE EMPEROR OF GERMANY.—The Honorable H. Cuthbert moved, by leave, That a Committee be appointed to draw up an Address of Sympathy with the Emperor of Germany and with the Dowager Empress and family of the late Emperor under the irreparable loss they have sustained; such Committee to consist of the Honorables Lieut.-Col. Sargood, James Service, N. Thornley, Dr. Le Fevre, W. A. Zeal, Sir William J. Clarke, and the Mover, and that they do retire immediately.

   Question—put and resolved in the affirmative.

   The Honorable H. Cuthbert brought up the Report from the Committee, and the same was read, and is as follows :—

   The Legislative Council of Victoria, Australia, desire to express the deep regret with which they received the announcement of the death of the late Emperor of Germany, and to convey their profound sympathy with His Imperial Majesty William II., with the Dowager Empress Victoria and Her family in their bereavement, and with the Nation at the loss of such an illustrious, honored, and much-loved Sovereign.

   The Hon. H. Cuthbert moved, That the report be now adopted.

   Question—put and resolved in the affirmative.

   The Honorable H. Cuthbert moved, by leave, That an Address be presented to His Excellency the Governor, requesting Him to transmit, by telegraph, the above resolution to the Right Honorable the Secretary of State for the Colonies for presentation to Her Majesty, with an expression of a respectful hope that Her Majesty will be graciously pleased to communicate it to the Emperor of Germany.

   Question—put and resolved in the affirmative.
5. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

   Australian Mails.—Copies of Contracts for the conveyance of Mails between Australia and Italy.

   Postal Conference 1888.—Proceedings of the Conference held in Sydney in January 1888.

   Post Office and Savings Bank.—Statement of the Accounts of the—for the year ended 31st December, 1887.

   Letters by Long Sea Route—Transmission of—to the United Kingdom.

   Post Cards—Transmission of—from Victoria to the United Kingdom.

   Severally ordered to lie on the Table.

   The Honorable Sir J. Lorimer presented, by command of His Excellency the Governor—

   The Land Act 1884.—Regulations.—Order in Council.

   Land Act 1884—Regulations amended.—Order in Council.

   Land Act 1884—Regulations.—Order in Council.

   Severally ordered to lie on the Table.

   The Honorable J. Bell presented, by command of His Excellency the Governor—

   Agriculture.—Reports relative to Blight in Wheat at Korong Vale.

   Ordered to lie on the Table.

   The Honorable J. Bell presented, pursuant to Act of Parliament—

   Agricultural Education—Accounts of the Trustees of Agricultural Colleges and the Council of Agricultural Education from 1st July, 1887, to 31st December, 1887.

   Ordered to lie on the Table.

   The Honorable Sir J. Lorimer presented, pursuant to Act of Parliament—

   Shire of Shepparton Waterworks Trust.—Application for Further Additional Loan of £6621. —Detailed Statement and Report.

   Education Act 1872—Regulations.

   Severally ordered to lie on the Table.

6. INSTRUMENTS AND SECURITIES STATUTE 1864 AMENDMENT BILL.—The Honorable W. A. Zeal moved, That he have leave to bring in a Bill to amend "*The Instruments and Securities Statute* 1864."

Question—put and resolved in the affirmative.

Ordered—That the Honorable W. A. Zeal do prepare and bring in the Bill.

The Honorable W. A. Zeal then brought up a Bill intituled "*A Bill to amend* ' *The Instruments and* " ' *Securities Statute* 1864,' " and moved, That it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 3rd July next.

7. LEAVE OF ABSENCE—THE HONORABLE W. I. WINTER.—The Honorable J. Bell moved, pursuant to notice given by the Honorable D. C. Sterry, That leave of absence be granted to the Honorable W. I. Winter during the Session to enable him to proceed to England on urgent private affairs.

Question—put and resolved in the affirmative.

8. STANDING ORDERS COMMITTEE.—The Honorable H. Cuthbert moved, pursuant to notice, That the Honorables The President, Dr. Dobson, J. Service, Lieut.-Col. Sargood, J. Balfour, H. Gore, and the Mover be appointed a Select Committee on the Standing Orders of the House, three to form a quorum.

Question—put and resolved in the affirmative.

9. LIBRARY COMMITTEE.—The Honorable H. Cuthbert moved, pursuant to *amended* notice, That the Honorables the President, D. Melville, F. Brown, W. P. Simpson, and Dr. Le Fevre be Members of the Joint Committee of both Houses to manage the Library.

Question—put and resolved in the affirmative.

10. PARLIAMENT BUILDINGS COMMITTEE.—The Honorable H. Cuthbert moved, pursuant to *amended* notice, That the Honorables The President, N. Fitz Gerald, S. Fraser, N. Thornley, and J. Balfour be Members of the Joint Committee of both Houses to manage and superintend the Parliament Buildings.

Question—put and resolved in the affirmative.

11. REFRESHMENT ROOMS COMMITTEE.—The Honorable H. Cuthbert moved, pursuant to *amended* notice, That the Honorables J. A. Wallace, J. Buchanan, Sir W. J. Clarke, Bart., D. C. Sterry, and J. G. Beaney be Members of the Joint Committee of both Houses to manage the Refreshment Rooms.

Question—put and resolved in the affirmative.

12. PRINTING COMMITTEE.—The Honorable Sir James Lorimer moved, pursuant to *amended* notice That the Honorables The President, G. Young, W. H. Roberts, F. Ormond, J. Bell, and the mover, be appointed a Printing Committee—three to form a quorum.

Question—put and resolved in the affirmative.

13. DAYS OF BUSINESS.—The Honorable H. Cuthbert moved, pursuant to notice, That Tuesday, Wednesday, and Thursday in each week be the days on which the Council shall meet for despatch of business during the present Session, and that half-past four o'clock be the hour of meeting on each day; and that on Tuesday and Thursday in each week the transaction of Government Business shall take precedence of all other business.

Qnestion—put and resolved in the affirmative.

14. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the following Order of the day be postponed until Tuesday, 3rd July next.

Statute of Gaols 1864 *Further Amendment Bill.—To be read a second time.*

15. ADDRESS IN REPLY TO GOVERNOR'S SPEECH.—The Order of the Day for the resumption of the debate on the Question, That the Council agree with the Committee in the Address to His Excellency the Governor in reply to His Excellency's opening Speech, brought up by the Committee yesterday, having been read,

Debate resumed.

Question—put and resolved in the affirmative.

The Honorable H. Cuthbert moved, That the Address be presented to His Excellency the Governor by the President and such members of the Council as may wish to accompany him.

Question—put and resolved in the affirmative.

16. ADDRESS OF CONDOLENCE TO HER MAJESTY THE QUEEN.—The Honorable H. Cuthbert moved that the following Address to Her Majesty the Queen be agreed to by the Council:—

The Legislative Council of Victoria, Australia, desire to express to Her Most Gracious Majesty the Queen their deep sympathy with Her in the great bereavement which she has suffered in the death of Her illustrious son-in-law, the late Emperor of Germany, a loss which has plunged England and Germany in a common grief.

Question—put and resolved in the affirmative.

The Honorable H. Cuthbert moved, That an Address be presented to His Excellency the Governor, requesting him to transmit by telegraph the above resolution to the Right Honorable the Secretary of State for the Colonies, for presentation to Her Majesty.

Question—put and resolved in the affirmative.

17. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday, the 3rd July next.

Question—put and resolved in the affirmative.

The Council adjourned at twelve minutes past eleven o'clock until Tuesday, 3rd July next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

(650 copies.)

VICTORIA.

No. 3.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 3RD JULY, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The following Messages from His Excellency the Governor were presented by The Honorable H. Cuthbert, and the same were read, and are as follow :—

HENRY B. LOCH,
Governor. *Message* .

The Governor begs to inform the Legislative Council that, in accordance with their wish, he transmitted by telegraphic despatch, on the 21st instant, to the Right Honorable the Secretary of State for the Colonies, the Resolution expressive of their deep sympathy with Her Majesty the Queen in the great bereavement which Her Majesty has suffered in the death of Her illustrious Son-in-law the late Emperor of Germany, and, in reply thereto, the Governor is commanded by the Queen to convey to the Legislative Council the expression of Her Majesty's grateful appreciation of the loyal sympathy which prompted the Message of Condolence.

Government House,
Melbourne, 30th June, 1888.

HENRY B. LOCH,
Governor. *Message* .

The Governor begs to acquaint the Legislative Council that he transmitted by telegraphic despatch to Her Majesty the Queen the Address of Condolence expressive of their profound sympathy with His Imperial Majesty William II, with the Dowager Empress Victoria and Her family in their bereavement, and with the Nation, at the loss of such an illustrious, honored, and much-loved Sovereign, and in reply, the Governor is commanded by Her Majesty to inform the Legislative Council that the Message of Condolence will be duly forwarded and presented to His Imperial Majesty the Emperor of Germany and to the Dowager Empress Victoria.

Government House,
Melbourne, 30th June, 1888.

Severally ordered to lie on the Table.

5. CENTENNIAL INTERNATIONAL EXHIBITION. — INVITATIONS TO LEGISLATIVE COUNCILS OF AUSTRALASIA.—The Honorable H. Cuthbert moved, by leave, That this House most cordially invites the Members of the Legislative Councils of New South Wales, South Australia, Tasmania, Queensland, New Zealand, Western Australia, and Fiji to be present at the opening of the Centennial International Exhibition, Melbourne, on the 1st of August, 1888.

Question—put and resolved in the affirmative.

The Honorable H. Cuthbert moved, by leave, That immediate steps be taken by the Honorable The President to communicate the foregoing Resolution to the Houses of Legislature therein mentioned.

Question—put and resolved in the affirmative.

6. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday, the 10th July instant.

Question—put and resolved in the affirmative.

The Council adjourned at a quarter to five o'clock until Tuesday, 10th instant, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

(650 copies.)

VICTORIA.

No. 4.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 10TH JULY, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly acquaint the Legislative Council that they have appointed a Committee, consisting of seven Members, to join with a Committee of the Legislative Council for the purpose of making all the necessary arrangements for the reception of the Members of the Parliaments of Australasia who may visit Melbourne on the occasion of the opening of the Centennial International Exhibition, Melbourne, and request that the Legislative Council will be pleased to appoint an equal number of Members to be joined with the Members of this House; five to be a quorum.

M. H. DAVIES,
Speaker.

Legislative Assembly Chambers,
Melbourne, 10th July, 1888.

5. CENTENNIAL INTERNATIONAL EXHIBITION—RECEPTION COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That, in compliance with the request of the Legislative Assembly, a Committee be appointed consisting of seven Members, to join with the Committee of the Legislative Assembly, for the purpose of making all the necessary arrangements for the reception of the Members of the Parliaments of Australasia who may visit Melbourne on the occasion of the opening of the Centennial International Exhibition, Melbourne, such Committee to consist of the Honorables James Balfour, Sir William J. Clarke, Bart., N. FitzGerald, F. Ormond, J. Service, J. Williamson, and W. A. Zeal; five to be the quorum, and that the Committee have power to meet on days on which the Council does not sit; and further, that the Committee meet in the first instance in the South Library, on Wednesday, at eleven o'clock a.m.

Question—put and resolved in the affirmative.

6. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday, the 24th July instant.

Question—put and resolved in the affirmative.

The Council adjourned at six minutes to five o'clock until Tuesday, 24th July instant, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

(650 copies.)

VICTORIA.

No. 5.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 24TH JULY, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. DECLARATIONS OF MEMBERS.—The Honorables S. Fraser and W. Ross severally delivered to the Clerk the declaration required by the 13th clause of the Act 45 Victoria, No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, SIMON FRASER, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Four hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Echuca Shire, and are known as land containing an area of three thousand three hundred and four acres, or thereabout, in the parish of Terrick Terrick and Patho.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Echuca Shire are rated in the rate-book of such district upon a yearly value of Three hundred and fifty-three pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"SIMON FRASER."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM ROSS, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Mount Rouse, and are known as 'The Gums,' near Caramut.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Mount Rouse are rated in the rate-book of such district upon a yearly value of Two thousand and eighty-four pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"WM. ROSS."

5. PRESENTATION OF ADDRESS TO HIS EXCELLENCY THE GOVERNOR.—The President announced to the Council that the Address of the Council to His Excellency the Governor, adopted on the 20th June last, had been presented in accordance with the resolution of the Council, and that His Excellency had been pleased to make thereto the following reply :—

MR. PRESIDENT AND HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL,

I receive with much satisfaction your dutiful Address and the renewed assurance of your loyalty and attachment to Her Majesty's Throne and Person.

I fully rely on your wisdom in the consideration of the measures which may be submitted to you, and I fervently trust that the result of your labours will conduce to the continued prosperity of this Country.

HENRY B. LOCH.

Government Offices,
Melbourne, 12th July, 1888.

(650 copies.)

6. PAPERS.—The Honorable H. Cuthbert presented by command of His Excellency the Governor—

Melbourne Mint.—Report of the Deputy-Master of the Royal Mint, London, on the weight and fineness of gold coins struck at the Melbourne Branch.

Chinese Immigration.—Correspondence.

Legislative Assembly Chamber—Ventilation and lighting of the—First and Second Progress Reports from the Royal Commission appointed to inquire into and report upon the best means of ventilating and lighting.

British New Guinea.—Report for the year 1887, by Her Majesty's Special Commissioner for the Protected Territory.

Statistical Register of the Colony of Victoria for the Year 1887—

Part I.—Blue Book.'

Part II.—Population.

Charitable Institutions.—Report of Inspector for the year ended 30th June, 1887.

Severally ordered to lie on the Table.

The Honorable Sir J. Lorimer presented, by command of His Excellency the Governor—

Import, Export, Transshipment, and Shipping Returns—A general summary of—with an Abstract of Customs Revenue for the year 1887.

Statistical Register of the Colony of Victoria for the year 1886—

Part V.—Interchange.

Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Bank Liabilities and Assets—Summary of sworn Returns for the quarter ended 31st December, 1887.

Victorian Mining Accident Relief Fund—Statement of Accounts rendered by the Trustees of the Fund.

Supreme Court—Rules of the.

Factories, Workrooms, and Shops—Report of the Chief Inspector of—for the year ended 31st December, 1887.

Severally ordered to lie on the Table.

The Honorable Sir J. Lorimer presented, pursuant to Act of Parliament—

Pilot Board, Accounts of the—for the year ended 31st August, 1887.

Melbourne Harbor Trust—The accounts of the—for the quarter ended 30th September, 1887.

Fisheries Act Amendment Act 1878—Notice prohibiting Trawling, Gippsland Lakes Entrance, for the quarter ended 31st December, 1887.

Fisheries Act 1873—Port Albert Oyster Beds.

Fisheries Act Amendment Act 1878—Notice Capture of Crayfish.

Fisheries Act Amendment Act 1878—Notice prohibiting Trawling in Lake Jambuk.

Victorian Military Forces—Regulations, Additions, and Alterations—First Class Militia Reserve.

Severally ordered to lie on the Table.

The Honorable J. Bell presented, pursuant to Act of Parliament—

The Irrigation Act 1886.—Orders in Council—

The Swan Hill Shire Waterworks Trust and the Tragowel Plains Irrigation and Water Supply Trust.—Apportioning certain liabilities.

Swan Hill Shire Water Works Trust and Cohuna Irrigation and Water Supply Trust.—Apportioning certain liabilities.

Koondrook Irrigation and Water Supply Trust.—District increased.

Tragowel Plains Irrigation and Water Supply Trust.—Loan.

Cohuna Irrigation and Water Supply Trust.—Regulations for the Election of Commissioners.

Cohuna Irrigation and Water Supply Trust.—Constituted.

Tragowel Plains Irrigation and Water Supply Trust.—Extent of district increased.

Payment of Travelling Expenses to Commissioners of Irrigation and Water Supply Trusts.—Regulations.

Severally ordered to lie on the Table.

7. DISTRESS FOR RENT LAW AMENDMENT BILL.—The Honorable H. Cuthbert moved, by leave, That he have leave to bring in a Bill to amend the law relating to Distress for Rent.

Question—put and resolved in the affirmative.

Ordered—That the Honorable H. Cuthbert do prepare and bring in the Bill.

The Honorable H. Cuthbert then brought up a Bill intituled "*A Bill to amend the Law relating to "Distress for Rent,*" and moved that it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 7th August next.

8. NOXIOUS INSECTS BILL.—The Honorable H. Cuthbert moved, by leave, That he have leave to bring in a Bill to prevent the introduction and to provide for the destruction of certain insects which injuriously affect vegetation, and for other purposes.

Question—put and resolved in the affirmative.

Ordered—That the Honorable H. Cuthbert do prepare and bring in the Bill.

The Honorable H. Cuthbert then brought up a Bill intituled "*A Bill to prevent the introduction and "to provide for the destruction of certain Insects which injuriously affect Vegetation, and for other "purposes,*" and moved, That it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 7th August next.

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9. LUNANCY STATUTE FURTHER AMENDMENT BILL.—The Honorable H. Cuthbert moved, by leave, That he have leave to bring in a Bill to further amend the Lunacy Statute.
Question—put and resolved in the affirmative.
Ordered—That The Honorable H. Cuthbert do prepare and bring in the Bill.
The Honorable H. Cuthbert then brought up a Bill, intituled "*A Bill to further amend the Lunacy "Statute,*" and moved that it be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 7th August next.

10. STATUTE OF GAOLS 1864 FURTHER AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, The President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.
Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

11. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly acquaint the Legislative Council that they have appointed a Committee, consisting of seven Members, to join with a Committee of the Legislative Council to consider and report upon *The General Code Bill*, and to request that the Legislative Council will be pleased to appoint an equal number of Members to be joined with the Members of this House; five to be the quorum.

M. H. DAVIES,
Speaker.

Legislative Assembly Chambers,
Melbourne, 24th July, 1888.

12. CODIFICATION OF LAWS.—The Honorable H. Cuthbert moved—
(1.) That a Select Committee be appointed to join the Committee of the Legislative Assembly to consider the best means of obtaining a codification of the laws in force in Victoria, and to report their opinion thereon.
(2.) That such Committee consist of seven members, five to be a quorum, with power to send for persons, papers, and records.
(3.) That the Members of the Committee be the Honorables J. Balfour, F. Brown, N. Fitz Gerald, D. Melville, Lt.-Col. Sargood, J. Service, and the Mover.
(4.) That such Committee meet in the South Library on Tuesday, 7th August next, at 3 o'clock p.m.
Question—put and resolved in the affirmative.
Ordered—That a Message be transmitted to the Legislative Assembly acquainting them with the above resolutions.

13. TELEGRAPHIC CABLE BETWEEN CANADA AND AUSTRALIA.—The Honorable N. Thornley moved, pursuant to notice given by the Honorable J. Service, That there be laid on the Table copies of all correspondence with the Secretary of State for the Colonies with the Government of Canada, and (if any) with the other Australasian colonies, relative to the laying of a telegraphic cable between Canada and Australia, or to a preliminary marine survey having that object in view.
Question—put and resolved in the affirmative.

14. CIVIL STAFF OF DEFENCE DEPARTMENT AND PUBLIC SERVICE BOARD.—The Honorable D. Melville moved, pursuant to notice, That there be laid on the Table of this House a copy of all correspondence which has passed between officers of the Civil Staff of the Defence Department, the Minister, and Secretary of Defence, and the Public Service Board with reference to appointments, transfers, promotions, and classification of work in that Department.
Debate ensued.
Motion, by leave, withdrawn.

15. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the following Order of the day be postponed until Tuesday, 7th August next:—
Instruments and Securities Statute 1864 *Amendment Bill—To be read a second time.*

The Council adjourned at six minutes past six o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 6.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 25TH JULY, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Two million four hundred and ninety-four thousand five hundred and fifty pounds to the service of the year One thousand eight hundred and eighty-eight and nine*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 25th July, 1888.

5. CONSOLIDATED REVENUE BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to apply out of the Consolidated Revenue the sum of Two million four hundred and ninety-four thousand five hundred and fifty pounds to the service of the year One thousand eight hundred and eighty-eight and nine*," be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, The President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable H. Cuthbert the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed*.

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—"*An Act to apply out of the Consolidated Revenue the sum of Two million four hundred and ninety-four thousand five hundred and fifty pounds to the service of the year One thousand eight hundred and eighty-eight and nine.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

6. PAPER.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

The Judicature Act—Report of the Council of Judges under section 54.

Ordered to lie on the Table.

7. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the following Order of the Day be postponed until Tuesday, 14th August next :—

Statute of Gaols 1864 Further Amendment Bill—To be further considered in Committee.

8. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday, 14th August next.

Question—put and resolved in the affirmative.

The Council adjourned at eleven minutes to five o'clock until Tuesday the 14th August next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority : ROBT. S. BRAIN, Government Printer, Melbourne.
(650 copies.)

VICTORIA.

No. 7.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 14TH AUGUST, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable Sir J. Lorimer, and the same was read and is as follows :—

HENRY B. LOCH,
Governor.

The Governor informs the Legislative Council that he has, on this day, at the Government House, given the Royal Assent to the undermentioned Act of the present Session, presented to him by the Clerk of the Parliaments, viz.:—

"*An Act to apply out of the Consolidated Revenue the sum of Two million four hundred and "ninety-four thousand five hundred and fifty pounds to the service of the year One "thousand eight hundred and eighty-eight and nine.*"

Government House,
Melbourne, 27th July, 1888.

5. PAPERS.—The Honorable Sir J. Lorimer presented, pursuant to Act of Parliament—
Public Accounts—General Regulations respecting—Addition to Regulation No. 29.
Bank Liabilities and Assets—Summary of Sworn Returns for the quarter ended 31st March, 1888.
Koondrook Irrigation and Water Supply Trust—Application for a further Loan of £4225.
Severally ordered to lie on the Table.

6. DISTRESS FOR RENT LAW AMENDMENT BILL.—The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.
Debate ensued.
The Honorable W. H. Roberts moved, That the debate be now adjourned.
Question—That the debate be now adjourned until Tuesday, 21st August instant—put and resolved in the affirmative.

7. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly acquaint the Legislative Council that they have directed the Select Committee appointed by the Legislative Assembly to join with a Committee of the Legislative Council, to consider and report upon the General Code Bill, to meet the Committee appointed by the Legislative Council in the South Library, on Tuesday, 7th August next, at three o'clock, as desired by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 25th July, 1888.

8. NOXIOUS INSECTS BILL.—The Honorable James Bell moved, That this Bill be now read a second time.
The Honorable J. H. Connor moved, That the debate be now adjourned.
Question—That the debate be now adjourned until Tuesday, 21st August instant—put and resolved in the affirmative.

9. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until Tuesday, 21st August instant :—
Lunacy Statute Further Amendment Bill.—To be read a second time.
Statute of Gaols 1864 Further Amendment Bill—To be further considered in Committee.

10. "LADY LOCH" S.S.—APPOINTMENT OF ENGINEER.—The Honorable W. H. Roberts moved, pursuant to notice, That there be laid on the Table of the Council copies of all papers and correspondence relating to the application for an engineer to be appointed to the steamship *Lady Loch.*
Question—put and resolved in the affirmative.

(650 copies.)

11. Leave of Absence.—The Hon. William McCulloch.—The Honorable Sir Jas. Lorimer moved, pursuant to notice, That leave of absence be granted to the Honorable William McCulloch for the remainder of this Session, on account of illness in his family.
Question—put and resolved in the affirmative.

12. Instruments and Securities Statute 1864 Amendment Bill.—The Honorable W. A. Zeal moved, That this Bill be now read a second time.
The Honorable Dr. Dobson moved, That the debate be now adjourned.
Debate ensued.
Question—That the debate be now adjourned until Tuesday the 21st August next—put and resolved in the affirmative.

13. Adjournment.—The Honorable Sir J. Lorimer moved, by leave, That the Council, at its rising, adjourn until Tuesday, 21st August instant.
Question—put and resolved in the affirmative.

The Council adjourned at two minutes to six o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

VICTORIA.

No. 8.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 21ST AUGUST, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. ISSUE OF WRITS.—The President announced that he had this day issued Writs for the election of Members to serve for the undermentioned Provinces in the places of Members who retire by rotation, viz. :—

Melbourne, in the place of the Honorable James Service.
North Yarra, in the place of the Honorable Dr. Le Fevre.
South Yarra, in the place of the Honorable Sir J. MacBain.
Southern, in the place of the Honorable Sir W. J. Clarke, Bart.
South Western, in the place of the Honorable W. Robertson.
Nelson, in the place of the Honorable James Williamson.
Western, in the place of the Honorable William Ross.
North Western, in the place of the Honorable James Bell.
Northern, in the place of the Honorable Walter Peacock Simpson.
Wellington, in the place of the Honorable David Ham.
North Central, in the place of the Honorable William Austin Zeal.
North Eastern, in the place of the Honorable Patrick Hanna.
Gippsland, in the place of the Honorable John George Dougharty.
South Eastern, in the place of the Honorable Dr. Dobson.

5. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President laid upon the Table the following Warrant appointing "The Committee of Elections and Qualifications":—

VICTORIA.

Pursuant to the provisions of an Act of the Legislative Council of Victoria, passed in the nineteenth year of Her present Majesty's reign, intituled "*An Act to provide for the election of Members to "serve in the Legislative Council and Legislative Assembly of Victoria respectively,*"

I do hereby appoint—

The Honorable James Balfour,
The Honorable Frederick Brown,
The Honorable David Coutts,
The Honorable Henry Gore,
The Honorable Sir James Lorimer,
The Honorable James Phillip MacPherson,
and
The Honorable Donald Melville,

to be Members of a Committee to be called "The Committee of Elections and Qualifications."

Given under my hand this Twenty-first day of August, One thousand eight hundred and eighty-eight.

JAS. MACBAIN,
President of the Legislative Council.

6. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

The Land Act 1884, and the Mallee Pastoral Leases Act 1883—Report of the Proceedings taken under the Provisions of—during the year ending 31st December, 1887.

Ordered to lie on the Table.

The Honoroble H. Cuthbert presented, pursuant to Act of Parliament—

Public Accounts—General Regulations respecting.

Ordered to lie on the Table.

The Honorable Jas. Bell presented, pursuant to Act of Parliament—

Gold Mining Leases—Alterations to Regulations relating to—Order in Council.

Ordered to lie on the Table.

(650 copies.)

The Honorable Sir J. Lorimer presented, pursuant to Act of Parliament—

Victorian Military Forces—Regulations for the—Alteration and Addition.

Ordered to lie on the Table.

The Honorable Sir J. Lorimer presented—

Lady Loch s.s., appointment of Engineer—Return to an Order of the Legislative Council, dated 14th August instant, for copies of all papers and correspondence relating to the application for an engineer to be appointed to the steamship *Lady Loch*.

Ordered to lieon the Table.

7. The General Code Bill Committee.—The Honorable H. Cuthbert moved, by leave, That the Select Committee, joined with the Select Committee of the Legislative Assembly on The General Code Bill, have power to meet on days on which the Council does not sit, to move from place to place, and to report the evidence from day to day.
Question—put and resolved in the affirmative.

8. Adjournment.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday, 28th August instant.
Question—put and resolved in the affirmative.

The Council adjourned at fifteen minutes to five o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

VICTORIA.

No. 9.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 28TH AUGUST, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. CENTENNIAL INTERNATIONAL EXHIBITION—RECEPTION COMMITTEE.—The Honorable J. Balfour brought up a Report from the Select Committee of the Legislative Council, together with the Proceedings of the Joint Committee of the Legislative Council and the Legislative Assembly.
   Ordered to lie on the Table and to be printed.

5. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President's Warrant appointing "The Committee of Elections and Qualifications" was again laid upon the Table by the President.

6. PAPERS.—The Honorable H. Cuthbert presented, pursuant to Act of Parliament—
   Department for Neglected Children and Reformatory Schools.—Report of the Secretary for the year 1887.
   Explosives—Reports of the Inspectors of—To the Honorable the Minister of Mines for Victoria on the working of "*The Explosives Act*" during the year 1887.
   Bank Liabilities and Assets—Summary of Sworn Returns for the Quarter ended 30th June 1888.
   Severally ordered to lie on the Table.

7. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday, 4th September next.
   Question—put and resolved in the affirmative.

The Council adjourned at twenty-one minutes to five o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.
(650 copies.)

VICTORIA.

No. 10.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 4TH SEPTEMBER, 1888.

1. The Council met in accordance with adjournment.

2. COMMISSIONER TO ADMINISTER OATH.—A Commissioner from His Excellency the Governor to administer the Oath prescribed by the 32nd section of *The Constitution Act* was introduced by the Usher.

The Commissioner handed his Commission to the Clerk, who read it as follows :—

By His Excellency Sir HENRY BROUGHAM LOCH, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over the Colony of Victoria and its Dependencies, &c., &c., &c.

To the Honorable George Higinbotham, Chief Justice of The Supreme Court of The Colony of Victoria.

GREETING :

WHEREAS by the Bill contained in the Schedule to a Statute passed in the Session of the Imperial Parliament holden in the eighteenth and nineteenth years of Her Majesty's reign, intituled, "*An Act 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,*" it is enacted that no Member, either of the Legislative Council or of the Legislative Assembly, shall be permitted to sit or vote therein respectively until he shall have taken and subscribed before the Governor, or before some person authorized by the Governor in that behalf, the oath in the said Bill mentioned : Now therefore I, the Governor aforesaid, do by these presents command and authorize you to proceed to the Parliament House, in the City of Melbourne, on Tuesday the fourth day of September instant, at half-past Four o'clock in the afternoon, then and there to administer the said oath to the several members of the said Legislative Council who have not already taken and subscribed the same since their election to the said Legislative Council.

Given under my hand and the seal of the Colony at Melbourne, in the said Colony, this third day of September, in the year of our Lord One thousand eight hundred and eighty-eight, and in the fifty-second year of Her Majesty's reign.

(L.S.) HENRY B. LOCH.

By His Excellency's Command,

D. GILLIES,
Premier.

Entered on Record by me in the Register of Patents, Book 22, page 408, this third day of September, One thousand eight hundred and eighty-eight.

T. R. WILSON.

3. NEW MEMBERS.—The Clerk acquainted the Council that writs, issued by the President of the Council, for the election of Members to serve in the place of Members whose seats became vacant by effluxion of time, had been received, and that by the returns endorsed thereon it appeared that the following Members had been duly elected to serve for the several Provinces following, viz. :—

The Honorable James Service for the Melbourne Province.
George Le Fevre for the North Yarra Province.
The Honorable Sir James MacBain for the South Yarra Province.
William John Clarke, stockholder, for the Southern Province.
Sidney Austin, wool broker, for the South Western Province.
Samuel Winter Cooke, grazier, for the Western Province.
David Ham, for the Wellington Province.
William Austin Zeal, civil engineer, for the North Central Province.
Frank Stanley Dobson, Esq., barrister-at-law, for the South Eastern Province.

(650 copies.)

4. NEW MEMBERS.—The Honorables James Service, Dr. Le Fevre, Sir Jas. MacBain, Sir William John Clarke, Bart., Sidney Austin, Samuel Winter Cooke, David Ham, William Austin Zeal, and Dr. Dobson severally approached the Table, and took and subscribed the Oath prescribed by the Constitution Act, and delivered to the Clerk the declaration required by the thirteenth Clause of the Act 45 Victoria No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES SERVICE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Caulfield Shire, and known as 'Kilwinning,' being the house and lands occupied as a residence for myself, in Balaclava Road, corner of Hotham-street.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of Caulfield are rated in the rate-book of such district upon a yearly value of Four hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES SERVICE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, GEORGE LE FEVRE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred and twelve pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Kew, and are known as 'Waverly,' and situated in Studley Park road, Studley Park, Kew.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Rew are rated in the rate-book of such district upon a yearly value of Two hundred and twelve pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"GEO. LE FEVRE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES MACBAIN, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Three hundred and eighty pounds, above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Prahran, and are known as land containing 7 acres 2 roods and 5 perches or thereabouts, part of Crown portion 27, in parish of Prahran, county of Bourke, with dwelling-house, out-houses, stable, &c., &c., erected thereon, in my own occupation.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Three hundred and eighty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAS. MACBAIN."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, SIR WILLIAM JOHN CLARKE, Baronet, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Nine hundred and eighty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of the shire of Merriang, and are known as—Three thousand four hundred and sixty-one acres, in the parishes of Kalkallo, Mickleham, and Darraweit Guim, No. 130 in the rate-book.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of the shire of Merriang are rated in the rate-book of such district upon a yearly value of Nine hundred and eighty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. J. CLARKE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, SIDNEY AUSTIN, of Geelong, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred and ninety-three pounds ten shillings above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Winchelsea and town of Geelong, are known as the Mount Pleasant Estate, and the premises occupied by the firm of Dennys, Lascelles, Austin and Co., respectively.

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"And I further declare that such of the said lands or tenements as are situate in the municipal district of Winchelsea are rated in the rate-book of such district upon a yearly value of Seven hundred and seven pounds, and that such of the said lands or tenements as are situate in the municipal district of Geelong are rated in the rate-book of such district upon a yearly value of Eight hundred and twenty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"SIDNEY AUSTIN."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, SAMUEL WINTER COOKE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Dundas, and are known as Murndal.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Dundas are rated in the rate-book of such district upon a yearly value of One thousand four hundred and three pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"SAMUEL WINTER COOKE."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, DAVID HAM, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Five hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Ballaarat East, and are known as houses and land in Victoria-street.

"And I further declare that such of the said lands or tenements as are situated in the municipal district of Ballaarat East are rated in the rate-book of such district upon a yearly value of Three hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"DAVID HAM."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM AUSTIN ZEAL, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria, of the yearly value of Four hundred and twenty-two pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Prahran and South Melbourne, and are known as—

"Parts of Crown portions 17 and 18, parish of Prahran (at Toorak), county of Bourke; and Crown allotment No. 4, section I, and Crown allotment No. 5, section L, city of South Melbourne, county of Bourke.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Three hundred and eighty pounds; and that such of the said lands or tenements as are situate in the municipal district of South Melbourne are rated in the rate-book of such district upon a yearly value of Four hundred and twenty-two pounds, or a total rating of Eight hundred and two pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. A. ZEAL."

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, FRANK STANLEY DOBSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Two hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Prahran and Hawthorn, and are known as—

"House, No. 44 Darling-street, South Yarra, in my own occupation; also land in Denham-street, Hawthorn, unoccupied.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of One hundred and seventy-five pounds, and that such of the said lands or tenements as are situate in the municipal district of Hawthorn are rated in the rate-book of such district upon a yearly value of Fifty-two pounds ten.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said land or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"F. STANLEY DOBSON."

The Commissioner left the Chamber.

5. ELECTION OF PRESIDENT.—The Clerk announced that the time had arrived for proceeding to the election of a President of the Council.

The Honorable H. Cuthbert moved, That the Honorable Sir James MacBain be President of the Council.

The Honorable Lieut.-Col. Sargood seconded the nomination.

The Honorable Sir James MacBain submitted himself to the judgment of the Council; and, no other member being proposed as President, was escorted thereto by his proposer and seconder, and made his acknowledgment to the Council, and thereupon took the Chair.

6. RECEPTION OF THE PRESIDENT ELECT BY THE GOVERNOR.—The Honorable H. Cuthbert announced that His Excellency the Governor would be prepared to receive the President Elect at half-past Five o'clock at Government House.

At six o'clock the President took the Chair and read the Prayer.

The President reported that he had, accompanied by many Members of the Council, presented himself to the Governor, who had been pleased to approve of the choice made by the Council, and had addressed him in the following terms :—

MR. PRESIDENT,

In the name and on behalf of Her Majesty I have great pleasure in expressing my concurrence in the choice made by the Legislative Council in electing you to preside over its deliberations.

I congratulate you upon the high honour which has been conferred upon you for the second time by the Council, and I rest assured that you will uphold the honour and dignity of the distinguished office to which you have been elected.

HENRY B. LOCH,
Governor.

Government House,
Melbourne, 4th September, 1888.

7. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

The Resumption of Lands for Public Purposes Act 1887.—Order in Council.

Post Office and Telegraph Department.—Report upon the affairs of the—for the year 1887.

Severally ordered to lie on the Table.

8. CHAIRMAN OF COMMITTEES.—The Honorable H. Cuthbert moved, by leave, that the Honorable Dr. Dobson be Chairman of Committees of the Council.

Question—put and resolved in the affirmative.

9. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday 11th September next.

Question—put and resolved in the affirmative.

The Council adjourned at six minutes past six o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority : ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 11.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 11TH SEPTEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. COMMISSION TO ADMINISTER OATH TO MEMBERS.—The President announced that he had received from His Excellency the Governor the following Commission, which was read by the Clerk, and is as follows :—

By His Excellency SIR HENRY BROUGHAM LOCH, *Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander in Chief in and over the Colony of Victoria and its Dependencies, &c., &c., &c.*

To the Honorable SIR JAMES MACBAIN, Knight, President of the Legislative Council of the Colony of Victoria.

GREETING :

WHEREAS by the Schedule to a Statute passed in the Session of the Imperial Parliament holden in the eighteenth and nineteenth years of Her Majesty's reign, intituled, "*An Act 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,*" it is enacted that no Member, either of the Legislative Council or of the Legislative Assembly, shall be permitted to sit or vote therein respectively until he shall have taken and subscribed before the Governor, or before some person authorized by the Governor in that behalf, the oath in the said Bill mentioned : NOW THEREFORE I, the Governor aforesaid, do by these presents command and authorize you from time to time, in the Parliament House, in the City of Melbourne, to administer the said oath to such Members of the said Legislative Council as have not already taken and subscribed the same since their election to the said Legislative Council.

Given under my hand and the seal of the Colony at Melbourne, in the said Colony, this tenth day of September, in the year of our Lord One thousand eight hundred and eighty-eight, and in the fifty-second year of Her Majesty's reign.

(L.S.) HENRY B. LOCH.

By His Excellency's Command,

D. GILLIES,
Premier.

Entered on Record by me in the Register of Patents, Book 22, page 408, this tenth day of September, One thousand eight hundred and eighty-eight.

T. R. WILSON.

5. RETURN TO WRIT.—The President announced the receipt of a Return to a Writ issued for the election of a Member for the North-Western Province, and that, by the Return endorsed on the said Writ, it appeared that the Honorable James Bell had been duly elected in pursuance of the said Writ.

6. NEW MEMBER.—The Honorable James Bell was introduced, and took and subscribed the Oath prescribed by the Constitution Act, and delivered to the Clerk the declaration required by the thirteenth Section of the Act 45 Victoria No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES BELL, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and twenty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Dunolly, and are known as my property, being allotments 4, 5, 6, 7, and 9 of section 26, town of Dunolly.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Dunolly are rated in the rate-book of such district upon a yearly value of One hundred and twenty pounds.

" And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAMES BELL."

(650 copies.)—2679.

7. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President's Warrant appointing the Committee of Elections and Qualifications was again laid upon the Table by the President.

8. MESSAGES FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable H. Cuthbert presented to the Council the following Messages from His Excellency the Governor :—

Marine Board Bill.—Assent to, notified.

HENRY B. LOCH,
Governor.

Message No. 1.

The Governor informs the Legislative Council that he has caused an Act intituled "*An Act to establish a Marine Board and for other purposes,*" which was reserved on the 17th December last for the signification of Her Majesty's pleasure thereon, and which received Her Majesty's Assent on the 29th June ultimo, to be proclaimed in the Victoria *Government Gazette*, a copy of which is transmitted herewith.

Government Offices,
Melbourne, 10th September, 1888.

THE ROYAL ASSENT TO THE ACT INTITULED "AN ACT TO ESTABLISH A MARINE BOARD AND FOR OTHER PURPOSES."

PROCLAMATION

By His Excellency SIR HENRY BROUGHAM LOCH, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over the Colony of Victoria and its Dependencies, &c., &c., &c.

WHEREAS by the *Constitution Statute* it is amongst other things enacted that the provisions of the Act of the fourteenth year of Her Majesty, chapter fifty-nine, and of the Act of the fifth and sixth years of Her Majesty, chapter seventy-six, *For the Government of New South Wales and Van Diemen's Land,* which relate to the giving and withholding of Her Majesty's assent to Bills, and the reservation of Bills for the signification of Her Majesty's pleasure thereon, and the instructions to be conveyed to governors for their guidance in relation to the matters aforesaid, and the disallowance of Bills by Her Majesty, shall apply to Bills to be passed by the Legislative Council and Assembly constituted under the *Constitution Act of Victoria* and the now reciting Statute, and by any other legislative body or bodies which may at any time hereafter be substituted for the present Legislative Council and Assembly: And whereas the Bill hereinafter mentioned was reserved for the signification of Her Majesty's pleasure thereon: And whereas by an Order of the Queen in Council, made on the twenty-ninth day of June, One thousand eight hundred and eighty-eight, a copy whereof is hereto appended, Her Majesty has been pleased to assent to the said Bill: Now therefore I, the Governor of Victoria, in pursuance of the provisions of the aforesaid Acts, do by this my Proclamation signify that the Bill intituled "*An Act to establish a Marine Board and for other purposes,*" which was reserved for the signification of Her Majesty's pleasure thereon upon the seventeenth day of December, in the year One thousand eight hundred and eighty-seven, has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same.

Given under my Hand and the Seal of the Colony, at Melbourne, this tenth day of September, in the year of our Lord One thousand eight hundred and eighty-eight, and in the fifty-second year of Her Majesty's reign.

(L.S.) HENRY B. LOCH.

By His Excellency's Command,
D. GILLIES,
Premier.

GOD SAVE THE QUEEN!

At the Court at Windsor, the 29th day of June, 1888.

PRESENT:

The Queen's Most Excellent Majesty.
Lord President, | Lord Steward,
Earl of Kintore.

WHEREAS by an Act passed in the 5th and 6th years of Her Majesty's reign, entitled *An Act for the Government of New South Wales and Van Deimen's Land,* it is amongst other things enacted that no Bill which shall be reserved for the signification of Her Majesty's pleasure thereon shall have any force or authority within the Colony of New South Wales until the Governor of the said colony shall signify either by speech or message to the Legislative Council of the said colony or by proclamation as therein aforesaid that such Bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same:

And whereas by another Act passed in the 13th and 14th years of Her Majesty's reign, entitled *An Act for the better Government of Her Majesty's Australian Colonies,* it was provided among other things that the provisions of the said former Act concerning the reservation of Bills for the signification of Her Majesty's pleasure thereon should apply to and be in force in the Colony of Victoria:

And whereas the said provisions were maintained in force as regards Bills passed by the Legislative Council and Legislative Assembly of the said colony by a subsequent Act passed in the 18th and 19th years of the reign of Her said Majesty, entitled *An Act 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:*

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And whereas on the 17th of December 1887 the Governor of the said Colony of Victoria reserved a certain Bill passed by the Legislative Council and Legislative Assembly of the said colony, entitled *An Act to establish a Marine Board and for other purposes*, for the signification of Her Majesty's pleasure thereon :

And whereas the said Bill, so reserved as aforesaid, has been laid before Her Majesty in Council, and it is expedient that the said Bill should be assented to by Her Majesty :

Now therefore Her Majesty, in pursuance of the said Acts, and in exercise of the powers thereby reserved to Her Majesty as aforesaid, doth by this present Order, by and with the advice of Her Majesty's Privy Council, declare Her assent to the said Bill.

C. L. PEEL.

Ordered to lie on the Table and to be printed.

Address of Condolence.—Death of late Emperor Frederick III. of Germany.

HENRY B. LOCH,
Governor.

Message No. 2.

With reference to the Address of condolence from the Legislative Council on the occasion of the death of the late Emperor Frederick III. of Germany, the Governor now begs to transmit a copy of a despatch and its enclosures which he has received from The Right Honorable the Secretary of State for the Colonies, conveying the thanks of His Imperial Majesty the Emperor William of Germany for the expressions of kindly sympathy conveyed therein.

Government House,
Melbourne, 11th September, 1888.

Ordered to lie on the Table, and together with its enclosure to be printed.

9. PAPERS.—The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Land Act 1884, No. 812, and Loan Act No. 845, Item I.—Additional Estimates of Expenditure which the Railways Commissioners propose to incur during the year ending 30th June, 1888, under.

Land Act No. 812 and Loans 717 and 845, Item I.—Estimates of Expenditure which the Railways Commissioners propose to incur during the year ending 30th June, 1889, under.

Education Act 1872.—Regulations.—Order in Council.

Severally ordered to lie on the Table.

The Honorable Sir J. Lorimer presented—

The Council of Defence—Report of.

Ordered to lie on the Table.

10. STANDING ORDERS COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Honorables the President, Dr. Dobson, and J. Service be appointed Members of the Standing Orders Committee.
Question—put and resolved in the affirmative.

11. PARLIAMENTARY BUILDINGS COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Honorable the President be appointed a Member of the Parliament Buildings Committee.
Question—put and resolved in the affirmative.

12. REFRESHMENT ROOMS COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Honorable Sir W. J. Clarke, Bart., be appointed a Member of the Refreshment-rooms Committee.
Question—put and resolved in the affirmative.

13. PRINTING COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Honorables The President, and J. Bell, be appointed Members of the Printing Committee.
Question—put and resolved in the affirmative.

14. GENERAL CODE BILL COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Honorable J. Service be appointed a Member of the General Code Bill Committee.
Question—put and resolved in the affirmative.

15. DISTRESS FOR RENT LAW AMENDMENT BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read.
Debate resumed.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair ; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.
Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

16. NOXIOUS INSECTS BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time having been read,
Debate resumed.
Question—put and resolved in the affirmative—Bill read a second time.
The Honorable J. Bell moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Bell, The President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 18th September instant, again resolve itself into the said Committee.

17. Statute of Gaols 1864 Further Amendment Bill.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair, and The Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 18th September instant, again resolve itself into the said Committee.

18. Cost of Parliament Buildings.—The Honorable W. A. Zeal moved, pursuant to notice, That a return be laid on the Table of the Council showing the sums expended, as follow, up to the 31st July last—

(1.) Gross amount spent on the Parliament Buildings.
(2.) Total cost of all fixtures, fittings, and furniture supplied to date.
(3.) Amount to be expended on the existing contract.
(4.) Total cost of land acquired or purchased and forming the Parliament reserve.
(5.) Gross cost of all out-buildings and fences, gross cost of the lawn tennis court, and gross cost of all other improvements made on the Parliament reserve.
(6.) Estimated cost of completing the Houses of Parliament and offices connected therewith, in accordance with the accepted design.

Question—put and resolved in the affirmative.

19. Sparrows Destruction Bill.—The Honorable J. H. Connor moved, pursuant to notice, That he have leave to bring in a Bill to provide for the destruction of Sparrows.

Question—put and resolved in the affirmative.

Ordered—That The Honorable J. H. Connor do prepare and bring in the Bill.

The Honorable J. H. Connor then brought up a Bill, intituled "*A Bill for the Destruction of Sparrows*," and moved that it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 25th September instant.

20. Postponement of Orders of the Day.—The Council ordered that the consideration of the following Orders of the Day be postponed until Tuesday, 18th September instant :—

Lunacy Statute Further Amendment Bill.—To be read a second time.
Instruments and Securities Statute 1864 *Amendment Bill.—Adjourned debate on second reading.*

21. Adjournment.—The Honorable H. Cuthbert moved, by leave, That the Council, at its rising, adjourn until Tuesday 18th September instant.

Question—put and resolved in the affirmative.

The Council adjourned at twenty-five minutes to seven o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority : Robt. S. Brain, Government Printer, Melbourne.

VICTORIA.

No. 12.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 18TH SEPTEMBER, 1888.

1. The Council met in accordance with adjournment.
2. The President took the Chair.
3. The President read the Prayer.
4. RETURNS TO WRITS.—The President announced the receipt of returns to Writs issued for the election of Members to serve for the undermentioned Provinces, and that by the returns endorsed on the said Writs it appeared that the following gentlemen had been returned for the said several Provinces, as under:—Northern Province, Walter Peacock Simpson; Nelson Province, William Henry Seville Osmand, gentleman.
5. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act "to confer powers upon the Ballarat Trustees, Executors, and Agency Company Limited,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 18th September, 1888.

6. BALLARAT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED.—The Honorable Jas. Service moved, That a Message be sent to the Legislative Assembly asking them to communicate the report and proceedings of the Select Committee of that House to which "*The Ballarat Trustees, Executors, "and Agency Company Limited Bill*" was referred.

Question—put and resolved in the affirmative.

The Honorable Jas. Service produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the colony by the promoters of this Bill, and moved, That the Bill intituled "*An Act to confer powers upon the Ballarat Trustees, Executors, and Agency "Company Limited*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time.

7. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

Technological and Industrial Instruction—Report of the Royal Commission for promoting—for the year 1887.

Central Board of Health.—Report of the Board for the period from 1st June, 1887, to 31st May, 1888.

Purchase of Lands—St. Kilda.—Approval of His Excellency the Governor in Council for the purchase of certain lands at St. Kilda required in connection with the works for the drainage of the Elwood Swamp, submitted in accordance with the provisions of the Act No. 933—to make provision for the resumption of land for public purposes.

Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Lunatic Asylums—Return by the Inspector of—of the number of patients visited and the number of miles travelled by him during the six months ended 30th June, 1888.

Hospitals for the Insane—Report of the Inspector of—for the year ended 31st December, 1887.

Public Library, Museums, and National Gallery—Report of the Trustees of—for 1887, with a Statement of Income and Expenditure for the financial year 1886-7.

Severally ordered to lie on the Table.

The Honorable Jas. Bell presented, pursuant to Act of Parliament—

Victorian Water Supply.—Second Annual General Report by the Secretary for Mines and Water Supply.

North Boort Irrigation and Water Supply Trust.—Copy of Petition, Declaration, Plans, Reports, &c.

East Boort Irrigation and Water Supply Trust.—Copy of Petition, Declaration, Plans, Reports, &c.

Western Wimmera Irrigation and Water Supply Trust.—Copy of Petition, Declaration, Plans, Reports, &c.

Severally ordered to lie on the Table.

(650 copies.)—2956.

The Honorable H. Cuthbert presented—

Telegraphic Cable between Canada and Australia.—Return to an Order of the Legislative Council, dated 24th July, 1888, for copies of all Correspondence with the Secretary of State for the Colonies, with the Government of Canada, and (if any) with the other Australasian colonies, relative to the laying of a telegraphic cable between Canada and Australia, or to a preliminary marine survey having that object in view.

Cost of Parliamentary Buildings.—Return to an Order of the Legislative Council, dated 11th September instant, for a Return showing the sums expended, as follows, up to the 31st July last—

(1.) Gross amount spent on the Parliament Buildings.
(2.) Total cost of all fixtures, fittings, and furniture supplied to date.
(3.) Amount to be expended on the existing contract.
(4.) Total cost of land acquired or purchased and forming the Parliament reserve.
(5.) Gross cost of all buildings, fences, including the lawn tennis court, and all other improvements made on the Parliament reserve.
(6.) Estimated cost of completing the Houses of Parliament and offices connected therewith, in accordance with the accepted design.

Severally ordered to lie on the Table, and to be printed.

8. NEW MEMBER.—The Honorable W. P. Simpson was introduced, and took and subscribed the Oath prescribed by the Constitution Act, and delivered to the Clerk the declaration required by the thirteenth Section of the Act 45 Victoria, No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WALTER PEACOCK SIMPSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and ninety-four pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Sandhurst, and are known as Sandhurst Horse Bazaar and Sale Yards, Charing Cross and Hargreaves-street, Sandhurst.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Sandhurst are rated in the rate-book of such district upon a yearly value of One hundred and ninety-four pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"WALTER PEACOCK SIMPSON."

9. DISTRESS FOR RENT LAW AMENDMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration Tuesday, 25th September instant.—Bill, as amended, to be printed.

10. NOXIOUS INSECTS BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 25th September instant, again resolve itself into the said Committee.

11. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the following Order of the Day be postponed until Tuesday, 25th September instant :—

Lunacy Statute Further Amendment Bill.—To be read a second time.

12. STATUTE OF GAOLS 1864 FURTHER AMENDMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had gone through the Bill and agreed to the same with amendments.

On the motion of the Honorable H. Cuthbert the Council agreed to the amendments made in Committee of the whole, and ordered the Bill to be read a third time Tuesday, 25th September instant.—Bill, as amended, to be printed.

13. DEFENCE DEPARTMENT CORRESPONDENCE.—The Honorable S. Fraser moved, pursuant to notice, That there be laid on the Table of this House a copy of all correspondence which has passed between Officers of the Civil Staff of the Defence Department, the Minister, and Secretary of Defence, and the Public Service Board with reference to appointments, transfers, promotions, and classification of work in that Department, with the exception of the correspondence referring to the appointment of the present Secretary of Defence.

Question—put and resolved in the affirmative.

14. STEAMSHIP "LADY LOCH."—The Honorable W. H. Roberts moved, pursuant to notice, That the papers relating to the appointment of an engineer to the steamship *Lady Loch* be printed.

Question—put and resolved in the affirmative.

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15. INSTRUMENTS AND SECURITIES STATUTE 1864 AMENDMENT BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read,

Debate resumed.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable W. A. Zeal moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable W. A. Zeal, The President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 25th September instant, again resolve itself into the said Committee.

16. ADJOURNMENT.—The Honorable H. Cuthbert moved, by leave, That the Council, at its rising, adjourn until Tuesday, 25th September instant.

Question—put and resolved in the affirmative.

The Council adjourned at thirty-one minutes past six o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 13.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 25TH SEPTEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. RETURNS TO WRITS.—The President announced the receipt of returns to Writs issued for the election of Members to serve for the undermentioned Provinces, and that by the returns endorsed on the said Writs it appeared that the following gentlemen had been returned for the said several Provinces as under:—

   Gippsland Province—George Davis.
   North-Eastern Province—John Turner, Esq.

5. NEW MEMBERS.—The Honorables W. H. S. Osmand, George Davis, and John Turner were severally introduced, and took and subscribed the Oath prescribed by the Constitution Act, and delivered to the Clerk the declaration required by the 13th section of the Act 45 Vict. No. 702, as hereunder set forth :—

   "In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM HENRY SEVILLE OSMAND, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Three hundred and fifty-two pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Stawell, and are known as 'The Sycamores' and Comongella Station.

   "And I further declare that such of the said lands or tenements as are situate in the municipal district of Stawell are rated in the rate-book of such district upon a yearly value of Three hundred and fifty-two pounds.

   "And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

   "W. H. S. OSMAND."

   "In compliance with the provisions of the Act 45 Victoria, No. 702, I, GEORGE DAVIS, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Maffra and Essendon, and are known as Riversdale, in the parish of Tinamba, in the municipality of Maffra, and a piece of land, allotment 64, Bagotville Estate, in the parish of Essendon.

   "And I further declare that such of the said lands or tenements as are situate in the municipal district of Maffra are rated in the rate-book of such district upon a yearly value of Three hundred and seventy pounds, and that such of the said lands or tenements as are situate in the municipal district of Essendon are rated in the rate-book of such district upon a yearly value of Five pounds.

   "And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

   "GEO. DAVIS."

(650 copies.)—3242.

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JOHN TURNER, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and thirty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Prahran and Richmond, and are known as 54 Powell-street, South Yarra, and No. 4 Affleck-street, South Yarra, and two houses in Balmain-street, Richmond, south side, neither numbered nor named, standing on ground having a frontage of about 40 feet 3 inches to Balmain-street, commencing at a point distant 40 feet 3 inches west of the south-west intersection of Balmain and Chestnut streets; thence running westerly about 40 feet 3 inches.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Prahran are rated in the rate-book of such district upon a yearly value of Seventy-eight pounds, and that such of the said lands or tenements as are situate in the municipal district of Richmond are rated in the rate-book of such district upon a yearly value of Fifty-two pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements or any part thereof for the purpose of enabling me to be returned a Member of the Legislative Council.

"JNO. TURNER."

6. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

Ventilation of Mines Board—Report.

Penal Establishments and Gaols—Report of the Inspector-General, for the year 1887.

Severally ordered to lie on the Table.

7. LIBRARY COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Honorables The President, W. P. Simpson, and Dr. Le Fevre be appointed Members of the Library Committee.

Question—put and resolved in the affirmative.

8. INCREASE OF MEMBERS OF THE LEGISLATIVE COUNCIL.—The Honorable H. Cuthbert moved, by leave of the Council, That a Select Committee be appointed for the purpose of considering the desirability of increasing the number of Members of this Honorable House; and if such increase be considered desirable, to report to the Council as to the best means of giving effect to their views.

Question—put and resolved in the affirmative.

9. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act "to confer powers upon the Ballarat Trustees, Executors, and Agency Company Limited,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 18th Septr., 1888.

10. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable H. Cuthbert, the following Order of the Day was read and discharged :—

Distress for Rent Law Amendment Bill.—Adoption of Report.

11. DISTRESS FOR RENT LAW AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be recommitted to a Committee of the whole Council for re-consideration.

Debate ensued.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, The President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 2nd October next, again resolve itself into the said Committee.

12. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until Tuesday, 2nd October next.

Question—put and resolved in the affirmative.

The Council adjourned at twenty-five minutes to seven o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 14.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 2ND OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. PAPERS.—The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Victorian Railways—Report of the Commissioners of the—for the year ending 30th June, 1888.

Ordered to lie on the Table.

The Honorable James Bell presented, pursuant to Act of Parliament—

The Irrigation Act 1886.—The Western Wimmera Irrigation and Water Supply Trust.—Order in Council approving of the scheme of Works.

The Irrigation Act 1886.—The Western Wimmera Irrigation and Water Supply Trust.—Regulations for the election of Commissioners.

The Irrigation Act 1886.—North Boort Irrigation and Water Supply Trust.—Order in Council constituting an Irrigation and Water Supply District, and appointing and creating a Trust in and for the same.

The Irrigation Act 1886.—North Boort Irrigation and Water Supply Trust.—Regulations for the election of Commissioners.

The Irrigation Act 1886.—North Boort Irrigation and Water Supply Trust.—Order in Council approving of the scheme of Works.

The Irrigation Act 1886.—East Boort Irrigation and Water Supply Trust.—Order in Council constituting an Irrigation and Water Supply District, and appointing and creating a Trust in and for the same.

The Irrigation Act 1886.—East Boort Irrigation and Water Supply Trust.—Regulations for the election of Commissioners.

The Irrigation Act 1886.—East Boort Irrigation and Water Supply Trust.—Order in Council approving of the scheme of Works.

The Irrigation Act 1886.—The Western Wimmera Irrigation and Water Supply Trust.—Order in Council constituting an Irrigation and Water Supply District, and appointing and creating a Trust in and for the same.

Severally ordered to lie on the Table.

5. MEMBERS OF COUNCIL BILL.—The Honorable H. Cuthbert moved, pursuant to notice, That he have leave to bring in a Bill to amend the Acts relating to the election of Members to serve in, and the Constitution of, the Legislative Council.

Question—put and resolved in the affirmative.

Ordered—That the Honorable H. Cuthbert do prepare and bring in the Bill.

The Honorable H. Cuthbert then brought up a Bill intituled "*A Bill to amend the Acts relating to "the Election of Members to serve in, and the Constitution of, the Legislative Council,*" and moved that it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 16th October instant.

6. INCREASE OF MEMBERS OF COUNCIL COMMITTEE.—The Honorable H. Cuthbert moved, pursuant to *amended* notice, That the Committee to consider the increase of Members of the Legislative Council be the Honorables the President, Lieut.-Col. Sargood, Jas. Service, N. Fitzgerald, W. A. Zeal, Sir J. Lorimer, F. Brown, J. Balfour, and the Mover, three to form a quorum; that they have power to send for persons, papers, and records, to meet on days on which the Council does not sit, and to report the Evidence and Proceedings from day to day.

7. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act "to confer powers upon the Sandhurst and Northern District Trustees, Executors, and Agency "Company Limited,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Octr., 1888.

(650 copies.)—3482.

8. SANDHURST AND NORTHERN DISTRICT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable W. P. Simpson moved, by leave of the Council, That a Message be sent to the Legislative Assembly requesting that they will be pleased to communicate to the Council copies of the Report and Proceedings of the Select Committee of that House to which the Bill was referred during the present Session of Parliament.

Question—put and resolved in the affirmative.

9. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act "to confer powers upon the Australasian Natives Trustees, Executors, and Agency Company Limited,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Octr., 1888.

10. AUSTRALASIAN NATIVES TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable S. Fraser moved, by leave of the Council, That a Message be sent to the Legislative Assembly requesting that they will be pleased to communicate to the Council copies of the Report and Proceedings of the Select Committee of that House to which the Bill was referred during the present Session of Parliament.

Question—put and resolved in the affirmative.

11. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "confer additional powers upon the Mercantile Finance, Trustees, and Agency Company of Australia "Limited,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Octr., 1888.

12. MERCANTILE FINANCE, TRUSTEES, AND AGENCY COMPANY OF AUSTRALIA LIMITED BILL.—The Honorable Geo. Young moved, by leave of the Council, That a Message be sent to the Legislative Assembly requesting that they will be pleased to communicate to the Council copies of the Report and Proceedings of the Select Committee of that House to which the Bill was referred during the present Session of Parliament.

Question—put and resolved in the affirmative.

13. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "confer powers upon the Equity Trustees, Executors, and Agency Company Limited,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Octr., 1888.

14. EQUITY TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable D. Melville moved, by leave of the Council, That a Message be sent to the Legislative Assembly requesting that they will be pleased to communicate to the Council copies of the Report and Proceedings of the Select Committee of that House to which the Bill was referred during the present Session of Parliament.

Question—put and resolved in the affirmative.

15. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "indemnify the Councillors of various Municipalities for borrowing moneys by overdrafts on "Bankers for the purposes of their Municipalities, contrary to the provisions of the 'Local Government "'Act* 1874,' *and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Octr., 1888.

16. MUNICIPAL OVERDRAFTS INDEMNITY BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to indemnify the Councillors of various Muni-"cipalities for borrowing moneys by overdrafts on Bankers for the purposes of their Municipalities, "contrary to the provisions of the 'Local Government Act* 1874,' *and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

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The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Debate ensued.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, The President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.
On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed*.
The Honorable H. Cuthbert moved, That the following be the title of the Bill:—"*An Act to indemnify "the Councillors of various Municipalities for borrowing moneys by overdrafts on Bankers for the "purposes of their Municipalities, contrary to the provisions of the 'Local Government Act* 1874,' "*and for other purposes.*"
Question—put and resolved in the affirmative.
Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

17. Message from the Legislative Assembly.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

Mr. President—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act to "confer powers upon the Equity Trustees, Executors, and Agency Company Limited,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Octr., 1888.

18. Equity Trustees, Executors, and Agency Company Limited Bill.—The Honorable D. Melville having produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the colony moved, That the Bill transmitted by the above Message, intituled "*An Act to confer powers upon the Equity Trustees, Executors, and Agency Company Limited,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be read a second time Tuesday, 9th October instant.

19. Message from the Legislative Assembly.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

Mr. President—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act to "confer additional powers upon the Mercantile Finance Trustees and Agency Company of Australia "Limited,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Oct., 1888.

20. Mercantile Finance Trustees and Agency Company of Australia Limited Bill.—The Honorable Geo. Young having produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the colony moved, That the Bill transmitted by the above Message, intituled "*An Act to confer additional powers upon the Mercantile Finance Trustees and Agency Company of Australia Limited,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time and ordered to be read a second time Tuesday, 9th October instant.

21. Message from the Legislative Assembly.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

Mr. President—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act "to confer powers upon the Australasian Natives Trustees, Executors, and Agency Company "Limited,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Oct., 1888.

22. AUSTRALASIAN NATIVES TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable S. Fraser having produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the colony moved, That the Bill transmitted by the above Message, intituled "*An Act to confer "powers upon the Australasian Natives Trustees, Executors, and Agency Company Limited,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 9th October instant.

23. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act to "confer powers upon the Sandhurst and Northern District Trustees, Executors, and Agency "Company Limited,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 2nd Oct., 1888.

24. SANDHURST AND NORTHERN DISTRICT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable D. Melville having produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the colony moved, That the Bill transmitted by the above Message intituled "*An Act to confer powers upon the Sandhurst and Northern District "Trustees, Executors, and Agency Company Limited,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be read a second time Tuesday, 9th October instant.

25. ADJOURNMENT.—The Honorable H. Cuthbert moved, by leave, That the Council, at its rising, adjourn until Tuesday, 9th October instant.

Question—put and resolved in the affirmative.

The Council adjourned at twenty-eight minutes to seven o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

No. 15.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 9TH OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read, and is as follows :—

HENRY B. LOCH,
Governor. *Message No.* .

The Governor informs the Legislative Council that he has, on this day, at the Government House, given the Royal Assent to the undermentioned Act of the present Session, presented to him by the Clerk of the Parliaments, viz.:—

"*An Act to indemnify the Councillors of various Municipalities for borrowing moneys by "overdrafts on Bankers for the purposes of their Municipalities contrary to the provisions "of the 'Local Government Act 1874' and for other purposes.*"

Government House,
4th October, 1888.

Ordered to lie on the Table.

5. NORTH-EASTERN PROVINCE ELECTION PETITION.—The President announced to the Council that there had been presented to him a Petition from James Stewart Butters against the return of the Honorable John Turner, a Member for North-Eastern Province, which he then laid before the Council, and is as follows :—

To the Honorable Sir James MacBain, Knight, President of the Legislative Council of Victoria.

The humble petition of James Stewart Butters, of Melbourne, in the colony of Victoria, estate agent,

Respectfully showeth,

That on the thirteenth day of September last past an election was held for one Member to serve in the Legislative Council of the colony of Victoria to represent the North-Eastern Electoral Province, and that on the nineteenth day of September last past an adjourned polling was held at Mundoona a polling-place within the said electoral province.

That your Petitioner was a candidate at the said election.

That John Turner, Esquire, and John Hanlan Knipe, Esquire, were the only other candidates at the said election.

That as the result of the said election the returning officer announced that John Turner, Esquire, had received 1,292 votes, that your Petitioner had received 1,255 votes, and that John Hanlan Knipe, Esquire, had received 1,215 votes ; and thereupon the said returning officer publicly declared that the said John Turner, Esquire, had received the majority of votes, and was duly elected as Member as aforesaid, and such returning officer made his return accordingly.

That on the taking of the poll for the said election at the polling-place at Euroa, within the said electoral province, divers ballot-papers were used which were written, and not printed in accordance with the provisions of "*The Electoral Act 1865*," and were not in the form prescribed by the twentieth Schedule of the said Act, and that the using of such ballot-papers prevented divers electors from recording their votes at the said election, and was highly dangerous, without precedent, and contrary to law.

That at the said election no poll was taken at Peechelba, which was one of the places within the said electoral province appointed for a poll to be taken, and public notification "thereof" was given in manner prescribed by law, and that there was no lawful adjournment of such poll, whereby divers electors were prevented from recording their votes at the said polling-place or at the said election.

That such a proceeding is altogether unauthorized by the said Electoral Act, is unwarrantable, inconvenient, and contrary to law.

(650 copies.)—3710.

That at the said election a poll was held at South Bundalong, a place within the said electoral province, but of the taking of such poll at the said place no notice was given in manner prescribed by law, whereby divers persons who were entitled to vote at the said election were prevented from recording their votes thereat, and that the taking of the said poll at the said place was inconvenient and contrary to law.

Your Petitioner therefore respectfully prays:

That you will communicate the matter of this Petition to the Legislative Council in order that the same may be referred to the Committee of Elections and Qualifications.

And your Petitioner respectfully further prays:

That the said election may be declared to have been held contrary to law, and to be void accordingly.

And your Petitioner respectfully further prays:

That the said John Turner, Esquire, be declared not to have been duly elected a member of the Legislative Council for the said North-Eastern Province according to law.

And your Petitioner respectfully further prays:

That he may have such further or other relief as the circumstances of the case may require.

And your Petitioner will ever pray, &c.

JAS. S. BUTTERS.

Dated, at Melbourne, this eighth day of October, One thousand eight hundred and eighty-eight.

Witness—J. E. McIntyre.

The Honorable H. Cuthbert moved, That the above Petition be referred to "The Committee of Elections and Qualifications" for consideration and report.

Question—put and resolved in the affirmative.

6. The Committee of Elections and Qualifications.—The following Members of "The Committee of Elections and Qualifications," viz., The Honorables James Balfour, H. Gore, Sir J. Lorimer, and D. Melville, took the Oath set forth in the Schedule to the Electoral Act of 1856 at the Table of the Council before the Clerk thereof.

7. Papers.—The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Constitution Statute—Statement of Expenditure under Schedule D to Act 18 and 19 Vict., Cap. 55, during the year 1887–8.

Ordered to lie on the Table.

8. Ah Toy *v.* Musgrove.—The Honorable H. Cuthbert moved, by leave, That there be laid on the Table of the Council copies of the Arguments before, and the Judgment of, the Supreme Court in the case of Ah Toy *v.* Musgrove.

Question—put and resolved in the affirmative.

9. Paper.—The Honorable H. Cuthbert presented—

Ah Toy *v.* Musgrove—Return to above Order.

Ordered to lie on the Table and to be printed.

10. Message from the Legislative Assembly.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

Mr. President—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to apply out of the Consolidated Revenue the sum of Nine hundred and forty-four thousand eight hundred and twenty pounds to the service of the year One thousand eight hundred and eighty-eight and nine,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 9th Octr., 1888.

11. Consolidated Revenue Bill (2).—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to apply out of the Consolidated Revenue the sum of Nine hundred and forty-four thousand eight hundred and twenty pounds to the service of the year One thousand eight hundred and eighty-eight and nine,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, The President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

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The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to apply out of the Consolidated Revenue the sum of Nine hundred and forty-four thousand eight hundred and twenty pounds to the service of the year One thousand eight hundred and eighty-eight and nine.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

12. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to repeal certain portions of 'The Marine Board Act 1887,' and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 9th Octr., 1888.

13. MARINE BOARD ACT AMENDMENT BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above message, intituled "*An Act to repeal certain portions of 'The Marine Board Act 1887,' and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 16th October instant.

14. DISTRESS FOR RENT LAW AMENDMENT BILL.—The Order of the Day for the further re-consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further re-consideration thereof.

The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 16th October instant, again resolve itself into the said Committee.

15. NOXIOUS INSECTS BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 16th October instant, again resolve itself into the said Committee.

16. STATUTE OF GAOLS 1864 FURTHER AMENDMENT BILL.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to further amend the Statute of Gaols 1864.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be transmitted to the Legislative Assembly, with a Message desiring their concurrence therein.

17. LUNACY STATUTE FURTHER AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

The Honorable J. Service moved, That the debate be now adjourned.

Question—That the debate be adjourned until Tuesday, 16th October instant, put and resolved in the affirmative.

18. COUNTY COURT JUDGES, RESIDENCE OF.—The Honorable W. A. Zeal moved, pursuant to notice, That, in the opinion of this House, any future appointment to the County Court Bench should be on the condition that the gentleman selected to fill the vacant office reside in some portion of the district over which he will have jurisdiction.

Debate ensued.

Question put.

Council divided.

Contents, 10.	Not Contents, 14.
The Hon. S. Austin	The Hon. S. W. Cooke
J. Buchanan	H. Cuthbert
J. H. Connor	Dr. Dobson
G. Davis	T. Dowling
H. Gore	N. FitzGerald
D. Ham	S. Fraser
D. Melville	C. J. Ham
W. P. Simpson	C. H. James
D. C. Sterry	Sir J. Lorimer
W. A. Zeal (*Teller*).	W. H. Roberts
	Lieut.-Col. Sargood
	J. Service
	N. Thornley
	J. Bell (*Teller*).

And so it passed in the negative.

19. THE BALLARAT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable J. Service moved, pursuant to notice, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable J. Service moved, by leave, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Service, The President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair ; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.
Resolved—That the Council will, on Tuesday, 16th October instant, again resolve itself into the said Committee.

20. DEPOSIT OF SILT BILL.—The Honorable W. H. Roberts moved, pursuant to notice, That he have leave to bring in a Bill to prevent the deposit of silt in Port Phillip or Hobson's Bay.
Question—put and resolved in the affirmative.
Ordered—That the Honorable W. H. Roberts do prepare and bring in the Bill.
The Honorable W. H. Roberts then brought up a Bill intituled "*A Bill to prevent the deposit of "Silt in Port Phillip or Hobson's Bay,*" and moved that it be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 16th October instant.

21. ADJOURNMENT.—The Honorable H. Cuthbert moved, by leave, That the Council, at its rising, adjourn until Tuesday, 16th October instant.
Debate ensued.
Question—put and resolved in the affirmative.

22. INSTRUMENTS AND SECURITIES STATUTE 1864 AMENDMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.
The President resumed the Chair ; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the Report to be received Tuesday, 16th October instant.

23. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until Tuesday, 16th October instant:—
Sparrows Destruction Bill.—To be read a second time.
Equity Trustees, Executors, and Agency Company Limited Bill.—To be read a second time.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—To be read a second time.
Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be read a second time.
Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be read a second time.

The Council adjourned at ten minutes past eleven o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 16.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 16TH OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The following Members of the "Committee of Elections and Qualifications," viz., the Honorables Frederick Brown and James Philip MacPherson, took the oath set forth in the Schedule to *The Electoral Act 1856*, at the Table of the Council, before the Clerk thereof.

The President appointed Tuesday, the 23rd day of October instant, at 11 o'clock in the forenoon, as the time, and the Committee Room as the place of the first meeting of the Committee.

5. PAPERS.—The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Rules of the Supreme Court.

University of Melbourne—Report of the Proceedings of the—For the Year 1887–88.

Fisheries Act Amendment Act 1878.—Notice as to Close Season for Crayfish.

Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented—

Defence Department Correspondence—Return to an Order of the Legislative Council, dated 18th September last, for a copy of all correspondence which has passed between Officers of the Civil Staff of the Defence Department, the Minister, and Secretary of Defence, and the Public Service Board with reference to appointments, transfers, promotions, and classification of work in that Department, with the exception of the correspondence referring to the appointment of the present Secretary of Defence.

Ordered to lie on the Table and to be printed.

6. GENERAL CODE BILL COMMITTEE.—The Honorable H. Cuthbert, Chairman, brought up the Report from this Joint Committee.

Ordered to lie on the Table, together with the Proceedings of the Committee, Minutes of Evidence and Appendices, and to be printed and taken into consideration Tuesday, 23rd October instant.

7. BALLARAT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the Report to be taken into consideration Tuesday, 23rd October instant.

8. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to confer powers upon the Guardian Trustees and Executors Company Limited*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 16th October, 1888.

9. THE GUARDIAN, TRUSTEES, AND EXECUTORS COMPANY LIMITED BILL.—The Honorable J. Bell moved, That a Message be sent to the Legislative Assembly requesting that they will be pleased to communicate to the Council copies of the Report and Proceedings of the Select Committee of that House to which this Bill was referred during the present Session of Parliament.

Question—put and resolved in the affirmative.

(650 copies.)—3962.

10. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to amend an Act intituled an Act to establish and regulate a Permanent Fund in connection with the Australasian Dramatic and Musical Association,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 16th October, 1888.

11. AUSTRALASIAN DRAMATIC AND MUSICAL ASSOCIATION FUND BILL.—The Honorable W. A. Zeal moved, That a Message be sent to the Legislative Assembly requesting that they will be pleased to communicate to the Council copies of the Report and Proceedings of the Select Committee of that House to which this Bill was referred during the present Session of Parliament.

Question—put and resolved in the affirmative.

12. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The Honorable D. Coutts, a Member of the Committee of Elections and Qualifications, took the oath set forth in the Schedule to *The Electoral Act 1856*, at the Table of the Council, before the Clerk thereof.

13. SPARROWS DESTRUCTION BILL.—The Honorable J. H. Connor moved, That this Bill be now read a second time.

The Honorable D. Melville moved, That the debate be now adjourned.

Question—That the debate be now adjourned until to-morrow—put and resolved in the affirmative.

14. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable W. A. Zeal, the following Order of the day was read and discharged:—

Instruments and Securities Statute 1864 Amendment Bill—Adoption of Report.

15. INSTRUMENTS AND SECURITIES STATUTE 1864 AMENDMENT BILL.—The Honorable W. A. Zeal moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable W. A. Zeal, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of this Bill.

The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with a further amendment, the Council agreed to the report from the Committee of the whole, and ordered the Bill to be read a third time to-morrow.

16. EQUITY TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable D. Melville moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable D. Melville moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable D. Melville, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

17. MERCANTILE FINANCE, TRUSTEES, AND AGENCY COMPANY OF AUSTRALIA LIMITED BILL.—The Honorable Geo. Young moved, That this Bill be now read a second time.

The Honorable W. A. Zeal moved, That this debate be now adjourned.

Question—That the debate be adjourned until to-morrow—put and resolved in the affirmative.

18. AUSTRALASIAN NATIVES TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable S. Fraser moved, That this Bill be now read a second time.

Debate ensued.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable S. Fraser moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable S. Fraser, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

19. SANDHURST AND NORTHERN DISTRICT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Honorable W. P. Simpson moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable W. P. Simpson moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable W. P. Simpson, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

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20. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under :—

Deposit of Silt Bill.—To be read a second time—until Tuesday, 23rd October instant.
Members of Council Bill.—To be read a second time.
Marine Board Act Amendment Bill.—To be read a second time.
Distress for Rent Law Amendment Bill.—To be further reconsidered in Committee.
Noxious Insects Bill.—To be further considered in Committee.
Lunacy Statute Further Amendment Bill.—Adjourned debate on second reading—until to-morrow.

21. MUNICIPALITIES OVERDRAFT.—The Honorable T. Dowling moved, pursuant to notice, That a Return be laid on the Table of the Council, showing—

(1.) The municipalities who had overdrafts at the time of the passing of the Indemnity Act 1886, with the amount of such overdraft due by each; and
(2.) A like return showing the position with regard to overdrafts of each municipality on the 30th September, 1888.

Question—put and resolved in the affirmative.

22. ALFRED GRAVING DOCK.—The Honorable W. A. Zeal moved, pursuant to notice, That there be laid on the Table of this House a Return showing—

(1.) The internal length of the Alfred Graving Dock at the top and on the floor.
(2.) The internal transverse width of the dock at the top and on the floor.
(3.) The length and width of the largest vessel the dock will accommodate.
(4.) The minimum depth of water (low-water spring tides) at the entrance to the dock.
(5.) The average depth of the channel from Hobson's Bay to the dock at low-water spring tides.

Question—put and resolved in the affirmative.

The Council adjourned at nine minutes past eleven o'clock until to-morrow, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 17.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 17TH OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. REFRESHMENT ROOMS COMMITTEE.—The Honorable J. Buchanan, on behalf of the Chairman, brought up a Report from this Joint Committee.
Ordered to lie on the Table and to be printed.

5. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read and is as follows :—

HENRY B. LOCH,

Governor. *Message.*

The Governor informs the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Act of the present Session, presented to him by the Clerk of the Parliaments, viz. :—

"*An Act to apply out of the Consolidated Revenue the sum of Nine hundred and forty-four thousand eight hundred and twenty pounds to the service of the year One thousand eight hundred and eighty-eight and nine.*"

Government Offices,
Melbourne, 16th October, 1888.

6. NORTH-EASTERN PROVINCE ELECTION.—The President announced to the Council that there had been presented to him a Petition from John Hanlon Knipe against the return of the Honorable J. Turner, a Member for the North-Eastern Province, which he then laid before the Council, and is as follows :—

To the Honorable Sir James MacBain, Knight, President of the Legislative Council of Victoria.

The humble petition of John Hanlon Knipe, of Melbourne, in the colony of Victoria, auctioneer,

Respectfully showeth,

That on the thirteenth day of December[a] last past an election was partly held for one Member to serve in the Legislative Council of the colony of Victoria to represent the North-Eastern Electoral Province, and on the nineteenth day of September last past part of the polling was held at Mundoona, a polling-place within the said electoral province.

[a] *Sic.*

That your Petitioner was a candidate at the said election.

That John Turner, Esquire, and James Stewart Butters, Esquire, were the only other candidates at the said election.

That as the result of the said election the returning officer announced that John Turner, Esquire, had received 1,292 votes, and that your Petitioner had received 1,215 votes, and that James Stewart Butters, Esquire, had received 1,255 votes ; and thereupon the said returning officer publicly declared that the said John Turner, Esquire, had received the majority of votes, and was duly elected as Member aforesaid, and such returning officer made his return accordingly.

That at the said election no poll was taken Peechelba, which was one of the places within the said electoral province appointed for a poll to be taken, and public notification thereof was given in manner prescribed by law, and that there was no lawful adjournment of such poll, whereby divers electors were prevented from recording their votes at the said polling-place or at the said election.

That on taking of the poll for the said election at the polling-place at Euroa, within the said electoral province, divers ballot-papers were used which were written, and not printed in accordance with the provisions of "*The Electoral Act 1865*," and were not in the form prescribed by the twentieth Schedule of the said Act, and that the using of such ballot-papers prevented divers electors from recording their votes at the said election, and was highly dangerous, without precedent, and contrary to law.

That such a proceeding is altogether unauthorized by the said Electoral Act, is unwarrantable, inconvenient, and contrary to law.

(650 copies.)—3987.

That at the said election a poll was held at South Bundalong, a place within the said electoral province, but of the taking of such poll at the said place no notice was given in manner prescribed by law, whereby divers persons who were entitled to vote at the said election were prevented from recording their votes thereat, and that the taking of the said poll at the said place was inconvenient and contrary to law.

That the above-mentioned irregularities occurred in the opinion of your Petitioner through the large number of polling-places in the province, and the fact that the said province is too large for one returning officer to manage within the time limited by the Act, and from the fact that it has not been divided into three equal parts with one representative to each part.

Your Petitioner therefore respectfully prays:

Firstly—That you will communicate the matter of this Petition to the Legislative Council in order that the same may be referred to the Committee of Elections and Qualifications.

Secondly—That the said election may be declared to have been held contrary to law, and to be void accordingly.

Thirdly—That the said John Turner, Esquire, be declared not to have been duly elected a member of the Legislative Council for the said North-Eastern Province according to law.

Fourthly—That he may have such further or other relief as the circumstances of the case may require.

Fifthly—That the said province may be divided into three parts, one representative being allotted to each of such parts.

And your Petitioner will ever pray.

JOHN HANLON KNIPE.

Witness—A. E. LAWFORD.

Dated, at Melbourne, this fifteenth day of October, One thousand eight hundred and eighty-eight.

Witness—

The Honorable H. Cuthbert moved, That the above Petition be referred to "The Committee of Elections and Qualifications" for consideration and report.

Question—put and resolved in the affirmative.

7. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act to confer powers upon the Guardian Trustees and Executors Company Limited,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 17th October, 1888.

8. GUARDIAN TRUSTEES AND EXECUTORS COMPANY LIMITED BILL.—The Honorable J. Bell having produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the Colony, moved, That the Bill intituled "*An Act to confer powers upon the Guardian Trustees and Executors Company Limited*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be read a second time Tuesday, 23rd October instant.

9. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act to amend an Act intituled 'An Act to establish and regulate a Permanent Fund in connection with the Australasian Dramatic and Musical Association,'*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 17th October, 1888.

10. AUSTRALASIAN DRAMATIC AND MUSICAL ASSOCIATION FUND BILL.—The Honorable W. A. Zeal having produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the Colony, moved, That the Bill intituled "*An Act to amend an Act intituled 'An Act to establish and regulate a Permanent Fund in connection with the Australasian Dramatic and Musical Association,'*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be read a second time Tuesday, 23rd October instant.

11. INSTRUMENTS AND SECURITIES STATUTE 1864 AMENDMENT BILL.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable W. A. Zeal, read a third time and *passed.*

The Honorable W. A. Zeal moved, That the following be the title of the Bill:—

"*An Act to amend 'The Instruments and Securities Statute 1864.'*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be transmitted to the Legislative Assembly, with a Message desiring their concurrence therein.

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12. EQUITY TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 23rd October instant, again resolve itself into the said Committee.

13. MERCANTILE FINANCE, TRUSTEES, AND AGENCY COMPANY OF AUSTRALIA LIMITED BILL.—The Order of the Day for the resumption of the debate on the question—That this Bill be now read a second time, having been read,

Debate resumed.

The Honorable Lieut.-Col. Sargood moved, That the debate be now adjourned.

Question—That the debate be adjourned until Tuesday, 23rd October instant—put and resolved in the affirmative.

14. AUSTRALASIAN NATIVES TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 23rd October instant, again resolve itself into the said Committee.

15. SANDHURST AND NORTHERN DISTRICT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 23rd October instant, again resolve itself into the said Committee.

16. NOXIOUS INSECTS BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 23rd October instant, again resolve itself into the said Committee.

17. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under :—

Sparrows Destruction Bill.—Adjourned debate on second reading—until Tuesday, 23rd October instant.

Members of Council Bill.—To be read a second time—until Wednesday, 31st October instant.

Marine Board Act Amendment Bill.—To be read a second time,

Distress for Rent Law Amendment Bill.—To be further re-considered in Committee,

Lunacy Statute Further Amendment Bill.—Adjourned debate on second reading—until Tuesday, 23rd October instant.

18. ADJOURNMENT.—The Honorable H. Cuthbert moved, by leave, That the Council, at its rising, adjourn until Tuesday, 23rd October instant.

Question—put and resolved in the affirmative.

The Council adjourned at half-past six o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 18.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 23RD OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to extend the Franchise to Members of the Police Force*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 23rd Octr., 1888.

5. POLICE FRANCHISE BILL.—The Honorable J. H. Connor moved, That the Bill transmitted by the above message, intituled "*An Act to extend the Franchise to Members of the Police Force*," be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 30th October instant.

6. PAPERS.—The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Savings Banks.—Statements and Returns for the year ended 30th June, 1888.

Ordered to lie on the Table.

The Honorable Sir J. Lorimer presented, pursuant to Act of Parliament—

Defence Department.—Statement of Expenditure, Special Appropriation, Act No. 777, sec. 7, and Appropriation Act, No. 958—Financial year 1887-8.

Victorian Naval Forces.—Revised Regulations.

Severally ordered to lie on the Table.

7. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under :—

General Code Bill—Consideration of Report of Joint Committee—until after the consideration of the 5th Order for to-day ;

Noxious Insects Bill—To be further considered in the Committee—until after the consideration of the 3rd Order for to-day.

8. MARINE BOARD ACT AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed*.

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to repeal certain portions of 'The Marine Board Act* 1887' *and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

(650 copies.)—4179.

9. NOXIOUS INSECTS BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration Tuesday, 30th October instant.—Bill as amended to be printed.

10. TRUSTEES COMPANIES BILL.—The Honorable H. Cuthbert moved, by leave, That he have leave to bring in a Bill for the regulation of companies authorized to act as executors, administrators, and trustees, and in other fiduciary capacities.

Question—put and resolved in the affirmative.

Ordered—That the Honorable H. Cuthbert do prepare and bring in the Bill.

The Honorable H. Cuthbert then brought up a Bill intituled "*A Bill for the regulation of Companies "authorized to act as Executors, Administrators, and Trustees, and in other fiduciary capacities,*" and moved that it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 30th October instant.

11. ARCHITECT OF THE HOUSES OF PARLIAMENT (MR. P. KERR).—The Honorable W. A. Zeal moved, pursuant to notice, That there be laid on the Table of the Council—

(1.) A copy of the recommendation made by the Parliamentary Buildings Commission on the 19th April, 1888 :—That the salary of the architect of the Houses of Parliament (Mr. P. Kerr) be raised to One thousand guineas per annum.

(2.) A copy of the recommendation made by the said Commission on the 29th June, 1888 :—That in lieu of increasing the salary of the architect of the Houses of Parliament a substantial sum be placed on the Estimates as a gratuity to Mr. P. Kerr in recognition of the eminent and valuable services he has rendered to the State.

Question—put and resolved in the affirmative.

12. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under :—

General Code Bill.—Consideration of Report of Joint Committee—until Tuesday, 30th October instant, and

Distress for Rent Law Amendment Bill.—To be further re-considered in Committee,

Lunacy Statute Further Amendment Bill.—Adjourned debate on second reading,

Ballarat Trustees, Executors, and Agency Company Limited Bill.—Adoption of Report,

Deposit of Silt Bill.—To be read a second time,

Guardian Trustees and Executors Company Limited Bill.—To be read a second time,

Australasian Dramatic and Musical Association Fund Bill.—To be read a second time,

Sparrows Destruction Bill.—Adjourned debate on second reading,

Equity Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee,

Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading,

Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee,

Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee—until to-morrow.

The Council adjourned at twenty minutes past ten o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 19.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 24TH OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. VISITOR.—The Honorable H. Cuthbert moved, by leave, that a chair be provided on the floor of the Chamber for the Honorable W. A. B. Gellibrand, President of the Legislative Council of Tasmania.
Question—put and resolved in the affirmative.

5. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the following Order of the Day be postponed until Tuesday, 30th October instant:—
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.

6. LUNACY STATUTE FURTHER AMENDMENT BILL.—The Order of the Day for the resumption of the debate on the question that this Bill be now read a second time having been read,
Debate resumed.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.
Resolved—That the Council will, on Tuesday, 30th October instant, again resolve itself into the said Committee.

7. ADJOURNMENT.—The Honorable H. Cuthbert moved, by leave, That the Council, at its rising, adjourn until Tuesday, 30th October instant.
Question—put and resolved in the affirmative.

The Council adjourned at half-past six o'clock until Tuesday next at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.
(650 copies.)—4216.

VICTORIA.

No. 20.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 30TH OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read and is as follows :—

HENRY B. LOCH,
Governor. *Message.*

The Governor informs the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Act of the present Session, presented to him by the Clerk of the Parliaments, viz. :—

"*An Act to repeal certain portions of 'The Marine Board Act 1887,' and for other "purposes.*"

Government Offices,
Melbourne, 29th October, 1888.

Ordered to lie on the Table.

5. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—Sir J. Lorimer, Chairman, brought up the Reports from this Committee on the Petitions from James Stewart Butters, Esq., and from John Hanlon Knipe, Esq., against the Return of John Turner, Esq., as Member for the North-Eastern Province, and the same were read by the Clerk.

Ordered to lie on the Table, and, together with the Proceedings of the Committee and the Minutes of Evidence, to be printed.

6. PAPERS.—The Honorable Sir J. Lorimer presented, pursuant to Act of Parliament—

The Fisheries Amendment Act 1878.—Notice. Close Season for Crayfish.

Fisheries Acts.—Notice of Proclamation for regulating the weight of Fish enumerated in the Schedule thereto.

Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented—

Alfred Graving Dock.—Return to an Order of the Legislative Council, dated 16th October instant, for a Return showing—

(1.) The internal length of the Alfred Graving Dock at the top and on the floor.
(2.) The internal transverse width of the dock at the top and on the floor.
(3.) The length and width of the largest vessel the dock will accommodate.
(4.) The minimum depth of water (low-water spring tides) at the entrance to the dock.
(5.) The average depth of the channel from Hobson's Bay to the dock at low-water spring tides.

Ordered to lie on the Table and to be printed.

7. GENERAL CODE BILL.—The Order of the Day for the consideration of the Report from the Joint Select Committee on this Bill having been read, the Honorable J. Balfour moved, That, in the opinion of the Council, steps should be taken for submitting the General Code Bill to the best available Counsel for thorough revision and correction.

Debate ensued.

The Honorable S. Fraser moved, That the debate be now adjourned.

Question—That the debate be adjourned until Tuesday, 13th November next—put and resolved in the affirmative.

(650 copies.)—4466.

8. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "enable the Mayor, Councillors, and Citizens of the City of Richmond to demise for terms of years "certain lands vested in them, and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 30th October, 1888.

9. RICHMOND CITY LANDS BILL.—The Honorable James Service moved, That the Bill transmitted by the above Message, intituled "*An Act to enable the Mayor, Councillors, and Citizens of the City of "Richmond to demise for terms of years certain lands vested in them, and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 13th November next.

10. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the 2nd Order for to-day be postponed until after the consideration of the 3rd Order for to-day.

11. TRUSTEES COMPANIES BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Debate ensued.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same with amendments, on the motion of the Honorable H. Cuthbert, the Council ordered the same to be re-committed to a Committee of the whole Council for re-consideration of Clauses 4 and 5.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of Clauses 4 and 5.

The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with further amendments, the Council ordered the same to be taken into consideration to-morrow.—Bill, as further amended, to be printed.

12. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until to-morrow:—

Noxious Insects Bill.—Adoption of Report.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Lunacy Statute Further Amendment Bill.—To be further considered in Committee.
Police Force Franchise Bill.—To be read a second time.
Ballarat Trustees, Executors, and Agency Company Limited Bill.—Adoption of Report.
Deposit of Silt Bill.—To be read a second time.
Guardian Trustees and Executors Company Limited Bill.—To be read a second time.
Australasian Dramatic and Musical Association Fund Bill.—To be read a second time.
Sparrows Destruction Bill.—Adjourned debate on second reading.
Equity Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.

The Council adjourned at twenty minutes past ten o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 21.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 31ST OCTOBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. PAPERS.—The Honorable J. Bell presented, pursuant to Act of Parliament—

Kyneton Shire Waterworks Trust.—Application for an additional Loan of £1,500.
Shepparton Urban Waterworks Trust.—Application for an additional Loan of £1,500.

Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented—

Architect of the Houses of Parliament (Mr. P. Kerr).—Return to an Order of the Legislative Council, dated 23rd October, 1888, for—

(1.) A copy of the recommendation made by the Parliamentary Buildings Commission on the 19th April, 1888:—That the salary of the architect of the Houses of Parliament (Mr. P. Kerr) be raised to One thousand guineas per annum.

(2.) A copy of the recommendation made by the said Commission on the 29th June, 1888:—That in lieu of increasing the salary of the architect of the Houses of Parliament a substantial sum be placed on the Estimates as a gratuity to Mr. P. Kerr in recognition of the eminent and valuable services he has rendered to the State.

The Pacific Telegraph Company Limited.—Letter addressed by Captain F. C. Rowan to the Honorable the Premier.

Severally ordered to lie on the Table.

5. LICENSING ACT—CONVICTIONS UNDER.—The Honorable J. Service moved, pursuant to notice, for a a return showing particulars of all convictions under the 98th section of the *Licensing Act* 1885, distinguishing between the first, second, and third offences, and showing the penalties in each case, also showing the names of all persons declared "disqualified" under the said section, and the period of disqualification, and the names of any such disqualified persons (if any) to whom a license has been subsequently granted.

Question—put and resolved in the affirmative.

6. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable H. Cuthbert, the following Order of the Day was read and discharged:—

Trustees Companies Bill.—Adoption of Report.

7. TRUSTEES COMPANIES BILL.—The Honorable H. Cuthbert moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration of Clause 4.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of Clause 4 of this Bill.

The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with a further amendment, the Council ordered the same to be taken into consideration this day.—Bill, as further amended, to be printed.

8. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable James Bell, the following Order of the day was read and discharged:—

Noxious Insects Bill.—Adoption of Report.

(650 copies.)—4525.

9. NOXIOUS INSECTS BILL.—The Honorable James Bell moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration.
Debate ensued.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable James Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again,
Resolved—That the Council will, on Wednesday, 14th November next, again resolve itself into the said Committee.

10. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the 4th Order be postponed until after the consideration of the 5th Order for to-day.

11. LUNACY STATUTE FURTHER AMENDMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read, the President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.
The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration Tuesday, 13th November next.—Bill, as amended, to be printed.

12. TRUSTEES COMPANIES BILL.—On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed*.
The Honorable H. Cuthbert moved, That the following be the title of the Bill:—
"*An Act for the regulation of Companies authorized to act as Executors Administrators and "Trustees and in other fiduciary capacities.*"
Question—put and resolved in the affirmative.
Ordered—That the Bill be transmitted to the Legislative Assembly, with a Message desiring their concurrence therein.

13. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under:—
Members of Council Bill.—To be read a second time—until Wednesday, 14th November next.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee,
Police Force Franchise Bill.—To be read a second time,
Ballarat Trustees, Executors, and Agency Company Limited Bill.—Adoption of Report,
Deposit of Silt Bill.—To be read a second time,
Guardian Trustees and Executors Company Limited Bill.—To be read a second time,
Australasian Dramatic and Musical Association Fund Bill.—To be read a second time,
Sparrows Destruction Bill.—Adjourned debate on second reading,
Equity Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee,
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading,
Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee,
Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee—until Tuesday, 13th November next.

14. ADJOURNMENT.—The Honorable H. Cuthbert moved, by leave, That the Council at its rising adjourn until Tuesday, 13th November next.
Question—put and resolved in the affirmative.

The Council adjourned at twenty-eight minutes past ten o'clock until Tuesday, 13th November next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 22.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 13TH NOVEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. RESIGNATION OF SEAT BY MEMBER.—The President announced that he had received from His Excellency the Governor the resignation by the Honorable T. F. Cumming of his seat as one of the Members for the Western Province in the Legislative Council.

5. DECLARATION OF MEMBER.—The Honorable W. P. Simpson, in pursuance of the requirements of the Act No. 702, delivered to the Clerk another declaration as hereunder set forth, viz.:—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WALTER PEACOCK SIMPSON, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and thirty pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of the Shire of Gordon, and are known as property situated in the parishes of Mincha, Mincha West, and Leaghur.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of the Shire of Gordon are rated in the rate-book of such district upon a yearly value of One hundred and thirty pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"W. P. SIMPSON."

6. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to amend 'The Zoological and Acclimatisation Society Incorporation Act 1884,' and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 13th November, 1888.

7. ZOOLOGICAL AND ACCLIMATISATION SOCIETY INCORPORATION ACT AMENDMENT BILL.—The Honorable J. Service moved, That a Message be sent to the Legislative Assembly, asking them to communicate to the Council the Report and Proceedings of the Select Committee of the Legislative Assembly to which the Zoological and Acclimatisation Society Incorporation Act Amendment Bill was referred.

Question—put and resolved in the affirmative.

(650 copies.)—4944.

8. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act "to restrain persons employed in the Public Service from accepting or holding any office or employ- "ment other than in connection with the duties of their offices in the Public Service,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 13th November, 1888.

9. PUBLIC OFFICERS EMPLOYMENT BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to restrain persons employed in the Public Service from "accepting or holding any office or employment other than in connection with the duties of their offices "in the Public Service,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 20th November instant.

10. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "enable certain Lessees to vote at the election of Commissioners of Irrigation and Water Supply "Trusts under 'The Irrigation Act 1886,' and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 13th November, 1888.

11. IRRIGATION AND WATER SUPPLY TRUSTS ELECTION BILL.—The Honorable H. Cuthbert moved' That the Bill transmitted by the above Message, intituled "*An Act to enable certain Lessees to vote "at the election of Commissioners of Irrigation and Water Supply Trusts under 'The Irrigation "Act 1886,' and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 20th November instant.

12. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "enable the Mayor, Councillors, and Burgesses of the town of North Melbourne to demise for "terms of years certain lands situate in the said town and permanently reserved for municipal "purposes by the Act DCCCCVI., and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 13th November, 1888.

13. NORTH MELBOURNE VESTING OF LANDS BILL.—The Honorable W. H. Roberts moved, That the Bill transmitted by the above Message, intituled "*An Act to enable the Mayor, Councillors, and "Burgesses of the town of North Melbourne to demise for terms of years certain lands situate in the "said town and permanently reserved for municipal purposes by the Act DCCCCVI., and for other "purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 20th November instant.

14. INCREASE IN NUMBER OF MEMBERS OF COUNCIL BILL.—The Honorable H. Cuthbert, on behalf of the Chairman, brought up the Report from the Committee.

Ordered to lie on the Table together with the Proceedings of the Committee, and to be printed.

15. PAPER.—The Honorable J. Bell presented, pursuant to Act of Parliament—

Shire of Seymour Waterworks Trust—Application for an Additional Loan of £134—Detailed statement and report.

Ordered to lie on the Table.

16. POLICE FORCE FRANCHISE BILL.—The Honorable D. Melville moved, That this Bill be now read a second time.

Debate ensued.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable D. Melville moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable D. Melville, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable D. Melville, the Council adopted the Report from the Committee of the whole on this Bill.

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The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable D. Melville, read a third time and *passed*.

The Honorable D. Melville moved, That the following be the title of the Bill :—

"*An Act to extend the Franchise to Members of the Police Force.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

17. General Code Bill.—The Order of the Day for the resumption of the debate on the question—That, in the opinion of the Council, steps should be taken for submitting the General Code Bill to the best available Counsel for thorough revision and correction, having been read,

Debate resumed.

Question—put and resolved in the affirmative.

18. Discharge of Order of the Day.—On the motion of the Honorable H. Cuthbert, the following Order of the Day was read and discharged :—

Lunacy Statute Further Amendment Bill.—Adoption of Report.

19. Lunacy Statute Further Amendment Bill.—The Honorable H. Cuthbert moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration.

Debate ensued.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of this Bill.

The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with further amendments, the Council ordered the same to be taken into consideration to-morrow.—Bill, as further amended, to be printed.

20. Postponement of Orders of the Day.—The Council ordered that the consideration of the following Orders of the Day be postponed until to-morrow :—

Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Richmond City Lands Bill.—To be read a second time.
Ballarat Trustees, Executors, and Agency Company Limited Bill.—Adoption of Report.
Deposit of Silt Bill.—To be read a second time.
Guardian Trustees and Executors Company Limited Bill.—To be read a second time.
Australasian Dramatic and Musical Association Fund Bill.—To be read a second time.
Sparrows Destruction Bill.—Adjourned debate on second reading.
Equity Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.

The Council adjourned at twenty-eight minutes past ten o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

VICTORIA.

No. 23.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 14TH NOVEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act to amend 'The Zoological and Acclimatisation Society Incorporation Act 1884,' and for other purposes,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 14th November, 1888.

5. ZOOLOGICAL AND ACCLIMATISATION SOCIETY INCORPORATION ACT AMENDMENT BILL.—The Honorable J. Service moved, by leave, That the Standing Order requiring the payment of £20 into the hands of the Colonial Treasurer prior to this Bill being read a first time be suspended.
Question—put and resolved in the affirmative.

6. ZOOLOGICAL AND ACCLIMATISATION SOCIETY INCORPORATION ACT AMENDMENT BILL.—The Honorable J. Service moved, That the Bill intituled "*An Act to amend 'The Zoological and Acclimatisation Society Incorporation Act 1884,' and for other purposes,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be read a second time Tuesday, 20th November instant.

7. ADMINISTRATION OF PUBLIC SERVICE ACT 1883.—The Honorable S. Fraser moved, pursuant to notice, That, in the opinion of this House—
(1.) The Defence Department correspondence laid upon the Table of this House, in return to an Order of 18th September last, discloses the fact that the administration of the Public Service Act by the Public Service Board is in the highest degree unsatisfactory.
(2.) That it is expedient that a joint Select Committee of both Houses should be at once appointed to inquire into and report upon the operation of the Public Service Act 1883.
Debate ensued.
Motion, by leave, withdrawn.

8. CALL OF THE COUNCIL.—The Honorable W. A. Zeal moved, That on Tuesday, 27th November instant, the Council be called.
Debate ensued.
Question—put and resolved in the affirmative.

9. ELECTORS.—The Honorable G. Davis moved, by leave, That there be laid upon the Table of the Council a Return showing the number of Electors on the Rolls for both Houses of Parliament, and the number voting at the last general election for the Assembly in each electorate; also the number voting at the two last bi-ennial elections for the Council in each of the provinces.
Question—put and resolved in the affirmative.

10. LUNACY STATUTE FURTHER AMENDMENT BILL.—On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported, the Honorable H. Cuthbert moved, That the Bill be now read a third time.
Debate ensued.
Question—put and resolved in the affirmative.

(650 copies.)—4992.

On the motion of the Honorable H. Cuthbert, the Council ordered that the following verbal amendments be made in the Bill, viz.:—

In Clause D, sub-section 6, line 2, the words "existing or" be inserted before the word "proposed."

In Clause 51, line 2, the word "sixteenth" be omitted, and the word "tenth" inserted instead.

In Clause 72, line 2, the word "seventeenth" be omitted, and the word "eleventh" inserted instead.

In the Schedule, page 29, the word "Sixteenth," in the heading, be omitted, and the word "Tenth" inserted instead; and,

In the next Schedule the word "Seventeenth," in the heading, be omitted, and the word "Eleventh" inserted instead.

Question—That the Bill do pass—put and resolved in the affirmative.

The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act to further amend the Lunacy Statute.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be transmitted to the Legislative Assembly, with a Message desiring their concurrence therein.

11. Richmond City Lands Bill.—The Honorable J. Service moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable J. Service moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable J. Service, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable J. Service, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable J. Service, read a third time and *passed*.

The Honorable J. Service moved, That the following be the title of the Bill:—

"*An Act to enable the Mayor, Councillors, and Citizens of the City of Richmond to demise "for terms of years certain Lands vested in them, and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

12. Guardian Trustees and Executors Company Limited Bill.—The Honorable D. Melville moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable D. Melville moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable D. Melville, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 20th November instant, again resolve itself into the said Committee.

13. Australasian Dramatic and Musical Association Fund Bill.—The Honorable W. A. Zeal moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable W. A. Zeal moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable W. A. Zeal, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable W. A. Zeal, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable W. A. Zeal, read a third time and *passed*.

The Honorable W. A. Zeal moved, That the following be the title of the Bill:—

"*An Act to amend an Act intituled 'An Act to establish and regulate a Permanent Fund in "'connection with the Australasian Dramatic and Musical Association.'*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

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14. SPARROWS DESTRUCTION BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read,

Debate resumed.

The Honorable H. Gore moved, That the debate be now adjourned.

Question—That the debate be adjourned until Tuesday, 20th November instant—put and resolved in the affirmative.

15. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under:—

Members of Council Bill—To be read a second time—until Tuesday, 27th November instant.
Noxious Insects Bill.—To be further re-considered in Committee,
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee,
Ballarat Trustees, Executors, and Agency Company Limited Bill.—Adoption of Report,
Deposit of Silt Bill.—To be read a second time,
Equity Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee,
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading,
Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee, and
Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee—until Tuesday, 20th November instant.

The Council adjourned at seventeen minutes past ten o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 24.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

THURSDAY, 15TH NOVEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. PAPER.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—
Education—Report of the Minister of Public Instruction for the year 1887-88.
Ordered to lie on the Table.

5. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to provide for the alteration of the Boundaries of certain Electoral Districts, and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 15th November, 1888.

6. ELECTORAL DISTRICTS ALTERATION BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to provide for the alteration of the Boundaries of certain Electoral Districts, and for other purposes,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Wednesday, 21st November instant.

7. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to make better provision for the conduct of Inquests concerning fatal Mining Accidents,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 15th November, 1888.

8. MINING ACCIDENTS INQUESTS BILL.—The Honorable Lieut.-Col. Sargood moved, That the Bill transmitted by the above Message, intituled "*An Act to make better provision for the conduct of Inquests concerning fatal Mining Accidents,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Wednesday, 21st November instant.

9. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to amend the Instruments and Securities Statute 1864,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the same without amendment.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 15th November, 1888.

The Council adjourned at five o'clock until Tuesday next at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority : ROBT. S. BRAIN, Government Printer, Melbourne
(650 copies.)—5079.

VICTORIA.

No. 25.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 20TH NOVEMBER, 1888.

1. The Council met in accordance with adjournment.
2. The President took the Chair.
3. The President read the Prayer.
4. DECLARATION OF MEMBER.—The Honorable W. McCulloch delivered to the Clerk the declaration required by the 13th clause of the Act 45 Victoria, No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, WILLIAM MCCULLOCH, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of Three hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal district of Colac, and are known as Mertoun Park.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Colac are rated in the rate-book of such district upon a yearly value of upwards of Three hundred pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"WM. McCULLOCH."

5. PAPERS.—The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Mooroopna Waterworks Trust—Application for Additional Loan of £500.—Detailed Statement and Report.

Maryborough Waterworks Trust—Application for Further Additional Loan of £1,250.—Detailed Statement and Report.

Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented—

Electors—Return to an Order of the Legislative Council, dated 14th November instant, for a Return showing the number of Electors on the Rolls for both Houses of Parliament, and the number voting at the last general election for the Assembly in each electorate; also the number voting at the two last biennial elections for the Council in each of the provinces.

Ordered to lie on the Table.

6. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to authorize the construction of the Cape Patterson and Kilcunda Junction Railway, and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 15th November, 1888.

7. CAPE PATTERSON AND KILCUNDA JUNCTION RAILWAY BILL.—The Honorable J. Service moved, That a Message be sent to the Legislative Assembly requesting them to communicate to the Council the Report and Proceedings of the Select Committee of that House to which the Cape Patterson and Kilcunda Junction Railway Bill was referred.

Question—put and resolved in the affirmative.

8. MEMORIAL.—The Honorable W. Pearson presented a Memorial from certain Electors of the South Riding of the Shire of Avon, in the District of Gippsland, praying the Council to cause such alteration to be made in the Distribution of Seats Bill when the same should be presented to the Legislative Council as would afford the Memorialists the redress prayed for in the Memorial.

Memorial read and ordered to lie on the Table.

(650 copies.)—5234.

9. PUBLIC OFFICERS EMPLOYMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same with amendments.
The Honorable H. Cuthbert moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration of Clause 2.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the reconsideration of Clause 2.
The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with a further amendment, the Council ordered the same to be taken into consideration to-morrow; Bill, as further amended, to be printed.

10. NORTH MELBOURNE LANDS BILL.—The Honorable W. H. Roberts moved, That this Bill be now read a second time.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable W. H. Roberts moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable W. H. Roberts, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration to-morrow; Bill, as amended, to be printed.

11. ZOOLOGICAL AND ACCLIMATISATION SOCIETY INCORPORATION ACT AMENDMENT BILL.—The Honorable James Service moved, That this Bill be now read a second time.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable James Service moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable James Service, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same with amendments, the Council ordered the same to be taken into consideration to-morrow; Bill, as amended, to be printed.

12. SPARROWS DESTRUCTION BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read,
Debate resumed.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable J. H. Connor moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. H. Connor, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again,
Resolved—That the Council will, on Tuesday, 27th November inst., again resolve itself into the said Committee.

13. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until to-morrow:—
Irrigation and Water Supply Trusts Election Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Ballarat Trustees, Executors, and Agency Company Limited Bill.—Adoption of Report.
Deposit of Silt Bill.—To be read a second time.
Guardian Trustees and Executors Company Limited Bill.—To be further considered in Committee.
Equity Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.

The Council adjourned at twenty-five minutes to eleven o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne

VICTORIA.

No. 26.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 21ST NOVEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. PETITION.—The Honorable W. A. Zeal presented a Petition from certain persons of Castlemaine and surrounding district, being fruit-growers, praying that only such methods might be adopted and enforced in the endeavour to eradicate noxious insects as might be approved of by practical fruit-growers; and further, that the Noxious Insects Bill now before the Council should be thrown out, and another Bill called the Codlin Moth Bill be introduced next Session of Parliament to deal with the codlin moth alone, and that provision might be made for the creation of boards in each diseased district, composed entirely of fruit-growers, to whom all regulations and proposed methods of destroying insects might be submitted for their approval before being adopted.
Petition read, ordered to lie on the Table, and to be printed.

5. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Messages from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act for "the regulation of Companies authorized to act as Executors Administrators and Trustees and in "other fiduciary capacities,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the same without amendment.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 21st November, 1888.

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council copies of the Report and Evidence of the Select Committee of the Legislative Assembly on the Bill intituled "*An Act to "authorize the construction of the Cape Patterson and Kilcunda Junction Railway, and for other "purposes,*" in accordance with the request of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 21st November, 1888.

6. CAPE PATTERSON AND KILCUNDA JUNCTION RAILWAY BILL.—The Honorable J. Service, having produced a certificate that the sum of £20 had been paid into the hands of the Treasurer for the public uses of the colony, moved, That the Bill intituled "*An Act to authorize the construction of the "Cape Patterson and Kilcunda Junction Railway, and for other purposes,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, and ordered to be read a second time Wednesday, 28th November instant.

7. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the several Orders of the Day, 1 to 6 inclusive, be postponed until after the consideration of the 8th Order for to-day.

8. NORTH MELBOURNE LANDS BILL.—On the motion of the Honorable Dr. Beaney, the Council adopted the report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Dr. Beaney, read a third time and *passed.*
The Honorable Dr. Beaney moved, That the following be the title of the Bill:—

"*An Act to enable the Mayor, Councillors, and Burgesses of the Town of North Melbourne "to demise for terms of years certain Lands situate in the said town, and permanently "reserved for municipal purposes by the Act DCCCCVI., and for other purposes.*"

Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

(650 copies.)—5286.

9. ZOOLOGICAL AND ACCLIMATISATION SOCIETY INCORPORATION ACT AMENDMENT BILL.—On the motion of the Honorable James Service, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable James Service, read a third time and *passed.*

The Honorable James Service moved, That the following be the title of the Bill :—

> *"An Act to amend 'The Zoological and Acclimatisation Society Incorporation Act 1884,' and for "other purposes."*

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

10. ELECTORAL DISTRICTS ALTERATION BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Debate ensued.

The Honorable J. H. Connor moved, That the debate be now adjourned.

Question—That the debate be now adjourned until Tuesday, 27th November instant, put and resolved in the affirmative.

11. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until Tuesday, 27th November instant :—

Mining Accidents Inquests Bill.—To be read a second time.
Public Officers Employment Bill.—Adoption of Report.
Irrigation and Water Supply Trusts Election Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Ballarat Trustees, Executors, and Agency Company Limited Bill.—Adoption of Report.
Deposit of Silt Bill.—To be read a second time.
Guardian Trustees and Executors Company Limited Bill.—To be further considered in Committee.
Equity Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Australasian Natives Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.
Sandhurst and Northern District Trustees, Executors, and Agency Company Limited Bill.—To be further considered in Committee.

12. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council at its rising adjourn until Tuesday, 27th November instant.

Question—put and resolved in the affirmative.

The Council adjourned at twenty-five minutes past ten o'clock until Tuesday next at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 27.

Minutes of the Proceedings OF THE LEGISLATIVE COUNCIL.

TUESDAY, 27TH NOVEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. RETURN TO WRIT.—The President announced that he had received a return to the Writ he had issued for the election of a Member to serve for the Western Province, by which it appeared that Agar Wynne, gentleman, had been duly elected in pursuance of the said Writ.

5. NEW MEMBER.—The Honorable A. Wynne was introduced, and took the Oath prescribed by the Constitution Act, and delivered to the Clerk the declaration required by the 13th section of the Act 45 Victoria, No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, AGAR WYNNE, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of over Fifteen hundred pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Shire of Mortlake and Shire of Hampden, and are known as 'The Terinallum Estate.'

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Shire of Mortlake are rated in the rate-book of such district upon a yearly value of £3,233, and that such of the said lands or tenements as are situate in the municipal district of Shire of Hampden are rated in the rate-book of such district upon a yearly value of £3,084.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements, or any part thereof, for the purpose of enabling me to be returned a Member of the Legislative Council.

"AGAR WYNNE."

6. PETITIONS.—The Honorable D. Ham presented a Petition from certain electors of the district of Ballarat West praying the Council would take the Petition into favorable consideration and either reject the Electoral Districts Redistribution Bill, or otherwise amend it to afford relief in the particulars specified in the Petition, and to give such further and other relief as to the Council might seem good.

Petition read and ordered to lie on the Table.

The Honorable D. Coutts presented a Petition from the President, Councillors, and Ratepayers of the Shire of Korong, under the seal of the municipality, praying the Council would take their case, as set forth in the Petition, into consideration, and so amend the Schedule to the Bill as to make the south boundary of the Shire of Korong also the boundary of the Korong Electoral District.

Petition read and ordered to lie on the Table.

The Honorable S. Austin presented a Petition from the Mayor, Aldermen, Councillors, and Burgesses of Geelong, under the seal of the said borough, praying the Council would so amend the Bill to provide for the alteration of the boundaries of certain Electoral Districts, and for other purposes, as to continue to the Electoral District of Geelong the right to return three members to the Honorable the Legislative Assembly; or, failing that, to re-insert the proposal first contained in the new Electoral Bill providing that the Electoral District of Geelong should be divided into single electorates, viz. :—The Municipal District of Geelong returning one Member, and the Municipal Districts of Newtown and Chilwell and Geelong West the other, as such amendment, in the opinion of this council, would be the means of securing a fairer representation for the electors.

Petition read and ordered to lie on the Table.

The Honorable N. Thornley presented a Petition from certain ratepayers and electors residing in part of the old Electorate of Dundas, praying the Council would take the necessary steps to have the portion of proposed Electorate of Dundas that lies west of main road from Coleraine to Harrow excised from Dundas and included in Normanby.

Petition received and ordered to lie on the Table.

The Honorable W. P. Simpson presented a Petition from certain electors residing at and near Echuca, in the electorate of Rodney, praying the House to reject the Bill to amend *The Electoral Act 1865*.

Petition read and ordered to lie on the Table.

(650 copies.)—5458.

The Honorable D. Coutts presented a Petition from the Mayor and Councillors of the Borough of Inglewood, under the seal of the municipality, praying the Council to cause the Bill to amend *The Electoral Act 1865* to be amended in the direction prayed for in the Petition.

Petition received and ordered to lie on the Table.

The Honorable W. P. Simpson presented a Petition from certain electors in the districts of Gunbower and Mandurang, praying the Council would take the statements in the Petition into consideration, and constitute and make Gunbower and Mandurang one electoral district returning two members.

Petition read and ordered to lie on the Table.

The Honorable W. P. Simpson presented three other Petitions from the electors in the districts of Gunbower and Mandurang, with similar prayers.

Petitions received and ordered to lie on the Table.

7. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read and is as follows :—

HENRY B. LOCH,
Governor. *Message.*

The Governor informs the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Act of the present Session, presented to him by the Clerk of the Parliaments, viz. :—

"*An Act to extend the franchise to Members of the Police Force.*"

Government Offices,
Melbourne, 26th November, 1888.

Ordered to lie on the Table.

8. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to amend 'The Electoral Act 1865,' and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 27th November, 1888.

9. ELECTORAL ACT 1865 AMENDMENT BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to amend 'The Electoral Act 1865,' and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 4th December next.

10. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to apply out of 'The Railway Loan Account 1885,' or temporarily out of 'The Public Account,' certain sums of money for Railway Works and other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 27th November, 1888.

11. RAILWAY LOAN APPLICATION BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to apply out of 'The Railway Loan Account 1885,' or temporarily out of 'The Public Account,' certain sums of money for Railway Works and other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

12. MESSAGES FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Messages from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to amend 'The Zoological and Acclimatisation Society Incorporation Act 1884,' and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 27th November, 1888.

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to enable the Mayor, Councillors, and Burgesses of the Town of North Melbourne to demise for terms of years certain Lands situate in the said Town, and permanently reserved for municipal purposes by the Act DCCCCVI., and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 27th November, 1888.

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13. PAPERS.—The Honorable H. Cuthbert presented—

Proposed Pacific Cable—Letter from Captain F. C. Rowan relative to the proposed ——

Ordered to lie on the Table.

The Honorable James Bell presented—

The Land Act 1884, sec. 69—Schedule (No. 5) of Country Lands proposed to be offered for sale by public auction during the year 1889.

The Irrigation Act 1886—Wandella Irrigation and Water Supply Trust—Appointed and created.

The Irrigation Act 1886—Wandella Irrigation and Water Supply Trust—Scheme or Plan of Works.

The Irrigation Act 1886—Werribee Irrigation and Water Supply Trust—Constituted.

The Irrigation Act 1886—Werribee Irrigation and Water Supply Trust—Scheme and Plan of Works.

Severally ordered to lie on the Table.

14. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the several Orders of the Day, Government Business, and Order No. 1, General Business, on the paper for to-day be postponed until after the consideration of Orders 2, 4, 5, 6, 7, and 8, General Business, on the paper for to-day.

15. BALLARAT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—On the motion of the Honorable James Service, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable James Service, read a third time and *passed*.

The Honorable James Service moved, That the following be the title of the Bill :—

"*An Act to confer powers upon the Ballarat Trustees, Executors, and Agency Company "Limited.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

16. GUARDIAN TRUSTEES AND EXECUTORS COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair ; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same with amendments, the Council ordered the same to be taken into consideration to-morrow.

17. EQUITY TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair ; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same without amendment.

On the motion of the Honorable D. Melville, the Council ordered the Standing Orders to be suspended, in order to allow this Bill to pass more than one stage on the same day.

On the motion of the Honorable D. Melville, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable D. Melville, read a third time and *passed*.

The Honorable D. Melville moved, That the following be the title of the Bill :—

"*An Act to confer powers upon the Equity Trustees, Executors, and Agency Company Limited.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

18. AUSTRALASIAN NATIVES TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read, the President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair ; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration to-morrow.

19. SANDHURST AND NORTHERN DISTRICT TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read, the President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had gone through the Bill and agreed to the same without amendment.

On the motion of the Honorable W. P. Simpson, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable W. P. Simpson, read a third time and *passed*.

The Honorable W. P. Simpson moved, That the following be the title of the Bill :—

"*An Act to confer powers upon the Sandhurst and Northern District Trustees, Executors, and Agency Company Limited.*"

Question—put and resolved in the affirmative.

Ordered—That a message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

20. CALL OF THE COUNCIL.—The Order of the Day, That the Council be called, having been read, the names of the Members were called over by the Clerk, in alphabetical order, when all the Members answered with the exception of the Honorables F. Brown, N. FitzGerald, and H. Gore, and these Members having been severally called a second time, were excused by the Council.

21. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered, That the consideration of the Second Order be postponed until after the consideration of the Third Order, Government Business, on the paper for to-day.

22. ELECTORAL DISTRICTS ALTERATION BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

The Honorable A. Wynne moved, That the debate be now adjourned.

Debate continued.

Question—That the debate be now adjourned until to-morrow—put and resolved in the affirmative.

23. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under :—

Members of Council Bill.—To be read a second time,
Mining Accidents Inquests Bill.—To be read a second time,
Public Officers Employment Bill.—Adoption of Report,
Irrigation and Water Supply Trusts Election Bill.—To be read a second time,
Noxious Insects Bill.—To be further re-considered in Committee,
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee,
Sparrows Destruction Bill.—To be further considered in Committee,
Deposit of Silt Bill.—To be read a second time—until to-morrow.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading—until Tuesday, 4th December next.

The Council adjourned at fifteen minutes to eleven o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 28.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 28TH NOVEMBER, 1888.

1. The Council met in accordance with adjournment.
2. The President took the Chair.
3. The President read the Prayer.
4. PETITIONS.—The Honorable D. Coutts presented a Petition from certain electors in the districts of Gunbower and Mandurang, praying the Council would take the statements in the Petition into consideration, and would constitute and make Gunbower and Mandurang one electoral district, returning two members.
   Petition read and ordered to lie on the Table.
   The Honorable J. Service presented a Petition from certain citizens of Melbourne praying the Council would reject the clauses in the Electoral Act 1865 Amendment Bill, abolishing plural voting.
   Petition read and ordered to lie on the Table, and referred to the Committee of the whole on the Electoral Act 1865 Amendment Bill.
5. CAPE PATTERSON AND KILCUNDA JUNCTION RAILWAY BILL.—The Honorable James Service moved, That this Bill be now read a second time.
   Debate ensued.
   Question—put and resolved in the affirmative.—Bill read a second time.
   The Honorable James Service moved, That this Bill be now committed to a Committee of the whole Council.
   Question—put and resolved in the affirmative.
   And, on the further motion of the Honorable James Service, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
   The President resumed the Chair, and the Honorable Lieut.-Col. Sargood reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committe may have leave to sit again.
   Resolved—That the Council will, on Wednesday, 5th December next, again resolve itself into the said Committee.
6. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of Orders 2, 3, and 4 be postponed until after the consideration of the 5th Order for to-day.
7. ELECTORAL DISTRICTS ALTERATION BILL.—The Order of the Day for the resumption of the debate on the question that this Bill be now read a second time having been read,
   Debate resumed.
   Question—That this Bill be now read a second time—put.
   Council divided.

Ayes, 24.	Noes, 7.
The Hon. S. Austin	The Hon. J. H. Connor
J. Balfour	J. P. MacPherson
J. G. Beaney, M.D.	D. Melville
J. Buchanan	W. H. S. Osmand
Sir W. J. Clarke, Bart.	A. Wynne
D. Coutts	W. A. Zeal
H. Cuthbert	S. W. Cooke (*Teller*).
G. Davis	
T. Dowling	
S. Fraser	
C. J. Ham	
D. Ham	
C. H. James	
G. Le Fevre, M.D.	
Sir J. Lorimer	
W. McCulloch	
F. Ormond	
W. Pearson	
W. H. Roberts	
Lt.-Col. Sargood	
J. Service	
W. E. Stanbridge	
G. Young	
J. Bell (*Teller*).	

   And so it was resolved in the affirmative.—Bill read a second time.

(650 copies.)—5500.

The Honorable H. Cuthbert moved, That this Bill be committed to a Committee of the whole Council.
Debate ensued.
Question put.
Council divided.

Ayes, 22.	Noes, 9.
The Hon. S. Austin	The Hon. J. Buchanan
J. Balfour	J. H. Connor
J. G. Beaney, M.D.	D. Coutts
J. Bell	G. Davis
S. W. Cooke	D. Ham
H. Cuthbert	J. P. MacPherson
T. Dowling	D. Melville
S. Fraser	W. H. S. Osmand
C. J. Ham	W. A. Zeal (*Teller*).
C. H. James	
G. Le Fevre, M.D.	
Sir J. Lorimer	
W. McCulloch	
F. Ormond	
W. Pearson	
W. H. Roberts	
Lt.-Col. Sargood	
J. Service	
W. E. Stanbridge	
A. Wynne	
G. Young	
N. Thornley (*Teller*).	

And so it was resolved in the affirmative.
Question—That this Bill be now committed to a Committee of the whole Council—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.
Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

8. Message from the Legislative Assembly.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

Mr. President—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to further amend the Statute of Gaols 1864*," and acquaint the Legislative Council that the Legislative Assembly have agreed to the same without amendment.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 28th November, 1888.

9. Railway Loan Application Bill.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill, and agreed to the same without amendment.
On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed*.
The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act to apply out of 'The Railway Loan Account 1885,' or temporarily out of 'The "'Public Account,' certain sums of money for Railway Works and other purposes.*"

Question—put and resolved in the affirmative.
Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

10. Guardian Trustees and Executors Company Limited Bill.—On the motion of the Honorable D. Melville, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable D. Melville, read a third time and *passed*.

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The Honorable D. Melville moved, That the following be the title of the Bill :—

"An Act to confer powers upon the Guardian Trustees and Executors Company Limited."

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

11. AUSTRALASIAN NATIVES TRUSTEES, EXECUTORS, AND AGENCY COMPANY LIMITED BILL.—On the motion of the Honorable S. Fraser, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable S. Fraser, read a third time and *passed.*

The Honorable S. Fraser moved, That the following be the title of the Bill :—

"An Act to confer powers upon the Australasian Natives Trustees, Executors, and Agency Company Limited."

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

12. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until to-morrow :—

Members of Council Bill.—To be read a second time.
Mining Accidents Inquests Bill.—To be read a second time.
Public Officers Employment Bill.—Adoption of Report.
Irrigation and Water Supply Trusts Election Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Sparrows Destruction Bill.—To be further considered in Committee.
Deposit of Silt Bill.—To be read a second time.

The Council adjourned at fourteen minutes to eleven o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 29.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

THURSDAY, 29TH NOVEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. PAPERS.—The Honorable J. Bell presented, pursuant to Act of Parliament—
Agricultural Education.—Accounts of the Trustees of Agricultural Colleges and the Council of Agricultural Education, from 1st January, 1888, to 30th June, 1888.
Ordered to lie on the Table.

The Honorable H. Cuthbert presented, pursuant to Law—
County Court Rules, 1888.
Ordered to lie on the Table.

5. PETITIONS.—The Honorable J. H. Connor presented a Petition from the Presidents, Councillors, and Ratepayers of the Shires of Bannockburn and Meredith, under the corporate seals of the said municipalities, requesting the Council to take the statements set forth in the Petition into favorable consideration, and to take such steps as might be deemed advisable for the division of the proposed Electorate of Grenville into two single electorates, whereby the petitioners sincerely believe that substantial relief would be given them.
Petition read, ordered to lie on the Table, and to be referred to the Committee of the whole on the Electoral Districts Alteration Bill.
The Honorable C. J. Ham presented a Petition from Martin Howy Irving, praying the Council would not pass the Public Officers Employment Bill.
Petition read and ordered to lie on the Table.

6. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to regulate the business and to provide for the licensing of Collectors of Special Wares Marine Stores and Old Metals, and to provide for the licensing of Dealers in Special Wares Marine Stores and Old Metals, and for amending 'The Old Metal Dealers Act 1876,'*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 29th November, 1888.

7. MARINE STORES BILL.—The Honorable J. Bell moved, That the Bill transmitted by the above Message, intituled "*An Act to regulate the business and to provide for the licensing of Collectors of Special Wares Marine Stores and Old Metals, and to provide for the licensing of Dealers in Special Wares Marine Stores and Old Metals, and for amending 'The Old Metal Dealers Act 1876,'*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 4th December next.

8. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of Orders 1, 2, and 3 be postponed until after the consideration of the 4th Order, Government Business, on the Paper for to-day.

9. IRRIGATION AND WATER SUPPLY TRUSTS ELECTION BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Lieut.-Col. Sargood having reported that the Committee had gone through the Bill, and agreed to the same with amendments, the Council ordered the same to be taken into consideration this day.—Bill as amended to be printed.

(650 copies.)—5562.

10. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to further amend 'The Companies Statute 1864,'*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 29th November, 1888.

11. BANKING COMPANIES REGISTRATION BILL.—The Honorable Sir J. Lorimer moved, That the Bill transmitted by the above Message, intituled "*An Act to further amend 'The Companies Statute 1864,'*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 4th December next.

12. ELECTORAL DISTRICTS ALTERATION BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 4th December next, again resolve itself into the said Committee.

13. PUBLIC OFFICERS EMPLOYMENT BILL.—On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill, and ordered the Bill to be read a third time Tuesday, 4th December next.

14. IRRIGATION AND WATER SUPPLY TRUSTS ELECTION BILL.—On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act to enable certain Lessees to vote at the election of Commissioners of Irrigation and "Water Supply Trusts under 'The Irrigation Act 1886,' and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

15. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until Tuesday, 4th December next:—

Members of Council Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Mining Accidents Inquests Bill.—To be read a second time.
Sparrows Destruction Bill.—To be further considered in Committee.
Deposit of Silt Bill.—To be read a second time.

The Council adjourned at twenty minutes to eleven o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 30.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 4TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. RETURN TO WRIT.—The President announced that he had received a return to the Writ he had issued for the election of a Member to serve for the North-Eastern Province, from which it appeared that James Stewart Butters was duly elected in pursuance of the said Writ.

5. NEW MEMBER.—The Honorable J. S. Butters was introduced, and took the Oath prescribed by the Constitution Act, and delivered to the Clerk the declaration required by the 13th section of the Act 45 Vict. No. 702, as hereunder set forth :—

"In compliance with the provisions of the Act 45 Victoria, No. 702, I, JAMES STEWART BUTTERS, do declare and testify that I am legally or equitably seised of or entitled to an estate of freehold for my own use and benefit in lands or tenements in the colony of Victoria of the yearly value of One hundred and seven pounds above all charges and incumbrances affecting the same, other than any public or parliamentary tax or municipal or other rate or assessment; and further, that such lands or tenements are situated in the municipal districts of Port Melbourne, Sandhurst, Shire of Moorabbin, Glenlyon, and Romsey, and are known as—Houses and land, Bay-street, Port Melbourne; house and land, Nolan-street, Sandhurst; land adjoining Red Bluff Hotel, Shire of Moorabbin, West Riding; land near Malmsbury Reservoir, Shire of Glenlyon, parish of Burke, county of Talbot; land at Braemar East, Riddell's Creek, Shire of Romsey.

"And I further declare that such of the said lands or tenements as are situate in the municipal district of Port Melbourne are rated in the rate-book of such district upon a yearly value of Seventy pounds, and that such of the said lands or tenements as are situate in the municipal district of Sandhurst are rated in the rate-book of such district upon a yearly value of Sixteen pounds, and that such of the said lands or tenements as are situate in the municipal district of Moorabbin are rated in the rate-book of such district upon a yearly value of Ten pounds, and that such of the lands or tenements as are situate in the municipal district of Glenlyon are rated in the rate-book of such district upon a yearly value of Six pounds, and that such of the lands or tenements as are situate in the municipal district of Romsey are rated in the rate-book of such district upon a yearly value of Five pounds.

"And I further declare that I have not collusively or colorably obtained a title to or become possessed of the said lands or tenements or any part thereof for the purpose of enabling me to be returned a Member of the Legislative Council.

"JAS. S. BUTTERS."

6. PETITIONS.—The Honorable Sir W. J. Clarke presented a Petition from certain residents and ratepayers of the Shire of Coburg, praying the Council to have the Redistribution of Seats Bill placed on the Statute Book, so far as it relates to the constitution of East Bourke Boroughs.

Petition received and ordered to lie on the Table.

The Honorable D. Melville presented a Petition from certain electors residing at and near Kyabram, in the electorate of Rodney, praying the Council would reject the Bill to amend *The Electoral Act 1865*.

Petition read, received, and ordered to lie on the Table.

The Honorable D. Coutts presented two several Petitions from certain electors in the Districts of Gunbower and Mandurang, praying the Council would take the statements set forth in the Petition into consideration, and constitute and make Gunbower and Mandurang one Electoral District returning two Members.

Petitions received and ordered to lie on the Table.

The Honorable D. Melville presented a Petition from certain burgesses and residents of the town of Brunswick, praying the Council to give effect to their desire and pass the Redistribution of Seats Bill without alteration, so far as Brunswick or the East Bourke Boroughs are concerned.

Petition read, received, and ordered to lie on the Table.

The Honorable J. P. MacPherson presented a Petition from certain electors in the Avoca Division of the Nelson Province, praying the Council to oppose the Bill providing for an increase of the number of Members in the Legislative Council.

Petition read, received, and ordered to lie on the Table.

Two similar Petitions were presented by the Honorable J. P. MacPherson, as under:—

From certain residents within the Nelson Province.

Petitions received, and severally ordered to lie on the Table.

(650 copies.)—5791.

7. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read and is as follows :—

HENRY B. LOCH,
Governor.

Message .

The Governor informs the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz. :—

"*An Act to enable the Mayor, Councillors, and Citizens of the City of Richmond to demise for "terms of years certain lands vested in them, and for other purposes.*"

"*An Act to amend an Act intituled 'An Act to establish and regulate a Permanent Fund in "connection with the Australasian Dramatic and Musical Association.'*"

"*An Act to amend 'The Instruments and Securities Statute 1864.'*"

"*An Act to enable the Mayor, Councillors, and Burgesses of the Town of North Melbourne "to demise for terms of years certain Lands situate in the said town and permanently "reserved for municipal purposes by the Act DCCCCVI., and for other purposes.*"

"*An Act to amend 'The Zoological and Acclimatisation Society Incorporation Act 1884,' and "for other purposes.*"

"*An Act to confer powers upon the Ballarat Trustees, Executors, and Agency Company "Limited.*"

"*An Act to further amend 'The Statute of Gaols 1864.'*"

"*An Act to apply out of 'The Railway Loan Account 1885' or temporarily out of 'The Public "'Account' certain sums of money for Railway Works and other purposes.*"

Government Offices,
Melbourne, 3rd December, 1888.

Ordered to lie on the Table.

8. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of Orders 1, 2, and 3 be postponed until after the consideration of the 5th Order for to-day.

9. ELECTORAL DISTRICTS ALTERATION BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

10. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Message from His Excellency the Governor recommending amendments in the Bill intituled "*An Act to confer powers upon "the Sandhurst and Northern District Trustees, Executors, and Agency Company Limited,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the several amendments recommended by His Excellency the Governor in this Bill, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 4th December, 1888.

And the said Message from His Excellency the Governor was read, and is as follows :—

HENRY B. LOCH,
Governor.

Pursuant to the provisions of section 36 of the Constitution Act, the Governor transmits to the Legislative Assembly, for their consideration, the following amendments which he desires to be made in the Bill intituled "*An Act to confer powers upon the Sandhurst and Northern District "Trustees, Executors, and Agency Company Limited*" :—

Clause 12, line 15 of the clause, omit the word "managing" and substitute "manager."
Line 26 of the clause, omit the words "acting managers" and substitute "acting manager."
Clause 19, line 9 of the clause, omit the word "Funds" and substitute "Fund."

Government Offices,
Melbourne, 1st December, 1888.

On the motion of the Honorable H. Cuthbert, the Council agreed to the several amendments, and ordered a Message to be transmitted to the Legislative Assembly acquainting them therewith.

11. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Message from His Excellency the Governor recommending an amendment in the Bill intituled "*An Act to confer powers "upon the Equity Trustees, Executors, and Agency Company Limited,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the said amendment recommended by His Excellency the Governor in this Bill, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 4th December, 1888.

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And the said Message from His Excellency the Governor was read, and is as follows :—

HENRY B. LOCH,
Governor.

Pursuant to the provisions of section 36 of the Constitution Act, the Governor transmits to the Legislative Assembly, for their consideration, the following amendment which he desires to be made in a Bill intituled "*An Act to confer powers upon the Equity Trustees, Executors, and Agency "Company Limited*" :—

Clause 13, page 6, line 19, before the words "in any case" insert "if."

Government Offices,
Melbourne, 1st December, 1888.

On the motion of the Honorable H. Cuthbert, the Council agreed to the amendment transmitted by His Excellency the Governor, and ordered a Message to be transmitted to the Legislative Assembly acquainting them therewith.

12. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "enable certain Lessees to vote at the Election of Commissioners of Irrigation and Water Supply "Trusts under 'The Irrigation Act 1886,' and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 4th December, 1888.

13. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until to-morrow :—

Electoral Act 1865 Amendment Bill.—To be read a second time.
Marine Stores Bill.—To be read a second time.
Banking Companies Registration Bill.—To be read a second time.
Members of Council Bill.—To be read a second time.
Public Officers Employment Bill.—To be read a third time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Mining Accidents Inquests Bill.—To be read a second time.
Sparrows Destruction Bill.—To be further considered in Committee.
Deposit of Silt Bill.—To be read a second time.

The Council adjourned at ten minutes past eleven o'clock until to-morrow, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 31.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 5TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. PETITION.—The Honorable Geo. Davis presented a Petition from certain electors of Wonnangatta Electoral Division of North Gippsland, requesting the Council to take their case, as set forth in the Petition, into favorable consideration, and endeavour to assist them to have the Division annexed to the Bairnsdale Electorate in lieu of the Tambo Electorate as proposed in the new Electoral Bill.
Petition received, read, and ordered to lie on the Table.

5. BANKING COMPANIES SECURITIES BILL.—The Honorable W. A. Zeal moved, by leave, That he have leave to bring in a Bill to confer on incorporated banking companies power to make advances on certain securities.
Question—put and resolved in the affirmative.
Ordered—That the Honorable W. A. Zeal do prepare and bring in the Bill.
The Honorable W. A. Zeal then brought up a Bill intituled "*A Bill to confer on Incorporated "Banking Companies power to make Advances on certain Securities,*" and moved that it be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 11th December instant.

6. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—
Australasian Statistics for the Year 1887, compiled from Official Returns, with a Report by the Government Statist of Victoria.
Ordered to lie on the Table.

The Honorable H. Cuthbert presented, pursuant to Act of Parliament—
Bank Liabilities and Assets.—Summary of sworn Returns for the Quarter ended 30th September, 1888.
Education Act 1872.—Regulation.—Order in Council.
Yan Yean Water Supply.—Cash Statement from 1st July, 1887, to 30th June, 1888, and Balance-sheet to 30th June, 1888.
Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented—
Municipalities Overdraft.—Return to an Order of the Legislative Council, dated 16th October last, for a Return showing—
(1.) The municipalities who had overdrafts at the time of the passing of the Indemnity Act 1886, with the amount of such overdraft due by each; and
(2.) A like return showing the position with regard to overdrafts of each municipality on the 30th September, 1888.
Ordered to lie on the Table.

7. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the 1st Order of the Day be postponed until after the consideration of the 2nd Order for to-day.

8. ELECTORAL DISTRICTS ALTERATION BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.
The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill, and agreed to the same with amendments.
The Honorable Sir W. J. Clarke moved, That this Bill be re-committed to a Committee of the whole Council for reconsideration of section 47.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable Sir W. J. Clarke, the President left the Chair, and the Council resolved itself into a Committee of the whole for the reconsideration of section 47 of this Bill.

(650 copies.)—5823.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee agreed to the Bill with a further amendment.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill, and ordered the Bill to be read a third time to-morrow.

9. CAPE PATTERSON AND KILCUNDA JUNCTION RAILWAY BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill, and agreed to the same without amendment.

On the motion of the Honorable J. Service, by leave, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable J. Service, read a third time and *passed.*

The Honorable J. Service moved, That the following be the title of the Bill :—

"*An Act to authorize the construction of the Cape Patterson and Kilcunda Junction Railway,* "*and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

10. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of Orders of the Day 3, 4, and 5 be postponed until after the consideration of the 6th Order for to-day.

11. MEMBERS OF COUNCIL BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Debate ensued.

The Honorable J. Balfour moved, That the debate be now adjourned.

Question—That this debate be now adjourned until to-morrow—put and resolved in the affirmative.

12. AMALGAMATION OF COMPANIES BILL.—The Honorable H. Cuthbert moved, by leave, That he have leave to bring in a Bill to facilitate the amalgamation of companies authorized to act as executors, administrators, and trustees, and in other fiduciary capacities.

Question—put and resolved in the affirmative.

Ordered—That the Honorable H. Cuthbert do prepare and bring in the Bill.

The Honorable H. Cuthbert then brought up a Bill intituled "*A Bill to facilitate the Amalgamation of Companies authorized to act as Executors, Administrators, and Trustees, and in other fiduciary capacities,*" and moved, That it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 11th December instant.

13. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under :—

Electoral Act 1865 Amendment Bill.—To be read a second time,
Marine Stores Bill.—To be read a second time,
Banking Companies Registration Bill.—To be read a second time,
Public Officers Employment Bill.—To be read a third time,
Noxious Insects Bill.—To be further re-considered in Committee,
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee—until to-morrow.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading—until Tuesday, 11th December instant.
Mining Accidents Inquests Bill.—To be read a second time,
Sparrows Destruction Bill.—To be further considered in Committee—until Wednesday, 12th December instant.
Deposit of Silt Bill.—To be read a second time—until to-morrow.

The Council adjourned at eighteen minutes to eleven o'clock until to-morrow, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 32.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

THURSDAY, 6TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the 1st Order of the Day be postponed until after the consideration of the 2nd Order for to-day.

5. MEMBERS OF COUNCIL BILL.—The Order of the Day for the resumption of the debate on the question, That this Bill be now read a second time, having been read—

Debate resumed.

Question put.

Council divided.

Ayes, 18.	Noes, 9.
The Hon. S. Austin	The Hon. J. H. Connor
Dr. J. G. Beaney	G. Davis
J. Bell	J. P. MacPherson
F. Brown	D. Melville
S. W. Cooke	W. H. S. Osmand
H. Cuthbert	W. Pearson
T. Dowling	J. A. Wallace
C. J. Ham	W. A. Zeal
C. H. James	A. Wynne (*Teller*).
Dr. G. Le Fevre	
Sir J. Lorimer	
W. McCulloch	
F. Ormond	
W. H. Roberts	
Lt.-Col. Sargood	
W. E. Stanbridge	
N. Thornley	
J. Balfour (*Teller*).	

And so it was resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable N. Thornley reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 11th December, again resolve itself into the said Committee.

6. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "make better provision for the employment, transfer, and promotion of Teachers in the Education "Department, and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 6th Decr., 1888.

7. STATE SCHOOL TEACHERS BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to make better provision for the employment, transfer, and "promotion of Teachers in the Education Department, and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Wednesday, 12th December instant.

(650 copies.)—5871.

8. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to further amend 'The Residence Areas Act 1881,'*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 6th Decr., 1888.

9. RESIDENCE AREAS ACT FURTHER AMENDMENT BILL.—The Honorable W. A. Zeal moved, That the Bill transmitted by the above Message, intituled "*An Act to further amend 'The Residence Areas Act 1881,'*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 11th December instant.

10. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to further amend the 'Lunacy Statute,'*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the same with amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 6th Decr., 1888.

On the motion of the Honorable H. Cuthbert, the Council ordered the amendments to be printed and taken into consideration Tuesday, 11th December instant.

11. MESSAGES FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Messages from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to confer powers upon the Australasian Natives Trustees, Executors, and Agency Company Limited,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 6th Decr., 1888.

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to confer powers upon the Guardian Trustees and Executors Company Limited,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 6th Decr., 1888.

12. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of Orders of the Day 1, 3, 4, and 5 be postponed until after the consideration of the 6th Order for to-day.

13. PUBLIC OFFICERS EMPLOYMENT BILL.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to restrain persons employed in the Public Service from accepting or holding any "office or employment other than in connection with the duties of their offices in the Public "Service.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

14. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until Tuesday, 11th December instant :—

Electoral Districts Alteration Bill.—To be read a third time.
Electoral Act 1865 Amendment Bill.—To be read a second time.
Marine Stores Bill.—To be read a second time.
Banking Companies Registration Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Deposit of Silt Bill.—To be read a second time.

The Council adjourned at twenty-nine minutes to seven o'clock until Tuesday next, at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 33.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 11TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read and is as follows:—

HENRY B. LOCH,
Governor. *Message.*

The Governor begs to inform the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz.:—

"*An Act to confer powers upon the Equity Trustees, Executors, and Agency Company "Limited.*"

"*An Act to confer powers upon the Sandhurst and Northern District Trustees, Executors, and "Agency Company Limited.*"

"*An Act to authorize the construction of the Cape Patterson and Kilcunda Junction Railway, "and for other purposes.*"

"*An Act to confer powers upon the Australasian Natives Trustees, Executors, and Agency "Company Limited.*"

"*An Act to confer powers upon the Guardian Trustees and Executors Company Limited.*"

Government Offices,
Melbourne, 10 Decr., 1888.

Ordered to lie on the Table.

5. NORTH-EASTERN PROVINCE ELECTION.—The President announced to the Council that there had been presented to him a Petition from John Hanlon Knipe against the return of the Honorable James Stewart Butters as Member for the North-Eastern Province, which he then laid before the Council, and is as follows:—

To the Honorable Sir James MacBain, Knight, President of the Legislative Council of Victoria.

The humble Petition of John Hanlon Knipe, of Melbourne, in the colony of Victoria, auctioneer,

Respectfully showeth,

That on the twenty-seventh day of November last an election was held for one Member to serve in the Legislative Council of the colony of Victoria to represent the North-Eastern Electoral Province.

That your Petitioner was a candidate at the said election.

That James Stewart Butters, Esquire, and John Turner, Esquire, were the only other candidates at the said election.

That as the result of the said election the returning officer announced that James Stewart Butters, Esquire, had received 1,865 votes, that John Turner, Esquire, had received 1,495 votes, and that your Petitioner had received 447 votes; and thereupon the said returning officer publicly declared that the said James Stewart Butters, Esquire, had received the majority of votes, and was duly elected as Member as aforesaid, and such returning officer made his return accordingly.

That your Petitioner has been informed, and believes, that the said James Stewart Butters was at the time of his said election incapable of being lawfully elected a Member of the Legislative Council of Victoria, and is incapable of sitting or voting in the said Council by reason of his not having been possessed at the time of his election of the qualification required by law necessary to entitle him to be elected as a member of the said Council, in that he had not for one year previous to such election been legally or equitably seised of or entitled to an estate of freehold in possession for his own use and benefit in lands or tenements in Victoria of the annual value of One hundred pounds above all charges and incumbrances affecting the same respectively, within the meaning of the eleventh section of the Act for the Reform of the Constitution No. DCCII., 1881.

(650 copies.)—6064.

That your Petitioner is advised and believes that by reason of the said James Stewart Butters having been so unqualified as aforesaid, and that your Petitioner having been informed by John Turner, Esquire, who received the next highest number of votes, that he the said John Turner, Esquire, did not intend to take any action in the matter, and that he has not done so, therefore your Petitioner is entitled to be declared duly elected a Member of the Legislative Council for the North-Eastern Province, and to have his name inserted in the return to the said Writ in the place of the said James Stewart Butters, Esquire.

Your Petitioner, therefore, respectfully prays that you will communicate the matter of this petition to the Legislative Council of Victoria in order that the case of your Petitioner may be referred to a Committee of the said Council duly authorized to receive, inquire into, and report upon the same according to law.

And your Petitioner further prays that, in the event of the said Committee reporting that the said James Stewart Butters, Esquire, was not at the time of the said election possessed of the necessary qualification to entitle him to be so elected, that the said Council will be pleased to declare the said Returning Officer's return void as respects the said James Stewart Butters, Esquire, and to amend the said return to the said writ by taking out the name of the said James Stewart Butters, Esquire, and inserting in its place the name of your Petitioner, and to declare your Petitioner duly elected as a Member of the Legislative Council of Victoria for the North-Eastern Province.

And that your Petitioner may have such further or other relief as the circumstances of the case may require, or as to the said Committee or the said Legislative Council may seem meet.

And your Petitioner will ever pray, &c.

JOHN HANLON KNIPE.

Witness—A. E. LAWFORD.

Collins-street west, Melbourne, the eleventh day of December, One thousand eight hundred and eighty-eight.

The Honorable H. Cuthbert moved, That the above Petition be referred to "The Committee of Elections and Qualifications" for consideration and report.

Question—put and resolved in the affirmative.

6. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

Charitable Institutions.—Report of Inspector for the Year ended 30th June, 1888.

Ordered to lie on the Table.

The Honorable H. Cuthbert presented, pursuant to Act of Parliament—

Exhibition Trustees.—Statement of Income and Expenditure for the Year ended 30th June, 1888.

Shire of Yarrawonga Waterworks Trust.—Application for an Additional Loan of £7,000.—Detailed Statement and Report.

Severally ordered to lie on the Table.

The Honorable H. Cuthbert presented—

Licensing Act—Convictions under.—Return to an Order of the Legislative Council, dated 31st October last, for a return showing particulars of all convictions under the 98th section of the *Licensing Act 1885*, distinguishing between the first, second, and third offences, and showing the penalties in each case, also showing the names of all persons declared "disqualified" under the said section, and the period of disqualification, and the names of any such disqualified persons (if any) to whom a licence has been subsequently granted.

Alfred Graving Dock—Estimate of Cost of lengthening the—to 550 feet.

Severally ordered to lie on the Table and to be printed.

7. PETITION.—The Honorable C. J. Ham presented a Petition from certain Chinese residents in the Colony of Victoria, praying that they might be heard by counsel at the Bar of the Council in opposition to the Chinese Immigration Restriction Bill.

Petition read and ordered to lie on the Table.

8. POSTPONEMENT OF ORDER OF THE DAY.—The Council ordered that the consideration of the 1st Order of the Day be postponed until after the consideration of the 7th Order for to-day.

9. MEMBERS OF COUNCIL BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable N. Thornley having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration to-morrow.—Bill as amended to be printed.

10. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to restrain Persons employed in the Public Service from accepting or holding any office or employment other than in connection with the duties of their offices in the Public Service,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Decr., 1888.

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11. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act for "the further Restriction of Chinese Immigration,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Decr., 1888.

12. CHINESE IMMIGRATION RESTRICTION BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act for the further Restriction of Chinese Immigration,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

13. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "make better provision for the appointment, promotion, and control of Officers and others in the service "of the Parliament of Victoria,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Dec., 1888.

14. OFFICERS OF PARLIAMENT BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to make better provision for the appointment, promotion, and "control of Officers and others in the service of the Parliament of Victoria,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

15. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "amend 'The Sales by Auction Statute 1864,'*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Decr., 1888.

16. AUCTION SALES STATUTE AMENDMENT BILL.—The Honorable J. Bell moved, That the Bill transmitted by the above Message, intituled "*An Act to amend 'The Sales by Auction Statute 1864,'*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

17. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "amend 'The Mining on Private Property Act 1884,'*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Decr., 1888.

18. MINING ON PRIVATE PROPERTY ACT AMENDMENT BILL.—The Honorable J. Bell moved, That the Bill transmitted by the above Message, intituled "*An Act to amend 'The Mining on Private "Property Act 1884,'*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 18th December instant.

19. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "continue various Expiring Laws,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Decr., 1888.

20. EXPIRING LAWS CONTINUANCE BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to continue various Expiring Laws,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

21. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "sanction the issue and application of certain sums of Money as Loans for Irrigation Works and "Water Supply in the Country Districts, and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Decr., 1888.

22. WATER SUPPLY LOANS BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to sanction the issue and application of certain sums of Money "as Loans for Irrigation Works and Water Supply in the Country Districts, and for other "purposes,*"
be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Thursday, 13th December instant.

23. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to "revest certain Lands at Gembrook in Her Majesty the Queen, and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 11th Decr., 1888.

24. GEMBROOK LANDS REVESTING BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to revest certain Lands at Gembrook in Her Majesty the "Queen, and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Thursday, 13th December instant.

25. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until to-morrow :—

Lunacy Statute Amendment Bill.—Consideration of amendments of Legislative Assembly.
Electoral Districts Alteration Bill.—To be read a third time.
Electoral Act 1865 Amendment Bill.—To be read a second time.
Marine Stores Bill.—To be read a second time.
Banking Companies Registration Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Banking Companies Securities Bill.—To be read a second time.
Amalgamation of Companies Bill.—To be read a second time.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Residence Areas Act further Amendment Bill.—To be read a second time.
Deposit of Silt Bill.—To be read a second time.

The Council adjourned at twenty-eight minutes to twelve o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 34.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 12TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—
   Public Service Board Report.
   The Observatory.—Twenty-third Report of the Board of Visitors to—together with the Annual Report of the Government Astronomer.
   Severally ordered to lie on the Table.

5. CHINESE PETITION.—The Honorable C. J. Ham moved, pursuant to notice, That the Petition of the Chinese residents that they may be heard at the Bar of the Council by Counsel against the provisions of the Bill for the Restriction of Chinese Immigration be granted.
   Debate ensued.
   Motion, by leave, withdrawn.

6. MALDON AND LAANECOORIE RAILWAY.—The Honorable W. A. Zeal moved, pursuant to *amended* notice, That, in the opinion of this House, the construction of the Maldon and Laanecoorie Railway by any other route than that recommended by the Railways Commissioners should not be proceeded with until Parliament shall have a further opportunity of considering the matter.
   Debate ensued.
   Question—put and resolved in the affirmative.

7. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

   MR. PRESIDENT—

   The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to further amend 'The Licensing Act 1885,'*" with which they desire the concurrence of the Legislative Council.

   M. H. DAVIES,
   Speaker.

   Legislative Assembly Chamber,
   Melbourne, 12th Decr., 1888.

8. LICENSING ACT AMENDMENT BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to further amend 'The Licensing Act 1885,'*" be now read a first time.
   Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

9. PETITION.—The Honorable J. Balfour presented a Petition from certain State School Teachers now employed in the Department of Education, praying that to the Second Schedule of the Teachers Bill, page 7, line 22, after the words "first female assistants of Third Class Schools" the words "or as second female assistants of First Class Schools" be added.
   Petition received, read, and ordered to lie on the Table.

10. MINING ACCIDENTS INQUESTS BILL.—The Honorable W. P. Simpson moved, That this Bill be now read a second time.
    Question—put and resolved in the affirmative.—Bill read a second time.
    The Honorable W. P. Simpson moved, That this Bill be now committed to a Committee of the whole Council.
    Question—put and resolved in the affirmative.
    And, on the further motion of the Honorable W. P. Simpson, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
    The President resumed the Chair ; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration to-morrow.—Bill as amended to be printed.

(650 copies.)—6105.

11. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to apply a sum out of the Consolidated Revenue to the service of the year ending on the thirtieth day of June, One thousand eight hundred and eighty-nine, and to appropriate the Supplies granted in this Session of Parliament,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 12th Decr., 1888.

12. APPROPRIATION BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to apply a sum out of the Consolidated Revenue to the service of the year ending on the thirtieth day of June, One thousand eight hundred and eighty-nine, and to appropriate the Supplies granted in this Session of Parliament,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time Tuesday, 18th December instant.

13. SPARROWS DESTRUCTION BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Wednesday, 19th December instant, again resolve itself into the said Committee.

14. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to authorize the raising of Money for Railways and Irrigation Works, and for other purposes,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 12th Decr., 1888.

15. RAILWAY LOAN BILL.—The Honorable Sir J. Lorimer moved, That the Bill transmitted by the above Message, intituled "*An Act to authorize the raising of Money for Railways and Irrigation Works, and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

16. MEMBERS OF COUNCIL BILL.—On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act to amend the Acts relating to the Election of Members to serve in and the Constitution of the Legislative Council.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be transmitted to the Legislative Assembly, with a Message desiring their concurrence therein.

17. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of Orders 5 to 9 be postponed until after the consideration of the 10th Order for to-day.

18. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable H. Cuthbert, the following Order of the Day was read and discharged:—

Electoral Districts Alteration Bill.—To be read a third time.

19. ELECTORAL DISTRICTS ALTERATION BILL.—The Honorable H. Cuthbert moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration of new clause A and other verbal amendments.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of new clause A and other amendments.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with further amendments, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill, and ordered the Bill to be read a third time to-morrow.

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20. AUCTION SALES STATUTE AMENDMENT BILL.—The Honorable J. Bell moved, That this Bill be now read a second time.

Debate ensued.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable J. Bell moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration to-morrow.

21. EXPIRING LAWS CONTINUANCE BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had gone through the Bill and agreed to the same without amendment.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed*.

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to continue various Expiring Laws.*"

Question—put and resolved in the affirmative.

Ordered—That a message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

22. LUNACY STATUTE AMENDMENT BILL.—The Order of the Day for the consideration of the amendments made by the Legislative Assembly in this Bill having been read, on the motion of the Honorable H. Cuthbert, the said amendments were read, and are as follow :—

(1.) Clause 1, at the end of the clause insert "Part III.—Miscellaneous."

(2.) Clause 8, line 41, page 3, after "shall" insert as modified "by the provisions of this Act."

(3.) Clause 10, line 14, after "inspector" omit all words down to and inclusive of "shall" in line 16, and insert "entertain no doubt of the sanity of the patient, and is clearly of opinion that such patient does not require treatment or control, he shall endorse upon the order and enter in the books to be kept in such receiving house his opinion that such patient is not insane and does not require treatment or control, and, if required by the patient, shall give a certificate of such opinion to the patient, and the patient shall be at once discharged from such receiving house. But if the superintendent, deputy-superintendent, or inspector, although he personally may be of opinion that the patient is not insane and does not require treatment or control, yet thinks the matter doubtful and that it would be better that he should take the opinion of a medical practitioner as to the sanity of the patient, or as to the patient requiring treatment or control, he shall."

(4.) Same clause, line 21, omit "consent or."

(5.) Clause 12, line 31, after "patient" insert "or if the patient be a person who comes within the Regulations by the Governor in Council under this Act for boarding-out patients, and the Inspector be of opinion that such patient will be, from the nature of his case, more fit for treatment as a boarded-out patient, the Inspector shall take the necessary steps for boarding-out such patient."

(6.) Clause 13, lines 10, 11, and 12, page 6, omit "and the patient shall be conveyed to such asylum or philanthropic hospital under the direction of the inspector accordingly," and insert "or if the patient be a person who comes within the regulations by the Governor in Council under this Act for boarding-out patients, and the inspector be of opinion that such patient will be from the nature of his case more fit for treatment as a boarded-out patient, the police magistrate shall give the necessary order, and the inspector shall take the necessary steps for boarding-out such patient accordingly.

(7.) Clause 16, line 27, omit "has" and insert "have."

(8.) Clause 20, line 36, after "patient" insert "has been delivered over to the custody and care of any relative or friend under section sixty-two of the Principal Act, and whenever any patient."

(9.) Same clause, line 38, omit "on leave."

(10.) Same clause, line 39, after "patient" insert "in such last-mentioned case."

(11.) Same clause, line 43 (at the beginning of the line) omit "such" and insert "the."

(12.) Clause 27, line 15, omit "not being an idiot."

(13.) Clause 31, line 23, after "inspector" insert "or the superintendent."

(14.) Clause 42, line 18, after "hospital" insert "superintendent of such philanthropic hospital."

(15.) Clause 44, line 33, after "inspector" omit "and such medical practitioner shall be paid by the governors of the hospital the sum of Five pounds five shillings for each of such visits, which fee shall be deemed to include remuneration for each report."

(16.) Clause 46, line 11, page 14, after "shall" insert "for each default."

(17.) Clause 47, line 18, after "lunacy" insert "and to the inspector."

(18.) Same clause, line 22, after "lunacy" insert "and to the inspector."

(19.) Same clause, line 25, after "notice" insert "statement."
(20.) Same clause and line, after "order" insert "or either of them."
(21.) Same clause, lines 25 and 26, omit "to the Master-in-Lunacy."
(22.) Clause 50, line 26, after "lunacy" insert "and to the inspector."
(23.) Clause 51, line 42, after "lunacy" insert "and to the inspector."
(24.) Clause 52, line 14, omit "two" and insert "one."
(25.) Clause 53, line 20, after "for" insert "inspecting."
(26.) Clause 79, line 27, after "may" insert "after public notice."
(27.) After clause 81, insert the following new clause:—

A. Where upon the making of an order by the justices under the Principal Act as amended by this Act for the reception of patients into a receiving house any person standing in any of the relations to the patient in the last preceding section mentioned is then present the said justices may proceed in such manner and make such order for the payment by such person of such sum for the maintenance of the patient mentioned in such order as though a summons had been duly issued against such person under the provisions of the next succeeding section, and such order shall have the like force and effect and be enforceable as if the same had been made upon a summons as hereinafter provided. Justices making order sending patient to receiving house may make order for payment of maintenance by relative then present.

(28.) Clause 87. Omit this clause.
(29.) After clause 96 (the last clause of the Bill) insert "Part III.—Miscellaneous."
(30.) Insert new clause—

B. Notwithstanding anything contained in the principal Act or in the "*Public Service Act* 1883" the Governor in Council may in the case of any officer discharging duties under either the principal Act or this Act who either before or after the passing of this Act may have attained the age of sixty years if such officer be able and willing to continue in the performance of his duties direct such officer to continue in the service during the pleasure of the Governor in Council or for such fixed time as the Governor in Council shall in each case direct and in such latter case it shall be lawful for the Governor in Council from time to time to renew the time of such continued service for such fixed periods as to the Governor in Council shall seem fit subject however to the proviso following, that is to say:—That every such officer shall retire from the service upon his attaining the age of sixty-five years, and nothing in this section shall affect the right to any superannuation or other allowance to which officers appointed before the passing of the Act No. 710 may be entitled or shall it give any right or claim to any superannuation or other allowance to officers appointed since the passing of the said last-mentioned Act. Retirement of officers.

(31.) Insert new clause—

C. The provisions of section one hundred and eighty-eight of the Principal Act shall extend to all persons matters and things within the provisions of this Act, and such section shall be read as though such several persons matters and things had been severally expressed and referred to therein. Sec. 188 extended to Act.

(32.) The Seventh Schedule (No. 1), page 28, in line 3, after "he" insert ["*or* she."]
The Seventh Schedule (No. 2), in line 4, after "he" insert ["*or* she."]
(33.) After the Tenth Schedule, insert the following new schedule:—

SCHEDULE B.

(34.) FORM TO BE USED WHEN RELATIVE PRESENT AT COMMITMENT TO RECEIVING HOUSE.

In the matter of "*The Lunacy Amendment Act* 1888."

BE it remembered that on the day of it appearing to the undersigned Justices of the Peace that of now being present before us is the* of a patient brought before us under the Principal Act and the said *Lunacy Amendment Act* 1888, and ordered by us to be sent to the receiving house at and the said [*here insert name of father, son, husband, &c.*] not having shown a sufficient cause to the contrary: We hereby adjudge that the said shall pay to the Master-in-Lunacy the sum of for the maintenance of the said patient from the date of this order until the expiration of the third day after the said patient shall have been received into the said receiving house, and we further adjudge that the said shall pay to the said Master-in-Lunacy the weekly / monthly sum of shillings for the future maintenance of the said patient from the said third day after the said patient shall have been so received into the said receiving house until the said patient's death or discharge from treatment as a patient under the said Acts, the first of such weekly / monthly payments to be made on the tenth day after the said patient shall have been received in such receiving house unless such patient shall have been sooner discharged.

* Father, son, husband, &c. (as the case may be).

Given under our hands and seals this day of at

(35.) The Eleventh Schedule, in the heading of the schedule insert "Form to be used where relative summoned."
(36.) Same schedule, line 6, after "he" insert "[*or* she]."
(37.) Same schedule, under "Order for Maintenance, &c.," line 6, after "he" insert "[*or* she]."
(38.) Same schedule, page 31, under "Order for Contribution to Maintenance," in line 9, page 31, after "he" insert "[*or* she]."
(39.) In line 15 after "his" insert "[*or* her]."

And the said amendments having been read a second time—
On the motion of the Honorable H. Cuthbert, the Council agreed to the several amendments numbered 1 to 11, 13 to 19, 21 to 39.
On the motion of the Honorable H. Cuthbert, the Council disagreed to amendment No. 12; and

On the motion of the Honorable H. Cuthbert, the Council ordered that amendment numbered 20 be amended by inserting "any or" after the first word "or."

Ordered—That the Bill be returned to the Legislative Assembly with a Message acquainting them that the Council have agreed to some of the amendments made by the Legislative Assembly in this Bill, have disagreed with one of the said amendments, and have agreed to one of the said amendments with an amendment with which they desire the concurrence of the Legislative Assembly.

23. MARINE STORES BILL.—The Honorable J. Bell moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable J. Bell moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move that the Committee may have leave to sit again.

Resolved—That the Council will, to-morrow, again resolve itself into the said Committee.

24. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed as under :—

State School Teachers Bill.—To be read a second time.
Chinese Immigration Restriction Bill.—To be read a second time.
Officers of Parliament Bill.—To be read a second time.
Electoral Act 1865 Amendment Bill.—To be read a second time.
Banking Companies Registration Bill.—To be read a second time.
Amalgamation of Companies Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Banking Companies Securities Bill.— To be read a second time.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Residence Areas Act further Amendment Bill.—To be read a second time.
Deposit of Silt Bill.—To be read a second time.

The Council adjourned at half-past eleven o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 35.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

THURSDAY, 13TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to further amend the 'Lunacy Statute,'*" and acquaint the Legislative Council that the Legislative Assembly do not insist on their amendment in this Bill with which the Legislative Council have disagreed, and that they have agreed to the amendment made by the Legislative Council in an amendment of the Legislative Assembly.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 13th Decr., 1888.

5. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read, and is as follows :—

HENRY B. LOCH,
Governor.

Pursuant to the provisions of section 36 of the Constitution Act, the Governor transmits to the Legislative Council, for their consideration, the following amendments, which he desires to be made in the Bill intituled "*An Act for the regulation of Companies authorized to act as Executors, Administrators, and Trustees, and in other fiduciary capacities*" :—

Clause 2, lines 5 and 6 of the clause, omit the words "which has been or may be."

Clause 3, line 16, omit the word "their" and substitute "his."

Clause 4, line 7 of the clause, after the words "conferred upon it" insert the words "by the special Act or Acts relating to such trustee company."

Lines 11 to 17 of the clause, omit the words commencing "except by depositing" in line 11 down to and inclusive of the words "in any one bank" in line 17.

At the end of the clause add the following words :—"Provided that notwithstanding anything in this section contained any trustee company may deposit any moneys of which it has control under the powers conferred upon it by the Special Act or Acts relating to such trustee company with any banking company or banking corporation having a subscribed capital of at least Three hundred thousand pounds, a paid-up capital of at least One hundred and fifty thousand pounds, and a reserve of at least Fifty thousand pounds, and which does not as part of its ordinary business buy and sell land or shares or other property, but no trustee company shall so deposit with any banking company or banking corporation more than the sum of Twenty thousand pounds on behalf of any one estate of which it has control."

Clause 5, line 4 of the clause, after "venture" insert "or."

Page 3, line 11, after the word "every" omit the word "such," and after the word "company" insert the words "existing at the time of the passing of this Act."

Clause 6, line 1, omit the word "restriction" and substitute the word "provision," and after the word "Act" omit the words "heretofore passed" and insert the words "in force at the time of the passing of this Act."

Government Offices,
Melbourne, Decr. 12th, 1888.

On the motion of the Honorable H. Cuthbert, the Council agreed to the several amendments recommended by His Excellency the Governor, and ordered the Message to be transmitted to the Legislative Assembly with a Message requesting their concurrence therewith.

(760 copies.)—6137.

6. BANKING COMPANIES REGISTRATION BILL.—The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable Sir J. Lorimer moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable Sir J. Lorimer, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair ; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

7. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the 2nd and 3rd Orders be postponed until after the consideration of the 5th Order for to-day.

8. CHINESE IMMIGRATION RESTRICTION BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair ; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.
Resolved—That the Council will, this day, again resolve itself into the said Committee.

9. ELECTORAL DISTRICTS ALTERATION BILL.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*
The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

> "*An Act to provide for the alteration of the Boundaries of certain Electoral Districts, and for other purposes.*"

Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

10. OFFICERS OF PARLIAMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had gone through the Bill and agreed to the same with amendments.
On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*
The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

> "*An Act to make better provision for the appointment, promotion, and control of Officers and others in the service of the Parliament of Victoria.*"

Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

11. WATER SUPPLY LOANS BILL.—The Honorable J. Bell moved, That this Bill be now read a second time.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable J. Bell moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same without amendment.
On the motion of the Honorable J. Bell, the Council adopted the Report from the Committee of the whole on this Bill.

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The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable J. Bell, read a third time and *passed*.

The Honorable J. Bell moved, That the following be the title of the Bill:—

"*An Act to sanction the issue and application of certain sums of Money as Loans for Irrigation "Works and Water Supply in the Country Districts, and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

12. GEMBROOK LANDS REVESTING BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same without amendment.

On the motion of the Honorable H. Cuthbert the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed*.

The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act to revest certain Lands at Gembrook in Her Majesty the Queen, and for other "purposes.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

13. RAILWAY LOAN BILL.—The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable Sir J. Lorimer moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable Sir J. Lorimer, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same without amendment.

On the motion of the Honorable Sir J. Lorimer, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Sir J. Lorimer, read a third time and *passed*.

The Honorable Sir J. Lorimer moved, That the following be the title of the Bill:—

"*An Act to authorize the raising of Money for Railways and Irrigation Works, and for "other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

14. MARINE STORES BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same with amendments, the Council ordered the same to be taken into consideration on Tuesday, 18th December instant.—Bill, as amended, to be printed.

15. ELECTORAL ACT 1865 AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Debate ensued.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, on Tuesday, 18th December instant, again resolve itself into the said Committee.

16. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until Tuesday, 18th December instant:—

Licensing Act Amendment Bill.—To be read a second time.
State School Teachers Bill.—To be read a second time.
Auction Sales Statute Amendment Bill.—Adoption of report.
Amalgamation of Companies Bill.—To be read a second time.
Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Mining Accidents Inquests Bill.—Adoption of report.
Banking Companies Securities Bill.—To be read a second time.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.
Residence Areas Act further Amendment Bill.—To be read a second time.
Deposit of Silt Bill.—To be read a second time.

The Council adjourned at twenty-five minutes to twelve o'clock until Tuesday next at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 36.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

TUESDAY, 18TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The Honorable Sir J. Lorimer, Chairman, brought up a Report from this Committee.
Report read, ordered to lie on the Table, and, together with the Proceedings, to be printed.

5. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read, and is as follows:—

HENRY B. LOCH,
Governor.

Message.

The Governor informs the Legislative Council that he has, on this day, at the Government House, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz.:—

"*An Act to enable certain Lessees to Vote at the Election of Commissioners of Irrigation and "Water Supply Trusts under 'The Irrigation Act 1886,' and for other purposes.*"

"*An Act to restrain persons employed in the Public Service from accepting or holding any office "or employment other than in connection with the duties of their offices in the Public "Service.*"

Government House,
Melbourne, 14th December, 1888.

Ordered to lie on the Table.

6. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read, and is as follows:—

HENRY B. LOCH,
Governor.

Message.

The Governor informs the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz.:—

"*An Act to continue various Expiring Laws.*"

"*An Act to further amend the 'Lunacy Statute.'*"

"*An Act to sanction the issue and application of certain sums of Money as Loans for Irrigation "Works and Water Supply in the Country Districts, and for other purposes.*"

"*An Act to revest certain Lands at Gembrook in Her Majesty the Queen, and for other "purposes.*"

"*An Act to authorize the raising of Money for Railways and Irrigation Works, and for "other purposes.*"

Government Offices,
Melbourne, 17th December, 1888.

Ordered to lie on the Table.

7. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—

Press Telegrams between Victoria and Western Australia.
Statistical Register of the Colony of Victoria for the Year 1887—
Part IV.—Finance, &c.
Part V.—Vital Statistics, &c.

Severally ordered to lie on the Table.

(650 copies.)—6315.

8. BANKING COMPANIES REGISTRATION BILL.—On the motion of the Honorable Sir J. Lorimer, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Sir J. Lorimer, read a third time and *passed.*
The Honorable Sir J. Lorimer moved, That the following be the title of the Bill :—
"*An Act to further amend 'The Companies Statute 1864.'*"
Question—put and resolved in the affirmative.
Ordered—That a Message be sent to the Legislative Assembly acquainting them that the Committee have agreed to the Bill without amendment.

9. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable J. Bell, the following Order of the Day was read and discharged :—
Auction Sales Statute Amendment Bill.—Adoption of Report.

10. AUCTION SALES STATUTE AMENDMENT BILL.—The Honorable J. Bell moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with amendments, the Council ordered the same to be taken into consideration this day.
On the motion of the Honorable J. Bell, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable J. Bell, read a third time and *passed.*
The Honorable J. Bell moved, That the following be the title of the Bill :—
"*An Act to amend 'The Sales by Auction Statute 1864.'*"
Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

11. MINING ACCIDENTS INQUESTS BILL.—On the motion of the Honorable W. P. Simpson, the Council adopted the Report from the Committee of the whole on this Bill.
The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable W. P. Simpson, read a third time and *passed.*
The Honorable W. P. Simpson moved, That the following be the title of the Bill :—
"*An Act to make better provision for the conduct of Inquests concerning fatal Mining Accidents.*"
Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

12. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable J. Bell, the following Order of the Day was read and discharged :—
Marine Stores Bill—Adoption of Report.

13. MARINE STORES BILL.—The Honorable J. Bell moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration of Clauses 8, 13, 16, 17, 18, 20, 21, 22, 29, 31, 34, and 38.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of Clauses 8, 13, 16, 17, 18, 20, 21, 22, 29, 31, 34, and 38 of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had agreed to the Bill with further amendments.
The Honorable J. Bell moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration of Clause 19.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of Clause 19 of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with a further amendment, the Council ordered the same to be taken into consideration this day.

14. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—
MR. PRESIDENT—
The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to amend the Acts relating to the Election of Members to serve in and the Constitution of the Legislative Council,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the same without amendment.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 18th Decr., 1888.

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15. MINING ON PRIVATE PROPERTY ACT AMENDMENT BILL.—The Honorable J. Bell moved, That this Bill be now read a second time.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable J. Bell moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same with amendments.
On the motion of the Honorable J. Bell, the Council adopted the Report from the Committee of the whole on this Bill, and ordered the Bill to be read a third time this day.

16. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "make better provision for the Appointment, Promotion, and Control of Officers and others in the "Service of the Parliament of Victoria,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

Legislative Assembly Chamber,
Melbourne, 18th Decr., 1888.

M. H. DAVIES,
Speaker.

17. APPROPRIATION BILL.—The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable Sir J. Lorimer moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable Sir J. Lorimer, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration to-morrow.

18. CHINESE IMMIGRATION RESTRICTION BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.
Resolved—That the Council will, this day, again resolve itself into the said Committee.

19. MARINE STORES BILL.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable J. Bell, read a third time and *passed*.
The Honorable J. Bell moved, That the following be the title of the Bill:—

"*An Act to regulate the Business and to provide for the Licensing of Collectors of Special Wares, "Marine Stores, and Old Metals, and to provide for the Licensing of Dealers in Special "Wares, Marine Stores, and Old Metals, and for amending 'The Old Metal Dealers "Act 1876.'*"

Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

20. LICENSING ACT AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same with amendments.
On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole, and ordered the Bill to be read a third time to-morrow.—Bill, as amended, to be printed.

21. MINING ON PRIVATE PROPERTY ACT AMENDMENT BILL.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable J. Bell, read a third time and *passed*.
The Honorable J. Bell moved, That the following be the title of the Bill:—

"*An Act to amend 'The Mining on Private Property Act 1884.'*"

Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

22. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to amend the Law relating to the collection of Revenue Land the issue of Insurance Licences by the Registrar-General and the Law relating to the collection of Revenue by Stamps*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 18th Decr., 1888.

23. STAMP DUTIES AMENDMENT BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to amend the Law relating to the collection of Revenue and the issue of Insurance Licences by the Registrar-General and the Law relating to the collection of Revenue by Stamps*," be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed and read a second time to-morrow.

24. STATE SCHOOL TEACHERS BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same with amendments.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill, and ordered the Bill to be read a third time to-morrow.—Bill, as amended, to be printed.

25. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to amend 'The Discipline Act 1870' and the Acts amending the same, and for other purposes*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 18th Decr., 1888.

26. DISCIPLINE ACT AMENDMENT BILL.—The Honorable Sir J. Lorimer moved, That the Bill transmitted by the above Message, intituled "*An Act to amend 'The Discipline Act 1870' and the Acts amending the same, and for other purposes*," be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time to-morrow.

27. RESIDENCE AREAS ACT FURTHER AMENDMENT BILL.—The Honorable D. C. Sterry moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable D. C. Sterry moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable D. C. Sterry, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair, and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable D. C. Sterry, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable D. C. Sterry, read a third time and *passed*.

The Honorable D. C. Sterry moved, That the following be the title of the Bill:—

"*An Act to further amend 'The Residence Areas Act 1881.'*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

And the Council having continued to sit till after Twelve of the clock,

WEDNESDAY, 19TH DECEMBER, 1888.

28. ELECTORAL ACT 1865 AMENDMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair, and the Honorable Dr. Dobson reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, this day, again resolve itself into the said Committee.

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29. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to amend the Acts relating to the Melbourne Harbor Trust,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Dec., 1888.

30. MELBOURNE HARBOR TRUST ACTS AMENDMENT BILL.—The Honorable Sir J. Lorimer moved, That the Bill transmitted by the above Message, intituled "*An Act to amend the Acts relating to the Melbourne "Harbor Trust,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable Sir J. Lorimer moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable Sir J. Lorimer, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill and agreed to the same without amendment, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable Sir J. Lorimer, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Sir J. Lorimer, read a third time and *passed.*

The Honorable Sir J. Lorimer moved, That the following be the title of the Bill :—

"*An Act to amend the Acts relating to the Melbourne Harbor Trust.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

31. DISCHARGE OF ORDERS OF THE DAY.—The Council ordered that the following Orders of the Day be read and discharged :—

Noxious Insects Bill.—To be further re-considered in Committee.
Distress for Rent Law Amendment Bill.—To be further re-considered in Committee.
Mercantile Finance, Trustees, and Agency Company of Australia Limited Bill.—Adjourned debate on second reading.

Ordered—That the said Bills be withdrawn.

32. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the following Orders of the Day be postponed until this day :—

Banking Companies Securities Bill.—To be read a second time.
Deposit of Silt Bill.—To be read a second time.
Chinese Immigration Restriction Bill.—To be further considered in Committee.

The Council adjourned at fifteen minutes to one o'clock until this day at half-past four o'clock p.m.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 37.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

WEDNESDAY, 19TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGES FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Messages from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to make better provision for the conduct of Inquests concerning fatal Mining Accidents*," and acquaint the Legislative Council that the Legislative Assembly have agreed to some of the amendments made in such Bill by the Legislative Council, and have disagreed to others of the said amendments, with which they desire the concurrence of the Legislative Council.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

M. H. DAVIES,
Speaker.

On the motion of the Honorable H. Cuthbert, the Council ordered the several amendments to be taken into consideration this day.

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Message from His Excellency the Governor recommending amendments in the Bill intituled "*An Act for the regulation of Companies authorized to act as Executors, Administrators, and Trustees, and in other fiduciary capacities*," and acquaint the Legislative Council that the Legislative Assembly have agreed to the several amendments recommended by His Excellency the Governor in this Bill.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th December, 1888.

5. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to provide for the extermination of Pleuro-pneumonia in Victoria*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

6. PLEURO-PNEUMONIA EXTERMINATION BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to provide for the extermination of Pleuro-pneumonia in Victoria*," be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

7. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to make provision for the vesting of certain Lands in the Board of Land and Works, the Victorian Railways Commissioners, the Mayor, Aldermen, Councillors, and Citizens of the City of Melbourne respectively*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

(650 copies.)—6379.

8. LANDS VESTING BILL.—The Honorable Sir J. Lorimer moved, That the Bill transmitted by the above Message, intituled "*An Act to make provision for the vesting of certain Lands in the Board of Land and Works, the Victorian Railways Commissioners, the Mayor, Aldermen, Councillors, and Citizens of the City of Melbourne respectively,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

9. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to facilitate the amalgamation of the Union Trustees Executors and Administrators Company Limited, the Colonial Permanent Trustees Executors and Agency Company Limited, the Australasian Natives Trustees Executors and Agency Company Limited, and the Guardian Trustees and Executors Company Limited,*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

10. TRUSTEES COMPANIES AMALGAMATION BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to facilitate the amalgamation of the Union Trustees Executors and Administrators Company Limited, the Colonial Permanent Trustees Executors and Agency Company Limited, the Australasian Natives Trustees Executors and Agency Company Limited, and the Guardian Trustees and Executors Company Limited,*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

11. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to amend 'The Banks and Currency Statute 1864,'*" with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

12. BANKS AND CURRENCY STATUTE AMENDMENT BILL.—The Honorable Sir J. Lorimer moved, That the Bill transmitted by the above Message, intituled "*An Act to amend 'The Banks and Currency Statute 1864,'*" be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

13. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to amend 'The Sales by Auction Statute 1864,'*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

14. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to provide for the alteration of the Boundaries of certain Electoral Districts, and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to some of the amendments made in such Bill by the Legislative Council, and have disagreed to others of the said amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

On the motion of the Honorable H. Cuthbert, the Council ordered the amendments to be taken into consideration this day.

15. PETITIONS.—The Honorable W. A. Zeal presented a Petition from certain Owners of Hotel Property and Licensed Victuallers in the colony of Victoria, praying that they might be heard by Counsel at the Bar of the Council, in opposition to the Licensing Act Amendment Bill.
Petition received, read, and ordered to lie on the Table.
The Honorable J. A. Wallace presented a Petition from certain Owners of Hotel Property and Licensed Victuallers in the colony of Victoria, praying that they might be heard by Counsel at the Bar of the Council, in opposition to the Licensing Act Amendment Bill.
Petition received, read, and ordered to lie on the Table.

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16. LICENSING ACT 1865 AMENDMENT BILL.—The Honorable W. A. Zeal moved, by leave, That the owners of hotel property and licensed victuallers be heard by counsel at the Bar of the Council.
Debate ensued.
Question put.
Council divided.

Ayes, 12.	Noes, 16.
The Hon. J. Buchanan	The Hon. S. Austin
J. H. Connor	J. Balfour
H. Gore	J. Bell
W. McCulloch	Sir W. J. Clarke, Bart.
J. P. MacPherson	H. Cuthbert
D. Melville	T. Dowling
W. Pearson	S. Fraser
D. C. Sterry	D. Ham
J. A. Wallace	Sir J. Lorimer
A. Wynne	F. Ormond
W. A. Zeal	W. H. S. Osmand
D. Coutts (*Teller*).	W. H. Roberts
	Lt.-Col. Sargood
	J. Service
	N. Thornley
	Dr. G. Le Fevre (*Teller*).

And so it passed in the negative.

17. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to regulate the Business and to provide for the Licensing of Collectors of Special Wares, Marine Stores, and Old Metals, and to provide for the Licensing of Dealers in Special Wares, Marine Stores, and Old Metals, and for amending 'The Old Metal Dealers Act 1876,'*" and acquaint the Legislative Council that the Legislative Assembly have agreed to some of the amendments made in such Bill by the Legislative Council, and have agreed to others of the said amendments with amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

On the motion of the Honorable J. Bell, the Council ordered the said amendments to be taken into consideration this day.

18. WILLIAMSTOWN GRAVING DOCK.—The Honorable W. A. Zeal moved, pursuant to notice, That this House recommends the Government to make provision in next year's Estimates for the cost of lengthening the Williamstown Graving Dock to 550 feet on its floor, for the following reasons :—
(1.) The desirability of having in the Port of Melbourne a dock of sufficient capacity to berth the longest and largest vessels afloat.
(2.) To encourage the owners of large steamers to use them in the Australian trade, and thereby shorten the time now occupied in voyages between these colonies, Europe, and America.
(3.) To provide for any emergency which may hereafter arise to any vessel in the Imperial or mercantile marine, at the very small cost the Inspector-General of Public Works has certified to be necessary.
Question—put and resolved in the affirmative.

19. PAPERS.—The Honorable H. Cuthbert presented, by command of His Excellency the Governor—
Protection of the Aborigines—Twenty-fourth Report of the Board for—
Ordered to lie on the Table.

The Honorable H. Cuthbert presented, pursuant to Act of Parliament—
Pilot Board of Victoria—Accounts of—Detailed Statement for the year ended 31st August, 1888.
Twelve-mile Irrigation and Water Supply Trust—Application for a further Loan of £2,050.
Severally ordered to lie on the Table.

20. MARINE STORE DEALERS BILL.—On the motion of the Honorable J. Bell, the amendments made by the Legislative Council in this Bill, to which the Legislative Assembly have agreed with amendments, were read, and are as follow :—

Clause 21, line 2, after "wares" insert "other than glass bottles."	Agreed to by the Legislative Assembly with the following amendment in line 4 :—To insert after "wares" the words "other than glass bottles."
Clause 22, line 23, after "pounds" insert "and upon a second conviction for such offence be liable to a penalty not exceeding Five pounds."	Agreed to by the Legislative Assembly with the following amendment, viz. :—That the words be inserted at end of clause instead of after the word "pounds."

Clause 45, line 11, after "generally" insert "or through any part thereof." — Agreed to by the Legislative Assembly with the following amendments :— In line 20, after "carts" insert "barrows," and in line 25, after "vehicles" insert "and for numbering and marking the number upon trucks hand-carts carts barrows and other vehicles."

The Honorable J. Bell moved, That the Council agree to the said several amendments of the Legislative Assembly.

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the said several amendments.

21. Discharge of Order of the Day.—The Council ordered that the following Order of the Day be read and discharged :—

Sparrows Destruction Bill.—To be further considered in Committee.

22. Appropriation Bill.—On the motion of the Honorable Sir J. Lorimer, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Sir J. Lorimer, read a third time and *passed.*

The Honorable Sir J. Lorimer moved, That the following be the title of the Bill :—

"*An Act to apply a Sum out of the Consolidated Revenue to the service of the Year ending on the thirtieth day of June One thousand eight hundred and eighty-nine, and to appropriate the Supplies granted in this Session of Parliament.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

23. Licensing Act Amendment Bill.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time.

On the motion of the Honorable H. Cuthbert, the Council ordered that the words "appointed for the" be inserted in amendment to Clause 6, after the word "day."

Question—That the Bill do pass—put and resolved in the affirmative.

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to further amend 'The Licensing Act 1885.'*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

24. State School Teachers Bill.—The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to make better provision for the employment, transfer, and promotion of Teachers in the Education Department, and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

25. Electoral Districts Alteration Bill.—On the motion of the Honorable H. Cuthbert, the several amendments made by the Legislative Council in this Bill, and disagreed to by the Legislative Assembly, were read, and are as follow :—

(1.) Page 9, line 12, after "Merri Creek to" omit all words to end of district, and insert "the Moreland-road; west by that road to the Moonee Ponds Creek; northerly by that creek to the commencing point ... ... One."

(2.) After "14. The Electoral District of East Bourke Boroughs" insert—

"14A. The Electoral District of Brunswick.

"Commencing at the intersection of the Moonee Ponds Creek and Moreland-road; thence east by that road to the Merri Creek; southerly down that creek to the north boundary of section 93, parish of Jika Jika; west by that boundary to Nicholson-street; south by Nicholson-street to Park-street east; west by Park-street east and Park-street west to the Moonee Ponds Creek; northerly up that creek to the commencing point ... One."

(3.) Page 15. No. 35. The Electoral District of Gippsland Central.

After "Sale" in last line of page omit all words to end of the district, and insert "north and east by the west and north boundaries of that parish to the south-east angle of portion 26A of the parish of Bundalaguah; northerly by the east boundary of that parish to the north-east angle of portion 13B of same parish; west to the south-east angle of the parish of Wa-de-lock; north and east by that parish boundary to the Avon River; down that river to the western shore of Lake Wellington; southerly by that shore to the northern boundary of the county of Buln Buln; easterly and following that boundary to the sea coast; and south-westerly by the sea coast to the commencing point ... One."

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(4.) Page 15, line 13, after "Sale" omit all words to end of district, and insert "North and east by the west and north boundaries of that parish to the south-east angle of portion 26A of the parish of Bundalaguah; northerly by the east boundary of that parish to the north-east angle of portion 13B of same parish; west to the south-east angle of the parish of Wa-de-lock; north and east by that parish boundary to the Avon River; down that river to the western shore of Lake Wellington; southerly by that shore to the northern boundary of the county of Buln Buln; easterly and following that boundary to the sea coast; and north-easterly by the sea coast to the commencing point ... ... One."

(5.) No. 73, omit "Shepparton and Euroa" in the head line and insert "Moira."

(6.) Omit the whole of 2, Brunswick Division.

(7.) Page 51. Before "16, Carlton North, insert—

"15A. BRUNSWICK.

"Brunswick district," as hereinbefore described.

(8.) Page 68, after head line "35, Gippsland, Central" insert—

"CLYDEBANK DIVISION.

"Commencing on the boundary of the district at the intersection of Flooding Creek with the west boundary of the parish of Sale; north and east by the west and north boundaries of that parish to the south-east angle of portion 26A of the parish of Bundalaguah; northerly by the east boundary of that parish to the north-east angle of portion 13B of same parish; west to the south-east angle of the parish of Wa-de-lock; north and east by that parish boundary to the Avon River; down that river to the western shore of Lake Wellington; southerly by that shore to the La Trobe River; up that river and the Thompson River to the boundary of the district; by the boundary of the district to the commencing point exclusive of the borough of Sale."

(9.) Page 71. Omit the whole of the Clydebank Division.

(10.) Page 110. Omit "Shepparton and Euroa" in head line and insert "Moira."

And the said amendments having been read a second time,

The Honorable H. Cuthbert moved, That the Legislative Council do not insist on their amendments Nos. 1 and 2.

Debate ensued.

The Honorable D. Melville, by leave, presented a Petition from certain ratepayers and residents of the borough of Northcote praying that the above amendments be adhered to.

Petition received, read, and ordered to lie on the Table.

Debate on the question, That the Council do not insist on the above amendments, continued.

Question—That the Council do not insist on the said amendments—put.

Council divided.

Ayes, 15.	Noes, 10.
The Hon. S. W. Cooke	The Hon. J. Buchanan
H. Cuthbert	Sir W. J. Clarke, Bart.
Dr. Dobson	J. H. Connor
T. Dowling	G. Davis
H. Gore	W. McCulloch
C. J. Ham	J. P. MacPherson
Dr. G. Le Fevre,	D. Melville
Sir J. Lorimer	W. Pearson
F. Ormond	J. A. Wallace
W. H. Roberts	W. A. Zeal (*Teller*).
J. Service	
W. E. Stanbridge	
A. Wynne	
G. Young	
Lt.-Col. Sargood (*Teller*).	

And so it was resolved in the affirmative.

The Honorable H. Cuthbert moved, That the Council do not insist on their amendment No. 3.

Debate ensued.

Question—put and negatived.

On the motion of the Honorable H. Cuthbert, the Council insisted on amendments 4, 8, and 9, and

On the motion of the Honorable H. Cuthbert, the Council agreed not to insist on their amendments 5, 6, 7, and 10.

Ordered—That the Bill be returned to the Legislative Assembly with a Message acquainting them that the Legislative Council do not insist on some of their amendments, and do insist on other of the said amendments in this Bill.

26. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to provide for the suppression of the Nuisance arising from the Port Melbourne Lagoon, and for other purposes*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th Decr., 1888.

27. PORT MELBOURNE LAGOON NUISANCE SUPPRESSION BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to provide for the suppression "of the Nuisance arising from the Port Melbourne Lagoon, and for other purposes,*" be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

28. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "amend 'The Mining on Private Property Act 1884,'*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 19th December, 1888.

29. ELECTORAL ACT 1865 AMENDMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same with amendments.

The Honorable H. Cuthbert moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had agreed to the Bill with further amendments, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to amend 'The Electoral Act 1865,' and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

30. TRUSTEES COMPANIES AMALGAMATION BILL.—The Honorable Lieut.-Col. Sargood moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable Lieut.-Col. Sargood moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable Lieut.-Col. Sargood, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Dr. Dobson having reported that the Committee had gone through the Bill, and agreed to the same with amendments, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable Lieut.-Col. Sargood, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Lieut.-Col. Sargood, read a third time and *passed.*

The Honorable Lieut.-Col. Sargood moved, That the following be the title of the Bill :—

"*An Act to facilitate the Amalgamation of the Union Trustees, Executors, and Administrators "Company Limited, the Colonial Permanent Trustee, Executor, and Agency Company "Limited, the Australasian Natives Trustees, Executors, and Agency Company Limited, "and the Guardian Trustees and Executors Company Limited.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

31. INEBRIATES BILL.—The Honorable H. Cuthbert moved, by leave, That he have leave to bring in a Bill to provide for the establishment of Asylums for Inebriates.

Question—put and resolved in the affirmative.

Ordered—That the Honorable H. Cuthbert do prepare and bring in the Bill.

The Honorable H. Cuthbert then brought up a Bill intituled "*A Bill to provide for the estab- "lishment of Asylums for Inebriates,*" and moved that it be now read a first time.

Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

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The Honorable H. Cuthbert moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair; and the Honorable Dr. Dobson reported that the Committee had gone through the Bill, and agreed to the same with amendments.
On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole, and ordered the Bill to be read a third time to-morrow.

32. POSTPONEMENT OF ORDERS OF THE DAY.—The Council ordered that the consideration of the following Orders of the Day be postponed until to-morrow :—

Chinese Immigration Restriction Bill.—To be further considered in Committee.
Amalgamation of Companies Bill.—To be read a second time.
Banking Companies Securities Bill.—To be read a second time.
Deposit of Silt Bill.—To be read a second time.
Stamp Duties Amendment Bill.—To be read a second time.
Discipline Act Amendment Bill.—To be read a second time.
Mining Accidents Inquests Bill.—Amendments of Legislative Assembly to be considered.
Pleuro-pneumonia Extermination Bill.—To be read a second time.
Lands Vesting Bill.—To be read a second time.
Banks and Currency Statute Amendment Bill.—To be read a second time.

The Council adjourned at twenty-five minutes to twelve o'clock until to-morrow at half-past four o'clock.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

No. 38.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

THURSDAY, 20TH DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. STATE SCHOOL TEACHERS BILL.—The Honorable H. Cuthbert moved, by leave, That a Message be sent to the Legislative Assembly to acquaint them that the following error had occurred in transcribing the amendments made in the Bill intituled "*An Act to make better provision for the employment, transfer, and promotion of Teachers in the Education Department, and for other purposes*," viz.: —The omission to insert in lines 28 and 29 of the Second Schedule the words "or as second female assistants in first class schools," in lieu of words omitted.
Question—put and resolved in the affirmative.

5. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The following Message from His Excellency the Governor was presented by the Honorable H. Cuthbert, and the same was read, and is as follows:—

HENRY B. LOCH,
Governor. *Message.*

The Governor informs the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz.:—

"*An Act for the regulation of Companies authorized to act as Executors, Administrators, and Trustees, and in other fiduciary capacities.*"
"*An Act to further amend 'The Companies Statute 1864.'*"
"*An Act to make better provision for the appointment, promotion, and control of Officers and others in the service of the Parliament of Victoria.*"
"*An Act to further amend 'The Residence Areas Act 1881.'*"
"*An Act to amend the Acts relating to the Melbourne Harbor Trust.*"

Government Offices,
Melbourne, 20th December, 1888.

Ordered to lie on the Table.

6. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Bill intituled "*An Act to further amend the Law relating to Public Health, and for other purposes*," with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

7. PUBLIC HEALTH LAW AMENDMENT BILL.—The Honorable H. Cuthbert moved, That the Bill transmitted by the above Message, intituled "*An Act to further amend the Law relating to Public Health, and for other purposes*," be now read a first time.
Question—put and resolved in the affirmative.—Bill read a first time, ordered to be printed, and read a second time this day.

8. MESSAGES FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Messages from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to further amend 'The Licensing Act 1885,'*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

M. H. DAVIES,
Speaker.

(650 copies.)—6415.

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to facilitate the Amalgamation of the Union Trustees, Executors, and Administrators Company Limited, the Colonial Permanent Trustees, Executors, and Agency Company Limited, the Australasian Natives Trustees, Executors, and Agency Company Limited, and the Guardian Trustees and Executors Company Limited,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th December, 1888.

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to provide for the alteration of the Boundaries of certain Electoral Districts, and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly do not now insist on disagreeing to the amendments in such Bill insisted on by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th December, 1888.

9. PETITION.—The Honorable Lieut.-Col. Sargood presented a Petition from the Mayor, Councillors, and Citizens of the city of South Melbourne, under the corporate seal of the said city, praying the Council not to give its assent to the Bill for the suppression of a nuisance existing in the borough of Port Melbourne.

Petition received, read, and ordered to lie on the Table.

10. MINING ACCIDENTS INQUESTS BILL.—The Order of the Day for the consideration of the amendments made by the Legislative Council in this Bill, disagreed to by the Legislative Assembly, having been read—On the motion of the Honorable D. C. Sterry, the said several amendments were read, and are as follow:—

(1.) Clause 2, line 15, omit "or by an agent duly authorized by them in writing for that purpose or by an officer of any branch of the Amalgamated Miners' Association of Australasia (of which the deceased was a financial member) having general or special authority for that purpose from such branch." — Disagreed to by the Legislative Assembly.

(2.) „ line 23, omit "or agent," after "counsel" insert "or," and omit "agent or officer." — Disagreed to by the Legislative Assembly.

The Honorable D. C. Sterry moved, That the Council do not insist on amendment No. 1.

Question—put and negatived.

Ordered—That the Council insist on amendment No. 2.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Council insist on the amendments disagreed to by the Legislative Assembly.

11. DISCHARGE OF ORDER OF THE DAY.—On the motion of the Honorable H. Cuthbert, the following Order of the Day was read and discharged :—

Inebriates Bill—Third reading.

12. INEBRIATES BILL.—The Honorable H. Cuthbert moved, That this Bill be re-committed to a Committee of the whole Council for re-consideration.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the re-consideration of this Bill.

The President resumed the Chair; and the Honorable H. Cuthbert having reported that the Committee had agreed to the Bill with further amendments, the Council ordered the same to be taken into consideration this day.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act to provide for the establishment of Asylums for Inebriates.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be transmitted to the Legislative Assembly, with a Message desiring their concurrence therein.

13. BANKS AND CURRENCY STATUTE AMENDMENT BILL.—The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable Sir J. Lorimer moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable Sir J. Lorimer, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill, and agreed to the same with an amendment.

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On the motion of the Honorable Sir J. Lorimer, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Sir J. Lorimer, read a third time and *passed*.

The Honorable Sir J. Lorimer moved, That the following be the title of the Bill :—

"*An Act to amend 'The Banks and Currency Statute 1864.'*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with an amendment, and requesting their concurrence therein.

14. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Message from His Excellency the Governor recommending an amendment in the Bill intituled "*An Act to regulate the "Business and to provide for the Licensing of Collectors of Special Wares, Marine Stores, and "Old Metals, and to provide for the Licensing of Dealers in Special Wares, Marine Stores, and "Old Metals, and for amending 'The Old Metal Dealers Act 1876,'*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the said amendment recommended by His Excellency the Governor in this Bill, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th December, 1888.

HENRY B. LOCH,
Governor.

Message.

Pursuant to the provisions of section 36 of the Constitution Act, the Governor transmits to the Legislative Assembly, for their consideration, the following amendment which he desires to be made in the Bill intituled "*An Act to regulate the Business and to provide for the Licensing of "Collectors of Special Wares, Marine Stores, and Old Metals, and to provide for the Licensing of "Dealers in Special Wares, Marine Stores, and Old Metals, and for amending 'The Old Metal "Dealers Act 1876'.*"—

In clause 41, in the second line of the clause, after "cart" insert "barrow."

Government Offices,
Melbourne, Decr. 20, 1888.

On the motion of the Honorable H. Cuthbert, the Council agreed to the amendment recommended by His Excellency the Governor, and ordered a Message to be transmitted to the Legislative Assembly acquainting them therewith.

15. DISCIPLINE ACT AMENDMENT BILL.—The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable Sir J. Lorimer moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable Sir J. Lorimer, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill, and agreed to the same without amendment.

On the motion of the Honorable Sir J. Lorimer, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Sir J. Lorimer, read a third time and *passed*.

The Honorable Sir J. Lorimer moved, That the following be the title of the Bill :—

"*An Act to amend 'The Discipline Act 1870' and the Acts amending the same, and for other "purposes.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

16. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "make better provision for the employment, transfer, and promotion of Teachers in the Education "Department, and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to some of the amendments made in such Bill by the Legislative Council, and have disagreed to one of the said amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

And the said amendment, disagreed to by the Legislative Assembly, was read and is as follows :—

In Second Schedule, lines 28 and 29, insert the words "or as second female assistants in first class schools."

The Honorable H. Cuthbert moved, That the Council do not insist on the said amendment.

Debate ensued.

Question—put and resolved in the affirmative.

Ordered—That a Message be sent to the Legislative Assembly acquainting them that the Legislative Council do not insist on their amendment.

17. STAMP DUTIES AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Debate ensued.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill, and agreed to the same with amendments.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill :—

"*An Act to amend the Law relating to the collection of Revenue and the issue of Insurance "Licences by the Registrar-General and the Law relating to the collection of Revenue by "Stamps.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

18. PUBLIC HEALTH LAW AMENDMENT BILL.—The Honorable H. Cuthbert moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable H. Cuthbert moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable H. Cuthbert, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair ; and the Honorable Lieut.-Col. Sargood reported that the Committee had made progress in the Bill, and that he was directed to move, That the Committee may have leave to sit again.

Resolved—That the Council will, this day, again resolve itself into the said Committee.

19. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "amend 'The Electoral Act 1865,' and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to some of the amendments made by the Legislative Council in this Bill and have disagreed to others of the said amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

And the said amendments disagreed to by the Legislative Assembly were read, and are as follow :—

(1.) Clause 47, omit this Clause.
(2.) Clause 48, omit this Clause.
(3.) Clause 49, omit this Clause.
(4.) Clause 50, omit this Clause.
(5.) Clause 51, omit this Clause.
(6.) Fifth Schedule, Part I., page 22, omit questions 5 and 7.
(7.) Fifth Schedule, Part II., page 23, omit questions 4 and 6.

The Honorable H. Cuthbert moved, That the Council do not insist on amendments 1 to 5 inclusive.

Debate ensued.

Question—put and negatived.

The Honorable H. Cuthbert moved, That the Council do not insist on amendments 6 and 7.

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Council do not insist on some of their amendments and that they do insist on other of the said amendments.

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20. MESSAGES FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Messages, from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "amend 'The Banks and Currency Statute 1864,'*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendment made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "provide for the establishment of Asylums for Inebriates,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the same with amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

And the said amendments were read, and are as follow :—

Clause 6, line 13, after "management" insert "supervision, inspection."
Same clause, line 14, after "treatment of" insert "and release of."
Clause 8, line 35, after "hereto of" insert "the husband or wife or."
Clause 10, line 14, after "Court" insert "the Master-in-Lunacy or any Judge of County Courts or any Police Magistrate."
Same clause, line 17, after "Court" insert "or County Court Master or Police Magistrate as aforesaid."
Same clause, line 19, after "Judge" insert "Master or Police Magistrate as aforesaid."
Clause 17, lines 7 and 8, omit "or to any rule made in pursuance of such regulations."
Same clause, line 8, after "is" insert "wilfully."
Same clause, line 12, omit "month" and insert "fortnight."
Second Schedule, before "state" insert "solemnly and sincerely declare and."
Same schedule, omit "Dated at this day of 188 ," and insert—

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

Declared before me, at , in the colony of Victoria, this day of , One thousand eight hundred and

Third Schedule, line 11, after "magistrate at" insert "his chambers at."

On the motion of the Honorable H. Cuthbert, the Council agreed to the said several amendments.
Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the said several amendments.

21. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "make better provision for the conduct of Inquests concerning fatal Mining Accidents,*" and acquaint the Legislative Council that the Legislative Assembly do still insist on disagreeing to the amendments in such Bill insisted on by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

The Honorable J. Bell moved, That the Council do not still insist on the said amendments still disagreed to by the Legislative Assembly.
Question—put and negatived.
Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council still insist on their said amendments.

22. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council a Bill intituled "*An Act to "amend the Law relating to the Collection of Revenue and the Issue of Insurance Licences by the Registrar-General and the Law relating to the Collection of Revenue by Stamps,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

23. PUBLIC HEALTH LAW AMENDMENT BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.
The President resumed the Chair; and the Honorable Lieut.-Colonel Sargood reported that the Committee had gone through the Bill, and agreed to the same with amendments.
On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act to further amend the Law relating to Public Health, and for other purposes.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

24. PLEURO-PNEUMONIA EXTERMINATION BILL.—The Honorable J. Buchanan moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable J. Buchanan moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable J. Buchanan, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair.

25. LANDS VESTING BILL.—The Honorable Sir J. Lorimer moved, That this Bill be now read a second time.

Question—put and resolved in the affirmative.—Bill read a second time.

The Honorable Sir J. Lorimer moved, That this Bill be now committed to a Committee of the whole Council.

Question—put and resolved in the affirmative.

And, on the further motion of the Honorable Sir J. Lorimer, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill and agreed to the same without amendment.

On the motion of the Honorable Sir J. Lorimer, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable Sir J. Lorimer, read a third time and *passed.*

The Honorable Sir J. Lorimer moved, That the following be the title of the Bill:—

"*An Act to make provision for the vesting of certain Lands in the Board of Land and Works, "the Victorian Railways Commissioners, the Mayor, Aldermen, Councillors, and Citizens "of the City of Melbourne respectively.*"

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them that the Council have agreed to the Bill without amendment.

26. CHINESE IMMIGRATION RESTRICTION BILL.—The Order of the Day for the further consideration of this Bill in Committee of the whole Council having been read—The President left the Chair, and the Council resolved itself into a Committee of the whole for the further consideration thereof.

And the Council having continued to sit till after Twelve of the clock,

FRIDAY, 21ST DECEMBER, 1888.

The President resumed the Chair; and the Honorable Lieut.-Col. Sargood reported that the Committee had gone through the Bill, and agreed to the same with amendments.

On the motion of the Honorable H. Cuthbert, the Council adopted the Report from the Committee of the whole on this Bill.

The President having reported that the Chairman of Committees had certified that the fair print of this Bill was in accordance with the Bill as reported—Bill, on the motion of the Honorable H. Cuthbert, read a third time and *passed.*

The Honorable H. Cuthbert moved, That the following be the title of the Bill:—

"*An Act for the further Restriction of Chinese Immigration.*"

Question—put and resolved in the affirmative.

Ordered—That the Bill be returned to the Legislative Assembly, with a Message acquainting them that the Legislative Council have agreed to the same with amendments, and requesting their concurrence therein.

27. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to "further amend the Law relating to Public Health, and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the amendments made in such Bill by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

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28. PORT MELBOURNE LAGOON NUISANCE SUPPRESSION BILL.—The Honorable J. Bell moved, That this Bill be now read a second time.
Debate ensued.
Question—put and resolved in the affirmative.—Bill read a second time.
The Honorable J. Bell moved, That this Bill be now committed to a Committee of the whole Council.
Question—put and resolved in the affirmative.
And, on the further motion of the Honorable J. Bell, the President left the Chair, and the Council resolved itself into a Committee of the whole for the consideration of this Bill.
The President resumed the Chair.

29. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act for "the further Restriction of Chinese Immigration,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to some of the amendments made in such Bill by the Legislative Council, and have disagreed to others of the said amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 21st Decr., 1888.

And the said amendments disagreed to by the Legislative Assembly were read, and are as follow :—

Clause 4. Add—

(1.) (IV.) To any Chinese woman or to any child under twelve years of age, provided that there shall not be allowed more than three women and six children for each 500 tons of the tonnage of any vessel entering any port or place in Victoria.

(2.) (V.) To any Chinese who has taken out or who shall take out letters of naturalization in Victoria.

(3.) Clause 9. Omit this clause.

On the motion of the Honorable H. Cuthbert, the Council agreed not to insist on amendment 1.
The Honorable H. Cuthbert moved, That the Council do not insist on amendment 2.
Debate ensued.
Question—put.
Council divided.

Ayes, 7.	Noes, 15.
The Hon. J. Bell	The Hon. S. Austin
G. Davis	J. Balfour
C. J. Ham	J. S. Butters
Dr. Le Fevre	T. Dowling
Sir J. Lorimer	H. Gore
J. Service	D. Ham
H. Cuthbert (*Teller*).	C. H. James
	W. McCulloch
	J. P. MacPherson
	D. Melville
	W. H. S. Osmand
	Lt.-Col. Sargood
	W. E. Stanbridge
	J. A. Wallace
	S. W. Cooke (*Teller*).

And so it passed in the negative.
The Honorable H. Cuthbert moved, That the Council do not insist on amendment 3.
Debate ensued.
Question—put.
Motion, by leave, withdrawn.
The Honorable Lieut.-Col. Sargood moved, That the Legislative Council insist on this amendment for the following reasons :—"Because it is unnecessarily harsh, and not in accord with the legislation of South Australia, which seems to the Council to meet all the necessities of the case."
Question—put and resolved in the affirmative.
Ordered—That the Bill be returned to the Legislative Assembly with a Message acquainting them that the Legislative Council do insist on one of their amendments, that they do not insist on another of the said amendments, and that they insist on another for the above reasons.

30. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act to amend 'The Electoral Act 1865,' and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly do not now insist in disagreeing to the amendments in such Bill insisted on by the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20th Decr., 1888.

31. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT,

The Legislative Assembly desire a Free Conference with the Legislative Council on the subject-matter of the amendments made and insisted on by the Legislative Council to the Bill intituled "*An Act for the further Restriction of Chinese Immigration*," and acquaint the Legislative Council that they have appointed five members of the Legislative Assembly to be Members of the said Conference.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 21st Decr., 1888.

32. CHINESE IMMIGRATION RESTRICTION BILL CONFERENCE.—The Honorable Lieut.-Col. Sargood moved, That a Committee be appointed, consisting of the Honorables H. Cuthbert, J. Service, J. Balfour, J. A. Wallace, and the Mover, to confer with the like number of Members of the Legislative Assembly on the amendments made and insisted on by the Legislative Council, and disagreed with by the Legislative Assembly, in the Chinese Immigration Restriction Bill, and name the South Library as the place, and fix now as the time of meeting, of the said Conference.

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them with the above resolution.

The Committee of the Legislative Council appointed to confer with the Members of the Legislative Assembly upon the amendments in "*The Chinese Immigration Restriction Bill*," insisted on by the Legislative Council, proceeded to the South Library, and there met the Members of the Committee appointed by the Legislative Assembly. After some time spent therein the Members returned to the Legislative Council, and the Honorable Lieut.-Col. Sargood brought up the following report, viz.:—

That the following proviso, viz. :—"Provided that each departure and each return of such Chinese shall be registered with the Collector of Customs" be added to sub-clause V.

That clause 6 in the South Australian Act be substituted for clause 9, omitted by the Legislative Council in the words following :—

Penalty on entry by land without permit.

9. Any Chinese who shall enter the colony of Victoria by land without first obtaining a permit in writing from some person to be appointed by the Governor in Council shall be guilty of an offence against this Act, and shall be liable on conviction, to a penalty of not less than Five pounds nor more than Twenty pounds, and in addition or substitution for any such penalty shall be liable, pursuant to any warrant or order of the Commissioner of Trade and Customs, to be removed or deported to the colony from whence he shall have come: Provided that this section shall only operate during such time as may from time to time be fixed by the Governor in Council by proclamation to be published in the *Government Gazette*, and any such proclamation may be revoked or varied by the Governor in Council by proclamation similarly published.

33. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly return to the Legislative Council the Bill intituled "*An Act for "the further Restriction of Chinese Immigration*," and acquaint the Legislative Council that the Legislative Assembly do not now insist on disagreeing to the amendments insisted on by the Legislative Council in this Bill, but have agreed to the same with amendments, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 20 Decr., 1888.

On the motion of the Honorable H. Cuthbert, the Council agreed to the amendments made by the Legislative Assembly, and ordered a Message to be transmitted to the Legislative Assembly, acquainting them therewith.

34. DISCHARGE OF ORDERS OF THE DAY.—The Council ordered that the following Orders of the Day be read and discharged :—

Amalgamation of Companies Bill.—To be read a second time.
Banking Companies Securities Bill.—To be read a second time.
Deposit of Silt Bill.—To be read a second time.

35. ADJOURNMENT.—The Honorable H. Cuthbert moved, That the Council, at its rising, adjourn until to-morrow at fifteen minutes to twelve o'clock.

The Council adjourned at twenty-eight minutes to six o'clock until to-morrow at fifteen minutes to twelve o'clock a.m.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority : ROBT. S. BRAIN, Government Printer Melbourne

VICTORIA.

No. 39.

Minutes of the Proceedings

OF THE

LEGISLATIVE COUNCIL.

SATURDAY, 22ND DECEMBER, 1888.

1. The Council met in accordance with adjournment.

2. The President took the Chair.

3. The President read the Prayer.

4. MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.—The Honorable H. Cuthbert presented the following Message from His Excellency the Governor, and the same was read, and is as follows :—

HENRY B. LOCH,
Governor. *Message.*

The Governor informs the Legislative Council that he has, on this day, at the Government Offices, given the Royal Assent to the undermentioned Acts of the present Session, presented to him by the Clerk of the Parliaments, viz.:—

"*An Act to amend the Acts relating to the Election of Members to serve in and the Constitution of the Legislative Council.*"
"*An Act to amend the 'Sales by Auction Statute 1864.'*"
"*An Act to regulate the business and to provide for the licensing of Collectors of Special Wares Marine Stores and Old Metals, and to provide for the licensing of Dealers in Special Wares Marine Stores and Old Metals and for amending the 'Old Metal Dealers Act 1876.'*"
"*An Act to amend the 'Mining on Private Property Act 1884.'*"
"*An Act to facilitate the amalgamation of the Union Trustees, Executors and Administrators Company Limited, the Colonial Permanent Trustee, Executor and Agency Company Limited, the Australasian Natives Trustees, Executors, and Agency Company Limited, and the Guardian Trustees and Executors Company Limited.*"
"*An Act to amend 'The Discipline Act 1870' and the Acts amending the same and for other purposes.*"
"*An Act to make better provision for the Employment, Transfer, and Promotion of Teachers in the Education Department and for other purposes.*"
"*An Act to amend "The Banks and Currency Statute 1864.*"
"*An Act to make provision for the vesting of certain Lands in the Board of Land and Works, the Victorian Railways Commissioners, the Mayor, Aldermen, Councillors and Citizens of the City of Melbourne respectively.*"
"*An Act to amend 'The Electoral Act 1865' and for other purposes.*"
"*An Act for the further Restriction of Chinese Immigration.*"

Government Offices,
Melbourne, 22nd December, 1888.

Ordered to lie on the Table.

5. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Message from His Excellency the Governor recommending amendments in the Bill intituled "*An Act to further amend the Licensing Act 1885,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the several amendments recommended by His Excellency the Governor in this Bill, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 22nd Decr., 1888.

(650 copies.)—6466.

†

6. LICENSING ACT AMENDMENT BILL.—And the said Message from His Excellency the Governor was read, and is as follows:—

HENRY B. LOCH,
Governor.

Pursuant to the provisions of section 36 of the Constitution Act the Governor recommends to the Legislative Assembly for their consideration the following amendments, which he desires to be made in a Bill intituled "*An Act to further amend The Licensing Act 1885.*"

In clause 9, in the first line after "Court" insert "the Inspector of Licensing Districts for the district."

In the eleventh line after "if" omit "the."

Government Offices,
Melbourne, 22nd December, 1888.

On the motion of the Hon. H. Cuthbert the Council agreed to the said several amendments, and ordered a Message to be transmitted to the Legislative Assembly acquainting them therewith.

7. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly transmit to the Legislative Council a Message from His Excellency the Governor recommending amendments in the Bill intituled "*An Act to amend the "Law relating to the collection of Revenue and the issue of Insurance Licenses by the Registrar-"General and the Law relating to the collection of Revenue by Stamps,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the several amendments recommended by His Excellency the Governor in this Bill, with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 22nd December, 1888.

8. STAMP DUTIES BILL.—And the said Message from His Excellency the Governor was read, and is as follows :—

HENRY B. LOCH,
Governor.

Pursuant to the provisions of section 36 of the Constitution Act, the Governor transmits to the Legislative Assembly, for their consideration, the following Message, which he desires to be made in a Bill intituled "*An Act to amend the Law relating to the collection of Revenue and the "issue of Insurance Licenses by the Registrar-General, and the Law relating to the collection of "Revenue by Stamps*":—

In Clause 4 omit the words "now or hereinafter."

In Clause 5 omit the words "now or hereinafter."

On the motion of the Honorable H. Cuthbert, the Council agreed to the said several amendments, and ordered a Message to be sent to the Legislative Assembly acquainting them therewith.

9. MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced to the Council the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT,

The Legislative Assembly transmit to the Legislative Council a Message from His Excellency the Governor recommending amendments in the Bill intituled "*An Act to further amend the Law relating to Public Health and for other purposes,*" and acquaint the Legislative Council that the Legislative Assembly have agreed to the several amendments recommended by His Excellency the Governor in this Bill with which they desire the concurrence of the Legislative Council.

M. H. DAVIES,
Speaker.

Legislative Assembly Chamber,
Melbourne, 22nd December, 1888.

10. PUBLIC HEALTH LAW AMENDMENT BILL.—And the said Message from His Excellency the Governor was read, and is as follows :—

HENRY B. LOCH,
Governor.

Pursuant to the provisions of section 36 of the Constitution Act, the Governor transmits to the Legislative Assembly, for their consideration, the following amendments, which he desires to be made in a Bill intituled "*An Act to further amend the Law relating to Public Health and for other "purposes*":—

In Clause 6, in the 4th line, omit the word "negligently."

Government Offices,
Melbourne, 22nd Decr. 1888.

On the motion of the Honorable H. Cuthbert, the Council agreed to the said amendment, and ordered a Message to be sent to the Legislative Assembly acquainting them therewith.

11. APPROACH OF HIS EXCELLENCY THE GOVERNOR.—The Approach of His Excellency the Governor was announced by the Usher.

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12. ROYAL ASSENT TO BILLS.—His Excellency the Governor came into the Council Chamber and commanded the Usher to desire the attendance of the Legislative Assembly in the Council Chamber; who being come with their Speaker, he, after a short speech to His Excellency, delivered the Appropriation Bill to the Clerk of the Parliaments, who brought it to the table.

His Excellency was then pleased to assent, in the name of Her Majesty the Queen, to the following Bills:—

"*An Act to apply a Sum out of the Consolidated Revenue to the service of the Year ending on the thirtieth day of June, One thousand eight hundred and eighty-nine, and to appropriate the Supplies granted in this Session of Parliament.*"

"*An Act to further amend 'The Licensing Act 1885.'*"

"*An Act to provide for the Alteration of the Boundaries of certain Electoral Districts and for other purposes.*"

"*An Act to provide for the establishment of Asylums for Inebriates.*"

"*An Act to amend the Law relating to the Collection of Revenue and the Issue of Insurance Licenses by the Registrar-General, and the Law relating to the Collection of Revenue by Stamps.*"

"*An Act to further amend the Law relating to Public Health and for other purposes.*"

the Royal Assent being severally read by the Clerk of the Parliaments in the following words:—

"In the name and on behalf of Her Majesty, I assent to this Act."

HENRY B. LOCH,
Governor.

The Clerk of the Parliaments delivered to Mr. Speaker a schedule of the Bills assented to.

His Excellency was then pleased to speak as follows:—

MR. PRESIDENT AND HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

I am glad to be able to release you from your protracted and valuable labours. The past session has been fruitful of important discussions and salutary legislation.

You have given your assent to Bills for securing the better representation of the people in Parliament, and also for improving the machinery of the Electoral Law. It is of the last importance in a constitutional country that the decisions of Parliament should express the National will with absolute precision. The difficulty of altering and readjusting old boundaries is great, and I congratulate you on having effected a settlement which removes many obvious anomalies, and appears to be generally accepted as fair and reasonable.

The valuable Marine Board Bill which you passed last Session, but which was reserved for Her Majesty's assent, has now become law; the unimportant alterations suggested by the Imperial Government in the Bill you have found it possible to make without sacrificing anything essential in the measure, and it may be hoped that its good effects will be speedily felt.

The Bill to bring the Officers of Parliament under the control of the two Houses, and the Bill to regulate the employment and transfer of Teachers, will obviate some technical imperfections in the Public Service Act that have been the frequent cause of friction and delay, without impairing the general principle that promotion is to be absolutely independent of patronage. Although time did not permit of your dealing with the whole question of a general revision of the law relating to Public Health, you are to be congratulated on being able to agree to an amending Bill containing many valuable provisions for the protection of the community by the enforcement of sanitary laws.

The Bill which you have passed amending the Discipline Act by continuing the Special Appropriation for Defence purposes will no doubt meet with general approval, and have most beneficial effects.

The amendment of the Lunacy Laws will contribute powerfully to the relief of a class which more than any other demands to be treated with paternal solicitude by the State; while the measures for controlling the immigration of Chinese, for enabling Inebriate Asylums to be established, for improving the administration of the Stamp Acts, for better regulating the constitution and proceedings of certain companies, and for the control of juveniles and persons collecting and dealing with Marine Stores will all tend to promote and ensure the public welfare.

The agricultural interest, which becomes more important and more permanent year by year, has been cared for with special solicitude by the present Parliament. It is unfortunate that the crops should have suffered in many districts from insufficient rainfall, but it is matter for congratulation that the legislation designed to supply water for domestic purposes and for irrigation has been vigorously carried out, and is beginning to produce the most encouraging results.

Although the exigencies of the Session have prevented the consideration of a Forests Bill, the important work of conserving the valuable timber resources of the colony has received special attention, under authority of regulations provided for in the existing Land Act. The alienation of Forest lands has been stopped, and during the past year additions to the Timber Areas have increased the State Forests from 1,500,000 to 4,000,000 acres.

It is a matter of regret that time did not permit you to deal with the Bill to prevent the Counterfeiting of Trade-marks, the Bill to completely amend the laws relating to the Public Health, and the Education Endowment Bill, though the subject-matter of each is of great and urgent importance.

MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

The financial statement which the Treasurer was able to lay before Parliament this year was undoubtedly one of the most gratifying ever submitted to a Legislative Assembly. The growth of our general prosperity remains unchecked, and its record must be highly gratifying to the country. I thank you in the name of Her Majesty for the ample provision which you have made for the service of the year in the supplies which you have granted.

MR. PRESIDENT AND HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL:

MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

The Centennial Exhibition has had the success that was predicted for it. The gentlemen to whose unsparing labours we are indebted for this result may congratulate themselves on having gone far beyond the traditional limits of these undertakings by the singular ability with which they have ministered to the development of a taste for music and painting. What no labour of our own could have effected has been done for us by the loyal and generous co-operation of the sister Colonies, who have made this Exhibition, what its designers wished it to be, an industrial triumph for the whole of the Continent.

We may see the beginnings of closer Federal Union in other directions. It has been found possible to arrive at a settlement of the difficult Chinese question, on lines which it may be hoped will be acceptable to Great Britain, and which suit the wishes and interests of all the Australian States. Since the Sydney Conference was held, South Australia has joined the Federal Union, and it may be hoped that New South Wales will not stand aloof much longer from the legislative concert of united Australia.

A happy accident gave the Legislative Assembly an occasion of testifying its loyalty to the Crown, when it supported the right of the Crown to appoint the Governors of Colonies on the advice of Her Majesty's responsible Imperial Advisers. The enthusiasm with which the news of this debate was received in the House of Commons is a significant proof that these communities were never more closely linked or dearer to England than they are now, when they are practically free to determine their own destinies.

I now, in Her Majesty's name, declare this Parliament to be prorogued to the 12th day of February, 1889.

JOHN BARKER,
Clerk of the Legislative Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

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SELECT COMMITTEES,

APPOINTED DURING THE SESSION 1888.

No. 1.—ADDRESS IN REPLY.

Appointed 19th June, 1888.

The Hon. J. P. MacPherson
J. Bell
Lieut.-Col. Sargood
D. Coutts
C. J. Ham

The Hon. F. Brown
N. Thornley
H. Cuthbert
Dr. Le Fevre.

No. 2.—LATE EMPEROR OF GERMANY.

Appointed 20th June, 1888.

The Hon. Lieut.-Col. Sargood
J. Service
N. Thornley
Dr. Le Fevre

The Hon. W. A. Zeal
Sir W. J. Clarke, Bart.
H. Cuthbert.

No. 3.—STANDING ORDERS.

Appointed 20th June, 1888.

The Hon. The President
Dr. Dobson
J. Service
Lieut.-Col. Sargood

The Hon. J. Balfour
H. Gore
H. Cuthbert.

No. 4.—LIBRARY (JOINT).

Appointed 20th June, 1888.

The Hon. The President
D. Melville
F. Brown

The Hon. W. P. Simpson
Dr. Le Fevre.

No. 5.—PARLIAMENT BUILDINGS (JOINT).

Appointed 20th June, 1888.

The Hon. The President
N. FitzGerald
S. Fraser

The Hon. N. Thornley
J. Balfour.

No. 6.—REFRESHMENT ROOMS (JOINT).

Appointed 20th June, 1888.

The Hon. J. A. Wallace
J. Buchanan
Sir W. J. Clarke, Bart.

The Hon. D. C. Sterry
Dr. Beaney.

No. 7.—PRINTING.

Appointed 20th June, 1888.

The Hon. The President
G. Young
W. H. Roberts

The Hon. F. Ormond
J. Bell
Sir J. Lorimer.

No. 8.—CENTENNIAL INTERNATIONAL EXHIBITION RECEPTION (JOINT).

Appointed 10th July, 1888.

The Hon. J. Balfour
Sir W. J. Clarke, Bart.
N. FitzGerald
F. Ormond

The Hon. J. Service
J. Williamson
W. A. Zeal.

No. 9.—GENERAL CODE BILL (JOINT).

Appointed 24th July, 1888.

The Hon. J. Balfour
F. Brown
N. FitzGerald
D. Melville

The Hon. Lieut.-Col. Sargood
J. Service
H. Cuthbert.

No. 10.—ELECTIONS AND QUALIFICATIONS.

Appointed 21st August, 1888.

The Hon. J. Balfour
F. Brown
D. Coutts
H. Gore

The Hon. Sir J. Lorimer
J. P. MacPherson
D. Melville.

No. 11.—INCREASE OF MEMBERS OF THE LEGISLATIVE COUNCIL.

Appointed 2nd October, 1888.

The Hon. The President
Lieut.-Col. Sargood
J. Service
N. FitzGerald
W. A. Zeal

The Hon. Sir J. Lorimer
F. Brown
J. Balfour
H. Cuthbert.

No. 12.—CHINESE IMMIGRATION RESTRICTION BILL (JOINT).

Appointed 21st December, 1888.

The Hon. H. Cuthbert
J. Service
J. Balfour

The Hon. J. A. Wallace
Lieut.-Col. Sargood.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1888.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 1.

Extracted from the Minutes.

TUESDAY, 30TH OCTOBER, 1888.

No. 1.—TRUSTEES COMPANIES BILL.—Clause 4.—An account of the moneys paid or received and of investments made and moneys advanced by a trustee company on account of each estate of which it has control shall be kept by such trustee company separate and distinct from that of any other such estate. Any director member or officer of a trustee company who appropriates or deals with any real or personal property of which such trustee company has control under the powers conferred upon it by this Act or lends or otherwise deals with any moneys received by such trustee company under the powers aforesaid otherwise than in accordance with this Act, the instrument creating the trust, and the law for the time being in force shall, and the manager or acting manager and directors of such trustee company if "they" fail to comply with the provisions of this section shall be guilty of a misdemeanour.

Amendment proposed—That after the word "they" in the ninth line of the above clause, the following words be inserted, viz.:—"knowingly and wilfully"—(*Lt-Col. Sargood.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided.

Ayes, 16.	Noes, 9.
The Hon. J. Bell	The Hon. T. Dowling
J. Buchanan	S. Fraser
Sir W. J. Clarke, Bart.	H. Gore
J. H. Connor	D. Ham
S. W. Cooke	J. P. MacPherson
H. Cuthbert	J. Service
G. Davis	N. Thornley
Sir J. Lorimer	W. A. Zeal
D. Melville	J. Balfour (*Teller*).
W. H. S. Osmand	
W. Pearson	
W. H. Roberts	
Lt.-Col. Sargood	
W. P. Simpson	
W. E. Stanbridge	
F. Brown (*Teller*).	

WEDNESDAY, 31st OCTOBER, 1888.

No. 2.—Trustees Companies Bill.—Clause 4.—An account of the moneys paid or received and of investments made and moneys advanced by a trustee company on account of each estate of which it has control shall be kept by such trustee company separate and distinct from that of any other such estate. Any director member or officer of a trustee company who knowingly and wilfully appropriates or deals with any real or personal property of which such trustee company has control under the powers conferred upon it or knowingly and wilfully lends or otherwise deals with any moneys received by such trustee company under the powers aforesaid otherwise than in accordance with this Act, the instrument creating the trust, and the law for the time being in force except by depositing the same in a bank having a subscribed capital of at least Three hundred thousand pounds a paid-up capital of at least One hundred and fifty thousand pounds and a reserve of at least Fifty thousand pounds, and which does not as part of its ordinary business buy and sell land or shares or other "property" shall, and the manager and directors of such trustee company if they or any of them knowingly and wilfully fail to comply with the provisions of this section shall be guilty of a misdemeanour.

Amendment proposed—That after the word "property" in the twelfth line of the above clause, the following words be inserted, viz.:—(provided that no deposit of the funds of any one estate shall exceed the sum of Twenty thousand pounds in any one bank).—(*Hon. W. A. Zeal.*)

Question—That the words proposed to be inserted be so inserted—put.

Committee divided.

Ayes, 16.	Noes, 12.
The Hon. Dr. J. G. Beaney	The Hon. J. Balfour
J. Bell	S. W. Cooke,
J. Buchanan	T. Dowling
Sir W. J. Clarke, Bart.	H. Gore
J. H. Connor	D. Ham
D. Coutts	C. H. James
H. Cuthbert	F. Ormond
G. Davis	J. Service
S. Fraser	W. P. Simpson
J. Lorimer	N. Thornley
D. Melville	G. Young
W. H. S. Osmand	Lt.-Col. Sargood (*Teller*).
W. H. Roberts	
J. A. Wallace	
W. A. Zeal	
F. Brown (*Teller*).	

By Authority: Robt. S. Brain, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1888.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 2.

Extracted from the Minutes.

TUESDAY, 13TH NOVEMBER, 1888.

No. 1.—LUNACY STATUTE FURTHER AMENDMENT BILL.—Clause 3.—In this Act, unless inconsistent with the subject-matter or context, the following words and expressions shall have the meanings hereinafter respectively assigned to them (that is to say) :—

"Criminal insane" shall mean and include persons imprisoned or detained in any gaol or reformatory or industrial school or other place of confinement under any sentence or under a charge of any offence or for not finding bail to answer a criminal charge or in consequence of a summary conviction, who shall appear to be insane, and persons who under the "*Criminal Law and Practice Act*" or any Act amending the same shall have been or shall be ordered to be kept in safe custody either until the Governor's pleasure be known or during the Governor's pleasure :

"Paying patients" shall mean any patients on whose behalf payments shall be made or agreed to be made for cottage or other separate accommodation under regulations of the Governor in Council for the establishment of cottages or other separate accommodation for paying patients :

"Receiving house" shall mean any asylum or portion of any asylum or any house building or premises proclaimed and constituted a receiving house as hereinafter provided.

In the Principal Act and in this Act the word "patient," in addition to the meaning assigned to it by section three of the Principal Act shall also mean and include—

All persons who are in any manner subject to be treated as insane or who are in any manner under any control or supervision as insane or persons of unsound mind, and until such persons are discharged either under this Act or the Principal Act all persons who may have been under detention control or supervision, or who may have been permitted to be absent on trial under the Principal Act, or who are boarded out or placed in a cottage established for the reception of paying "patients."

Amendment proposed that after the word "patients," at the end of the above clause, the following words be inserted, viz., "or in a philanthropic hospital.'

Question that the words proposed to be inserted be so inserted—put.

Committee divided.

Ayes, 11.	Noes, 7.
The Hon. J. Bell	The Hon. S. Fraser
J. Buchanan	D. Ham
J. H. Connor	D. Melville
S. W. Cooke	W. H. S. Osmand
H. Cuthbert	J. Service
G. Davis	W. A. Zeal
H. Gore	Lt.-Col. Sargood (*Teller*).
Sir J. Lorimer	
J. P. MacPherson	
W. H. Roberts	
D. C. Sterry (*Teller*).	

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1888.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 3.

Extracted from the Minutes.

TUESDAY, 20TH NOVEMBER, 1888.

No. 1.—PUBLIC OFFICERS EMPLOYMENT BILL.—Clause 2.—Except with the express permission of the Governor signified by Order in Council published in the *Government Gazette*, which permission may be at any time by Order of Council withdrawn, no officer shall after the passing of this Act accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any banking insurance mining mercantile or other commercial business, whether the same be carried on by any corporation company firm or individual; nor except as aforesaid shall any officer himself engage in or undertake any such business whether as principal or agent, nor engage or continue in the private practice of any profession, nor accept or continue to hold any office in or under any municipal or any other corporation whatsoever, *nor accept or engage in any employment other than in connection with the duties of his office or offices under the Crown:* Provided that nothing herein contained shall be deemed to prevent any officer from becoming a member only of any incorporated company or of any company or society of persons registered under any Act of Parliament.

Amendment proposed—That the words "nor accept or engage in any employment other than in connection with the duties of his office or offices under the Crown," in the 9th line of the above clause, be omitted (*Hon. W. E. Stanbridge.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided.

Ayes, 15.	Noes, 9.
The Hon. J. Buchanan	The Hon. J. Balfour
J. H. Connor	W. S. Cooke
H. Cuthbert	C. J. Ham
G. Davis	C. H. James
S. Fraser	J. P. MacPherson
H. Gore	Lt.-Col. Sargood
D. Ham	J. Service
Sir J. Lorimer	W. E. Stanbridge
D. Melville	Dr. G. Le Fevre (*Teller*).
W. H. Roberts	
W. P. Simpson	
D. C. Sterry	
N. Thornley	
W. A. Zeal	
F. Brown (*Teller*).	

No. 2.—Proposed new clause to follow clause 2.—A. "Nothing in this Act shall prejudice the rights (if any) of any person or persons under Acts 160 and 773."

Motion made and question put that the above new clause stand part of the Bill.—(*Hon. C. J. Ham.*)

Committee divided.

Ayes, 9.	Noes, 14.
The Hon. J. Balfour	The Hon. F. Brown
S. W. Cooke	J. Buchanan
D. Ham	J. H. Connor
C. H. James	H. Cuthbert
Dr. G. Le Fevre	G. Davis
J. P. MacPherson	S. Fraser
Lt.-Col. Sargood	H. Gore
W. E. Stanbridge.	Sir J. Lorimer
C. J. Ham (*Teller*).	D. Melville
	W. P. Simpson
	D. C. Sterry
	N. Thornley
	W. A. Zeal
	W. H. Roberts (*Teller*).

By Authority: Robt. S. Brain, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1888.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 4.

Extracted from the Minutes.

TUESDAY, 4th DECEMBER, 1888.

No. 1.—ELECTORAL DISTRICTS ALTERATION BILL (SECOND SCHEDULE):—

14. THE ELECTORAL DISTRICT OF EAST BOURKE BOROUGHS.

Commencing on the Moonee Ponds Creek at the north-west angle of portion 142, parish of Jika Jika; thence east by the north boundary of that portion to the south-west angle of portion 150; north by the western boundary of that portion to the north-west angle; east by the north boundaries of portions 150, 149, and 148 to the north-east angle of portion 148; south by the eastern boundary of portion 148 and of the town reserve of Coburg to the south-east angle of that reserve; and west by the south boundaries of the same reserve to the Merri Creek; southerly down that creek to the north-western angle of portion 136 in the said parish east by the north boundary of portion 136 to High-street, Northcote; further east crossing High-street by Dundas-street to the Darebin Creek; southerly down that creek to the Yarra River; down the Yarra River to Reilly-street; west by that street to Smith-street; north by Smith-street to the Queen's-parade; north-easterly by the Queen's-parade to the Merri Creek; up the Merri Creek to north boundary of section 93, parish of Jika Jika; west by that boundary to Nicholson-street; south by Nicholson-street to Park-street east; west by Park-street east and Park-street west to the Moonee Ponds Creek; northerly by that creek to the commencing point ... ... Two.

Amendment proposed—That the words "East Bourke Boroughs," in the head-line, be omitted with a view of inserting instead thereof the word "Brunswick."—(*Hon. D. Melville.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided.

Ayes, 14.	Noes, 16.
The Hon. J. Balfour	The Hon. Dr. Beaney,
J. Bell	F. Brown
S. W. Cooke	J. Buchanan
T. Dowling	J. S. Butters
H. Gore	Sir W. J. Clarke, Bart.
Sir J. Lorimer	J. H. Connor
W. McCulloch	D. Coutts
J. P. MacPherson	S. Fraser
W. H. S. Osmand	D. Ham
J. Service	C. H. James
W. E. Stanbridge	D. Melville
N. Thornley	F. Ormond
A. Wynne	W. Pearson
H. Cuthbert (*Teller*).	J. A. Wallace
	W. A. Zeal
	G. Davis (*Teller*).

No. 2.—

35. THE ELECTORAL DISTRICT OF GIPPSLAND CENTRAL.

Commencing on the sea coast at the mouth of Merriman's Creek; thence up that creek to the south boundary of the parish of Rosedale; westerly by the southern boundary of that parish to Flynn's Creek; northerly by that creek to the La Trobe River; up that river to its source in the range forming the southern watershed of the Yarra River; easterly by that range to Mount Baw Baw; north-westerly by the range forming the northern watershed of the Yarra to the Great Dividing Range; easterly by that range to Mount Selma; southerly by the range to Mount Useful; southerly by a direct line to the junction of Silver Jack's Creek with Donnelly's Creek; southerly by a direct line to the bridge over the Thompson River on the Toongabbie and Walhalla road; down that river to the west boundary of the parish of "Sale"; north by that boundary to Flooding Creek; down that creek to a point west of the north-east angle of allotment 86, parish of Sale; east to that angle; south to the La Trobe River; easterly down that river and by the northern boundary of the county of Buln Buln to the sea coast; and south-westerly by the sea coast to the commencing point ... ... One.

Amendment proposed—That all the words after "Sale" in the 10th line of the above clause be omitted with a view of inserting instead thereof the following words:—"North and east by the west and north boundaries of that parish to the south-east angle of portion 26A of the parish of Bundalaguah; northerly by the east boundary of that parish to the north-east angle of portion 13B of same parish; west to the south-east angle of the parish of Wa-de-lock; north and east by that parish boundary to the Avon River; down that river to the western shore of Lake Wellington; southerly by that shore to the northern boundary of the county of Buln Buln; easterly and following that boundary to the sea coast, and south-westerly by the sea coast to the commencing point" ... ... One.
—(*Hon W. Pearson.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided.

Ayes, 7.	Noes, 17.
The Hon. J. Bell	The Hon. J. Balfour
H. Cuthbert	F. Brown
T. Dowling	Sir W. J. Clarke, Bart.
H. Gore	J. H. Connor
J. P. MacPherson	S. W. Cooke
W. H. S. Osmand	D. Coutts
Sir J. Lorimer (*Teller*).	S. Fraser
	C. H. James
	W. McCulloch
	D. Melville
	W. Pearson
	J. Service
	W. E. Stanbridge
	J. A. Wallace
	A. Wynne
	W. A. Zeal
	G. Davis (*Teller*).

By Authority: Robt. S. Brain, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1888.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 5.

Extracted from the Minutes.

TUESDAY, 11TH DECEMBER, 1888.

1. MEMBERS OF COUNCIL BILL (CLAUSE 4):—

4. The Melbourne North Yarra South Yarra Southern North-Western and South-Eastern Provinces shall each return four members to the Council.

The South-Western Nelson Western Northern Wellington North-Central North-Eastern and Gippsland Provinces shall each return three members to the Council.

The members of the Council elected at the periodical elections to be held in the provinces in the next following section mentioned in the year One thousand eight hundred and eighty-nine and those elected at any periodical election to fill any vacancy caused by effluxion of time shall each hold their seats for a period of six years and shall then retire by effluxion of time. Every retiring member shall if otherwise qualified be capable of being re-elected.

Amendment proposed—That the word "Melbourne," in the first line of the above clause, be omitted.—(*Hon. J. H. Connor.*)

Question—That the word proposed to be omitted stand part of the clause—put.

Committee divided.

Ayes, 23.	Noes, 10.
The Hon. S. Austin	The Hon. J. Buchanan
J. Balfour	J. H. Connor
F. Brown	W. McCulloch
S. W. Cooke	J. P. MacPherson
D. Coutts	D. Melville
H. Cuthbert	W. H. S. Osmand
T. Dowling	W. Pearson
S. Fraser	J. A. Wallace
H. Gore	W. A. Zeal
D. Ham	G. Davis (*Teller*).
C. H. James	
Dr. Le Fevre	
Sir J. Lorimer	
Sir J. MacBain	
F. Ormond	
W. H. Roberts	
Lt.-Col. Sargood	
J. Service	
W. E. Stanbridge	
D. C. Sterry	
N. Thornley	
A. Wynne	
J. Bell (*Teller*).	

No. 2. Amendment proposed—That the words "North Yarra," in the first line of the above clause, be omitted.—(*Hon. J. H. Connor.*)

Question—That the words proposed to be omitted stand part of the clause—put,

Committee divided.

Ayes, 7.	Noes, 25.
The Hon. J. Bell	The Hon. S. Austin
T. Dowling	J. Balfour
Sir J. Lorimer	F. Brown
Sir J. MacBain	J. Buchanan
W. H. Roberts	J. H. Connor
J. Service	S. W. Cooke
Dr. Le Fevre (*Teller*).	D. Coutts
	H. Cuthbert
	G. Davis
	H. Gore
	D. Ham
	C. H. James
	W. McCulloch
	J. P. MacPherson
	D. Melville
	W. H. S. Osmand
	W. Pearson
	Lt.-Col. Sargood
	W. E. Stanbridge
	D. C. Sterry
	N. Thornley
	J. A. Wallace
	A. Wynne
	W. A. Zeal
	F. Ormond (*Teller*).

No. 3. Amendment proposed—That the words "South Yarra," in the first line of the above clause, be omitted.—(*Hon. J. H. Connor.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided.

Ayes, 22.	Noes, 11.
The Hon. S. Austin	The Hon. J. Buchanan
J. Balfour	J. H. Connor
J. Bell	G. Davis
F. Brown	W. McCulloch
S. W. Cooke	D. Melville
D. Coutts	W. H. S. Osmand
H. Cuthbert	W. Pearson
T. Dowling	J. Service
S. Fraser	J. A. Wallace
H. Gore	W. A. Zeal
D. Ham	J. P. MacPherson (*Teller*).
C. H. James	
Sir J. Lorimer	
Sir J. MacBain	
F. Ormond	
W. H. Roberts	
Lt.-Col. Sargood	
W. E. Stanbridge	
D. C. Sterry	
N. Thornley	
A. Wynne	
Dr. Le Fevre (*Teller*).	

No. 4. Amendment proposed—Motion made that the word "Wellington" be inserted in lieu of the above clause after the word "and," in place of the words "South-Eastern" (previously omitted).—(*Hon. H. Cuthbert.*)

Question—That the word proposed to be inserted be so inserted—put.

Committee divided.

Ayes, 16.	Noes, 14.
The Hon. J. Balfour	The Hon. S. Austin
J. Bell	J. Buchanan
F. Brown	J. H. Connor
S. W. Cooke	C. H. James
D. Coutts	Dr. Le Fevre
H. Cuthbert	W. McCulloch
G. Davis	J. P. MacPherson
T. Dowling	D. Melville
H. Gore	W. H. S. Osmand
D. Ham	W. H. Roberts
Sir J. Lorimer	J. Service
W. Pearson	J. A. Wallace
Lt.-Col. Sargood	W. A. Zeal
W. E. Stanbridge	F. Ormond (*Teller*).
D. C. Sterry	
N. Thornley (*Teller*).	

WEDNESDAY, 12th DECEMBER, 1888.

MARINE STORES BILL.—(Clause 8):—

8. Any two justices sitting in open court may take into consideration any application by a male person above the age of thirteen or below that age if he has obtained a certificate of being educated up to the standard required by the Education Act for a licence to act as a collector and to carry on the business of collecting special wares, and on the hearing of such application any officer of police or any other person may be heard to show cause to the justices against granting the application; and it shall be lawful for the justices to grant in the form in the First Schedule to this Act to the person making the application such a licence, or to refuse any such application, or the justices may adjourn the consideration thereof from time to time as they see fit. Provided that such adjournments do not in the whole exceed two months from the day of first making the application. "Provided always that no licence shall be granted to a female or to a person who has at any time been convicted of felony."

No. 1. Amendment proposed—That the words "Provided always that no licence shall be granted to a female or to a person who has at any time been convicted of felony," in the tenth line of the above clause be omitted.—(*Hon. D. C. Sterry.*)

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided.

Ayes, 11.	Noes, 7.
The Hon. S. Austin	The Hon. F. Brown
J. Bell	D. Coutts
J. H. Connor	D. Melville
H. Cuthbert	W. E. Stanbridge
T. Dowling	D. C. Sterry
Sir J. Lorimer	A. Wynne
J. P. MacPherson	S. W. Cooke (*Teller*).
W. H. Roberts	
Lt.-Col. Sargood	
J. Service	
J. Balfour (*Teller*).	

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

VICTORIA.

LEGISLATIVE COUNCIL.

SESSION 1888.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE COUNCIL.

No. 6.

Extracted from the Minutes.

TUESDAY, 18TH DECEMBER, 1888.

No. 1. CHINESE IMMIGRATION RESTRICTION BILL.—

Clause 4. This Act shall not apply—

(I.) To any person duly accredited to the Government of any of Her Majesty's possessions in Australasia by any Government as its representative, nor to any person sent by any Government on any special mission.

(II.) To any person being a member of the crew of any vessel if such person is not discharged therefrom in Victoria and does not land in Victoria except in the discharge of his duties in connection with such vessel.

(III.) To any persons or any class of persons who are for the time being exempted (as hereinafter provided) from the provisions hereof.

Amendment proposed—That at the end of the clause the following words be added, viz.:—

(IV.) To any Chinese woman or to any child under twelve years of age, provided that there shall not be allowed more than three women and six children for each 500 tons of the tonnage of any vessel entering any port or place in Victoria.—(*Hon. Lieut.-Col. Sargood.*)

Question—That the words proposed to be added be so added—put.
Committee divided.

Ayes, 16.	Noes, 16.
The Hon. J. Balfour	The Hon. S. Austin
J. H. Connor	Dr. Beaney
C. J. Ham	J. Bell
D. Ham	J. Buchanan
Dr. Le Fevre,	S. W. Cooke
W. McCulloch	D. Coutts
J. P. MacPherson	H. Cuthbert
D. Melville	G. Davis
W. H. S. Osmand	T. Dowling
W. Pearson	H. Gore
W. P. Simpson	Sir J. Lorimer
W. E. Stanbridge	J. Service
J. A. Wallace	D. C. Sterry
A. Wynne	N. Thornley
W. A. Zeal	G. Young
Lt.-Col. Sargood (*Teller*).	W. H. Roberts (*Teller*).

The tellers having declared the numbers for the Ayes and for the Noes to be respectively sixteen, or equal, the Chairman gave his vote with the Ayes, in order to allow of further consideration of the subject, and declared the question to have been resolved in the affirmative.

No. 2. LICENSING ACT AMENDMENT BILL.—Clause 15.—No determination order or proceedings under Part II. of the Principal Act or any amendment thereof shall be removed or removable by *certiorari* or otherwise into the Supreme Court for any want or alleged want of jurisdiction or for any error or alleged error of form or substance or on any ground whatsoever.

Question—That clause 15 as amended stand part of the Bill—put.

Committee divided.

Ayes, 20.	Noes, 12.
The Hon. S. Austin	The Hon. J. S. Butters
J. Balfour	J. H. Connor
Dr. Beaney	S. W. Cooke
J. Bell	C. H. James
J. Buchanan	W. McCulloch
D. Coutts	J. P. MacPherson
H. Cuthbert	W. H. S. Osmand
T. Dowling	W. Pearson
H. Gore	W. P. Simpson
C. J. Ham	W. E. Stanbridge
D. Ham	J. A. Wallace
Dr. Le Fevre	W. A. Zeal (*Teller*).
Sir. J. Lorimer	
D. Melville	
W. H. Roberts	
Lt.-Col. Sargood	
J. Service	
A. Wynne	
G. Young	
N. Thornley (*Teller*).	

No. 3. Proposed new clause G.—The provisions of section twenty of the Principal Act as amended by any subsequent Act applying to the issue and renewal of victuallers' licences in respect of houses situated in mountainous districts shall apply to the mallee country dealt with by "*The Mallee Pastoral Leases Act* 1883" in the same manner as though the same were a mountainous district.—(*Hon. D. Coutts*).

Question—That the proposed new clause stand part of the Bill—put.

Committee divided.

Ayes, 15.	Noes, 17.
The Hon. S. Austin	The Hon. Dr. Beaney,
J. S. Butters	J. Buchanan
J. H. Connor	H. Cuthbert
S. W. Cooke	T. Dowling
C. H. James	H. Gore
W. McCulloch	C. J. Ham
J. P. MacPherson	D. Ham
W. Pearson	Dr. Le Fevre
W. P. Simpson	Sir J. Lorimer
W. E. Stanbridge	D. Melville
D. C. Sterry	W. H. S. Osmand
J. A. Wallace	W. H. Roberts
G. Young	Lt.-Col. Sargood
W. A. Zeal	J. Service
D. Coutts (*Teller*).	N. Thornley
	A. Wynne
	J. Balfour (*Teller*).

No. 4. STATE SCHOOL TEACHERS BILL—SECOND SCHEDULE.—The following amendments shall be made in the Third Schedule of "*The Public Service Act* 1883":—

Part II.

Add at the end of the note immediately following the heading "SECOND-CLASS TEACHERS" the words—"Minimum fixed salary for females £176 per annum, rising by five annual increments of £8 to a maximum of £216."

The note immediately following the heading "THIRD-CLASS TEACHERS" is hereby repealed, and the following substituted :—

"That is, teachers who are certificated, and have also passed the matriculation examination; or are certificated and hold two of the Department's science certificates; or have obtained the trained teacher's certificate subsequently to 31st December, 1875; or obtained a trained teacher's certificate of first or second class under the Board of Education; or possess a certificate of competency alone in the case of teachers employed at the passing of this Act.

And in addition to possessing any such qualification also hold one of the following positions, that is to say—As head teachers of third-class schools, or as first male assistants in first-class schools; or as first female assistants in second-class schools; or as first female assistants in schools which were reduced from the second class on the 30th June 1888.

Minimum fixed salary for males, £176 per annum, rising by four annual increments of £8 to a maximum of £208.

Minimum fixed salary for females, £121 12s., rising by seven annual increments of £6 8s. to a maximum of £166 8s."

The note immediately following the heading "FOURTH-CLASS TEACHERS" is hereby repealed and the following substituted:—

"That is, teachers who are certificated, and also are in charge of fourth-class schools, or hold positions as first male assistants in second-class schools, or as first female assistants of third-class schools. Minimum fixed salary for males, £144 per annum, rising by three annual increments of £8 to a maximum of £168.

Minimum fixed salary for females, £89 12s., rising by four annual increments of £6 8s. to a maximum of £115 4s."

The note immediately following the heading "FIFTH-CLASS TEACHERS" is hereby repealed and the following substituted:—

"That is, teachers who are licensed to teach, and also are in charge of fifth-class schools, or hold other assistantships than those specified above, or act as relieving teachers. Fixed salary for teachers employed otherwise than as junior assistants under Sixth Schedule:—

Males—Minimum, £88, rising by six annual increments of £8 to a maximum of £136.

Females—Minimum, £64, rising by three annual increments of £6 8s. to a maximum of £83 4s.

Fixed salary for teachers employed as junior assistants under Sixth Schedule—

Males—£80 per annum, without increment.

Females—£64 per annum, without increment."

Under the heading "JUNIOR ASSISTANTS" the words "Names to be entered in order of seniority of appointment as junior assistant" are hereby repealed, and the words "Names to be entered in order of seniority of appointment as head teacher or assistant" are hereby substituted.

Male teachers employed at the passing of the Principal Act and who were certificated at the time of its coming into operation shall be eligible for promotion to any class though not possessing the literary qualification therefor, and male licensed teachers employed at the passing of the Principal Act shall be eligible for promotion to the fourth class and to third class assistantships, and female teachers employed and licensed at the passing of the Act shall be eligible for promotion to any class though not possessed of the literary qualification therefor, and all female teachers and male certificated teachers as aforesaid shall be entitled to the privileges accruing under section sixty-four of the Principal Act to teachers the class of whose school is raised, and all licensed teachers as aforesaid shall be entitled to the same privileges when their schools are raised to the fourth class but not to a higher class, unless the Minister, on the recommendation of the Secretary and Inspector-General, certify that in any such case any such teacher is not deserving of such privileges.

And the said Part II. of the said Schedule shall be read accordingly.

The following amendments shall be made in the Sixth Schedule of "*The Public Service Act* 1883."

The words "a first female assistant teacher of the second or the third class" are hereby repealed, and the words "a first female assistant teacher of the second class" are hereby substituted.

The words "a first female assistant teacher of the fourth class" are hereby repealed, and the words "a first female assistant teacher of the third class" are hereby substituted.

And the words "a first female assistant teacher of the fifth class" are hereby repealed, and the words "a first female assistant teacher of the fourth class" are hereby substituted.

Amendment proposed that after the word "schools" in the twenty-sixth line of the schedule, the following words be inserted, viz.:—"or as second female assistants in first class schools."

Question that the words proposed to be inserted be so inserted—put.

Committee divided.

Ayes, 14.	Noes, 6.
The Hon. J. S. Butters	The Hon. J. Bell
D. Coutts	H. Cuthbert
D. Ham	T. Dowling
C. H. James	Sir J. Lorimer
W. McCulloch	N. Thornley
J. P. MacPherson	H. Gore (*Teller*).
D. Melville	
W. H. S. Osmand	
Lt.-Col. Sargood	
W. P. Simpson	
W. E. Stanbridge	
D. C. Sterry	
G. Young	
J. Balfour (*Teller*).	

WEDNESDAY, 19TH DECEMBER, 1888.

No. 5.—ELECTORAL ACT AMENDMENT BILL.—Clause 47.—It shall not be lawful for any person on any one day to vote in more than one electoral district at any election of members of the Legislative Assembly (notwithstanding anything in any Act of Parliament contained); and if any person vote contrary to the provisions hereinbefore in this section contained or if any person having voted at any such election vote again on any day to which any such election has been adjourned, he shall on conviction thereof before any two or more justices forfeit and pay a sum not exceeding Fifty pounds or in default may be imprisoned for any period not exceeding three months.

Question that this clause stand part of the Bill—put.

Committee divided.

Ayes, 9.	Noes, 22.
The Hon. Dr. Beaney	The Hon. J. Balfour
J. Bell	J. Buchanan
H. Cuthbert	J. S. Butters
G. Davis	Sir W. J. Clarke, Bart.
D. Ham	J. H. Connor
D. Melville	S. W. Cooke
W. H. Roberts	D. Coutts
W. A. Zeal	T. Dowling
Dr. Le Fevre (*Teller*).	H. Gore
	C. J. Ham
	C. H. James
	W. McCulloch
	J. P. MacPherson
	W. H. S. Osmand
	W. Pearson
	Lt.-Col. Sargood
	J. Service
	W. E. Stanbridge
	J. A. Wallace
	A. Wynne
	G. Young
	F. Ormond (*Teller*).

No. 6.—Chinese Immigration Restriction Bill.—

Clause 4. This Act shall not apply—

(i.) To any person duly accredited to the Government of any of Her Majesty's possessions in Australasia by any Government as its representative, nor to any person sent by any Government on any special mission.

(ii.) To any person being a member of the crew of any vessel if such person is not discharged therefrom in Victoria and does not land in Victoria except in the discharge of his duties in connection with such vessel.

(iii.) To any persons or any class of persons who are for the time being exempted (as hereinafter provided) from the provisions hereof.

(iv.) To any Chinese woman or to any child under twelve years of age, provided that there shall not be allowed more than three women and six children for each 500 tons of the tonnage of any vessel entering any port or place in Victoria.

Amendment proposed—That at the end of the clause the following words be added:—

(v.) To any Chinese who has taken out or who shall take out letters of naturalization in Victoria.

Question—That the words proposed to be added be so added—put.

Committee divided.

Ayes, 17.	Noes, 6.
The Hon. S. Austin	The Hon. J. Bell
J. Buchanan	G. Davis
J. S. Butters	Dr. Le Fevre,
Sir W. J. Clarke, Bart.	Sir J. Lorimer
S. W. Cooke	J. Service
T. Dowling	H. Cuthbert (*Teller*).
H. Gore	
C. J. Ham	
D. Ham	
C. H. James	
W. McCulloch	
J. P. McPherson	
D. Melville	
W. H. S. Osmand	
W. E. Stanbridge	
J. A. Wallace	
J. Balfour (*Teller*).	

No. 7.—Chinese Immigration Restriction Bill.—Clause 9.—Any Chinese who enters Victoria by land without first obtaining a permit in writing from some person to be appointed by the Governor in Council shall be guilty of a misdemeanour, and shall be liable on conviction to a fine not exceeding Fifty pounds or imprisonment with or without hard labour for any term not exceeding six calendar months, and in addition or substitution for any such imprisonment shall be liable pursuant to any warrant or order of the justices before whom he is convicted to be removed or deported to the colony from which he has come.

Question—That this clause stand part of the Bill—put.

Committee divided.

Ayes, 4.	Noes, 17.
The Hon. H. Cuthbert	The Hon. S. Austin
G. Davis	J. Balfour
Sir J. Lorimer	J. Buchanan
J. Bell (*Teller*).	J. S. Butters
	Sir W. J. Clarke, Bart.
	S. W. Cooke
	T. Dowling
	H. Gore
	C. J. Ham
	W. McCulloch
	J. P. MacPherson
	D. Melville
	W. H. S. Osmand
	J. Service
	W. E. Stanbridge
	J. A. Wallace
	C. H. James (*Teller*).

No. 8. PORT MELBOURNE LAGOON NUISANCE SUPPRESSION BILL.—Clause 11.—When all the lands described in Part I. of the Schedule hereto other than those dedicated to the public as aforesaid have been sold the Board shall after defraying out of the moneys received from the sale thereof so much of the cost of the works authorized and directed by this Act as cannot be defrayed out of moneys contributed by the various corporations hereinbefore by this Act directed to contribute "divide the amount remaining into two equal parts, and one of such parts shall be paid to the mayor councillors and citizens of the city of South Melbourne, and the other of such parts shall be paid to the mayor councillors and burgesses of the town of Port Melbourne, and the said moneys are hereby appropriated accordingly."

If at the time when any payment to any of the said corporations becomes due under the provisions of this section any sum is then due under the provisions of this Act to Her Majesty or the Board by such corporation the Board may set off the sum so due to such corporation against the sum due by it as aforesaid.

Amendment proposed—That the words after the word "contribute" in line five to and inclusive of the word "accordingly" in line nine of the above clause be omitted with the view of inserting "repay to the municipalities of South Melbourne and Port Melbourne the sums advanced by them respectively."

Question—That the words proposed to be omitted stand part of the clause—put.

Committee divided.

Ayes, 11.	Noes, 10.
The Hon. S. Austin	The Hon. J. Balfour
J. S. Butters	G. Davis
S. W. Cooke	C. J. Ham
H. Cuthbert	W. McCulloch
T. Dowling	J. P. MacPherson
H. Gore	D. Melville
D. Ham	W. H. S. Osmand
Dr. Le Fevre	J. Service
Sir J. Lorimer	J. A. Wallace
W. E. Stanbridge	C. H. James (*Teller*).
J. Bell (*Teller*).	

No. 9.—Clause 11.

Motion made, and question put—That the Chairman do leave the Chair.—(*Hon. D. Melville*).

Ayes, 11.	Noes, 9.
The Hon. J. S. Butters	The Hon. S. Austin
G. Davis	J. Bell
T. Dowling	H. Cuthbert
C. J. Ham	H. Gore
C. H. James	D. Ham
W. McCulloch	Sir J. Lorimer
D. Melville	J. P. MacPherson
J. Service	W. H. S. Osmand.
W. E. Stanbridge	Dr. Le Fevre (*Teller*).
J. A. Wallace.	
S. W. Cooke (*Teller*).	

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

ADDRESS OF CONDOLENCE ON THE OCCASION OF THE DEATH OF THE LATE EMPEROR FREDERICK III. OF GERMANY.

DESPATCH FROM THE RIGHT HONORABLE THE SECRETARY OF STATE FOR THE COLONIES WITH ENCLOSURES.

Ordered by the Legislative Council *to be printed, 11th September, 1888.*

HENRY B. LOCH,
Governor.

With reference to the Address of Condolence from the Legislative Council on the occasion of the death of the late Emperor Frederick III. of Germany, the Governor now begs to transmit a copy of a Despatch and its enclosures which he has received from the Right Honorable the Secretary of State for the Colonies conveying the thanks of His Imperial Majesty the Emperor William of Germany for the expressions of kindly sympathy conveyed therein.

Government House,
Melbourne, 11th September, 1888.

DESPATCH FROM THE RIGHT HONORABLE THE SECRETARY OF STATE FOR THE COLONIES TO THE GOVEROR OF VICTORIA.

VICTORIA.
No. 71.

Downing-street,
28th July 1888.

SIR,

My telegram of the 28th ultimo informed you that the messages of condolence received in your telegrams of the 20th and 21st ultimo, from the Legislative Council and Assembly of Victoria, on the occasion of the death of the German Emperor, would be duly presented at Berlin; and I have the honour to transmit to you, for communication to those bodies, a copy of a letter from the Foreign Office, with its enclosures, conveying the thanks of His Majesty the Emperor and King for these expressions of kindly sympathy. 21st July.

I have the honour to be, Sir,
Your most obedient humble servant,
KNUTSFORD.

Governor
SIR HENRY LOCH, G.C.M.G., K.C.B.,
&c., &c., &c.

B 1.—2833.

THE FOREIGN OFFICE TO THE COLONIAL OFFICE.

[COPY.]

Foreign Office,
July 21st, 1888.

SIR,

Sir E. Malet. Treasury, No. 66, July 14, 1888.

With reference to your letter of the 29th ultimo, I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Lord Knutsford, a copy of a Despatch from Her Majesty's Ambassador at Berlin, conveying the thanks of His Majesty the Emperor William for the message of condolence from the Legislative Council of Victoria.

I am, &c.,
JAMES FERGUSON.

THE UNDER-SECRETARY OF STATE,
Colonial Office.

SIR E. B. MALET TO THE MARQUIS OF SALISBURY.

[COPY.]

MY LORD,

Berlin, July 14th, 1888.

With respect to Your Lordship's Despatch of the 3rd instant, I have the honour to transmit to Your Lordship herewith translation of a note which I have received from Count Bismarck, in which His Excellency states that he has been commanded by the Emperor to convey His Majesty's thanks to the Legislative Council of Victoria for their telegram of condolence on the occasion of the death of His Majesty's father, the late Emperor Frederick.

I have, &c.,
E. B. MALET.

THE MARQUIS OF SALISBURY,
&c., &c., &c.

COUNT BISMARCK TO SIR E. MALET.

[COPY.—TRANSLATION.]

Foreign Office,
Berlin, July 12th, 1888.

The undersigned has the honour to inform His Excellency Sir E. Malet, in reply to his note of the 6th instant, that he did not fail to convey to its high destination the message transmitted by telegraph, in which the Legislative Assembly of Victoria expressed their sympathy on the occasion of the death of his late Majesty the Emperor Frederick.

His Majesty the Emperor and King was most agreeably touched with this expression of sympathy, and has instructed the undersigned to avail himself of the Ambassador's good offices in order to express to those who sent the telegram His Majesty's thanks for their friendly sympathy.

The undersigned, in thus obeying His Majesty's commands, avails himself, &c.

H. BISMARCK.

His Excellency
SIR E. MALET,
&c., &c., &c.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

TELEGRAPHIC CABLE BETWEEN CANADA AND AUSTRALIA.

RETURN to an Order of the *Legislative Council*,

Dated 24th July 1888, *for*—

COPIES of all Correspondence with the Secretary of State for the Colonies with the Government of Canada, and (if any) with the other Australasian Colonies, relative to the Laying of a Telegraphic Cable between Canada and Australia, or to a Preliminary Marine Survey having that object in view.

(The Honorable James Service.)

Ordered by the Legislative Council *to be printed* 18*th September*, 1888.

By Authority:
ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

ABSTRACT.

No.	From Whom.	To Whom.	Subject.	Date.	Page.
P. 86/3709	Mr. Sandford Fleming, Ottawa, Canada	Mr. A. Deakin, Chief Secretary of Victoria	Submits proposals for connecting the Australasian Colonies by Submarine Telegraph with Canada, and through Canada with Great Britain. Encloses printed documents in relation thereto. *Vide* Appendix 1	1886. 4 Nov.	7
P. 86/3710	Mr. Sandford Fleming	Mr. Deakin ...	Encloses Parliamentary Returns and other printed documents on the same subject. *Vide* Appendix 2	8 „	8
No. 87/48	The Secretary to the Premier	Mr. Sandford Fleming	Acknowledges the receipt of the foregoing letters; the subject will receive consideration	1887. 6 Jan.	8
No. 87/230	Mr. Owen Jones, Secretary (*pro tem.*) to the Pacific Telegraph Company Limited	Mr. Gillies, Premier of Victoria	Forwards a statement respecting the Company which has been formed for the establishment of telegraphic communication between Great Britain and Australasia by the Pacific route; states the advantages of the route	1886. 8 Dec.	9
No. 87/300	The Secretary to the Premier	Mr. Owen Jones ...	Acknowledges the receipt of the above; the subject will be considered	1887. 27 Jan.	10
No. 87/482	The Secretary to the Premier	Mr. Owen Jones ...	Informs that communication of the 8th December has been carefully perused by the Postmaster-General; also by the Premier: however, pending the deliberations of the Colonial Conference in London, Ministers are holding the matter over	9 Feb.	10
P. 87/280	Sir Graham Berry, Agent-General	Mr. Gillies ...	Forwards a copy of the Pacific Cable Company's proposals; also copy of a letter from the Chairman of the Eastern Extension Company, with enclosures	1886. 24 Dec.	11
Enclosure 1	Mr. Owen Jones ...	Mr. Gillies ...	*Vide* P.87/230 *supra.*		
Enclosure 2	Mr. Pender, Chairman, Eastern Extension Telegraph Company	Mr. Gillies ...	Furnishes information as to the existing Telegraph Cables and the best method for ensuring cheap tariffs for Cablegrams; also a Memorandum relative to the proposed Pacific Cable	23 „	11
No. 87/516	Mr. Gillies ...	Sir Graham Berry ...	Acknowledges the receipt of the above letter; informs of having already received Mr. Owen Jones's letter of 8th December, and encloses copy of reply. *Vide* No. 87/482 *supra.*	1887. 11 Feb.	16
P. 87/773	Hon. E. Stanhope, Secretary of State for the Colonies	Sir H. B. Loch, Governor of Victoria	Asks for a reply to Mr. Pender's letter and memorandum of 23rd December. *Vide* enclosures to P.87/280 *supra*	13 Jan.	16
P. 87/1018	Sir Graham Berry ...	Mr. Gillies ...	Forwards copy of a letter from the Secretary of the Pacific Telegraph Company enclosing a reply to Mr. Pender's Memorandum	11 Mar.	16
Enclosure	Hon. H. Finch-Hatton, Secretary, Pacific Telegraph Company	Sir Graham Berry ...	Communicates the reply of the Pacific Telegraph Company, as indicated above	4 „	17

No.	From Whom.	To Whom.	Subject.	Date.	Page.
				1887.	
P. 87/2609	Sir Graham Berry ...	Mr. Gillies ...	Transmits a copy of Correspondence, &c., on the subject of a Survey in connexion with Cable Communication from Australasia to Canada	22 July	20
Enclosure 1	Delegates to the Colonial Conference	Sir H. Holland, Secretary of State for the Colonies	Request that the question of submerging Cables in the Pacific Ocean may be tested by a Nautical Survey	16 May	20
Enclosure 2	Mr. Sandford Fleming	Mr. Baillie Hamilton, Secretary to the Colonial Conference	Brings the preceding letter under notice	16 „	21
Enclosure 3	Hon. R. H. Meade, Under Secretary, Colonial Office	Mr. E. MacGregor, Secretary to the Admiralty	Requests that Mr. Sandford Fleming may be put in communication with the Hydrographer to the Admiralty	23 „	21
Enclosure 4	Secretary to the Admiralty	Under Secretary, Colonial Office	States that the Hydrographer will confer with Mr. Fleming. Suggests, however, that the desired soundings be not taken specially, unless the matter be urgent	28 „	22
Enclosure 5	Under Secretary, Colonial Office	Mr. Sandford Fleming	Communicates the Admiralty letter, as above	3 June	22
Enclosure 6	Mr. Sandford Fleming	Under Secretary, Colonial Office	Presses for a reconsideration of the views of the Admiralty on account of the great importance of the question	8 „	22
Enclosure 7	... ...	... ...	Resolutions of the Colonial Conference on the subject of the proposed Submarine Pacific Telegraph Route	6 May	23
P.O. 87/3278	Hon. H. Finch-Hatton	Mr. F. T. Derham, Postmaster-General of Victoria	Requests favorable consideration for the Pacific Cable Company's proposal to lay a Cable from Vancouver Island to Australia, as laid before the Colonial Conference on 6th May, 1887	12 „	24
Enclosure	Hon. H. Finch-Hatton	Sir H. T. Holland ...	Submits proposal as above	3 „	24
P. 87/3576	Mr. Sandford Fleming	Mr. Deakin ...	Calls attention to *previous Correspondence. States action taken by him in consequence of the attitude of the Admiralty in the matter, and submits a Memorandum showing how the desired survey can be made by Canada and Australasia in conjunction. Has similarly addressed other Colonies * Received through the Agent-General, *vide* P.87/2609 *supra.*	26 Sept.	25
Enclosure	... ...	... ...	Memorandum by Mr. Sandford Fleming, as above described	26 „	26
No. 87/ 4818–23	Mr. Gillies ...	Premiers, &c., of the Australasian Colonies	Telegram. Suggests that the proposed survey be set forward by the Colonial Ministries moving their several Governors to recommend the adoption by the Imperial Government of the Colonial Conference Resolutions of 6th May	23 Dec.	30
No. 87/4833	Mr. Gillies ...	Sir Graham Berry ...	Telegram. Directs inquiry to be made if Mr. Fleming's letter to the Colonial Office of the 8th June has yet been answered	23 „	30
P. 87/4098	Sir H. A. Atkinson, Premier of New Zealand	Mr. Gillies ...	Telegram. States that he has acted on Mr. Gillies' suggestion of the 23rd inst.	24 „	30

No.	From Whom.	To Whom.	Subject.	Date.	Page.
				1887.	
P. 87/4115	Sir S. W. Griffith, Premier of Queensland	Mr. Gillies ...	Telegram. Would like to discuss the matter with Mr. Gillies before taking the action suggested	28 Dec.	30
No. 87/4866	Mr. Gillies ...	Sir S. W. Griffith ...	Telegram. States that he had felt sure of the concurrence of Queensland with the course he is taking. Inquires as to objections to this course	28 „	31
P.87/4122	Mr. Fysh, Premier of Tasmania	Mr. Gillies ...	Telegram. Gives reasons for not moving in the matter at present. Thinks that question should be referred to the forthcoming Postal and Telegraph Conference	28 „	31
P.87/4144	Sir S. W. Griffith ...	Mr. Gillies ...	Telegram. Thinks that Governors should not be moved until Mr. Sandford Fleming's proposals have been considered	30 „	31
No. 87/4912	Mr. Gillies ...	Sir S. W. Griffith ...	Telegram. Explains as to the course of procedure which he had in view	30 „	31
				1888.	
P.88/51	Mr. Playford, Premier of South Australia	Mr. Gillies ...	Telegram. Regards the Pacific Cable Survey as a question for discussion at the intended Conference	4 Jan.	31
P.88/89	Sir M. Fraser, Colonial Secretary of Western Australia	Mr. Gillies ...	Telegram. Considers the question premature	7 „	32
P.88/137	Sir Graham Berry ...	Mr. Gillies ...	Telegram. Communicates the reply of the Admiralty to Mr. Sandford Fleming's letter of 8th June	12 „	32
P.88/490	Sir Graham Berry ...	Mr. Gillies ...	Encloses copy of a Despatch from the Secretary of State to the Governor-General of Canada respecting the Pacific Cable	13 „	32
				1887.	
Enclosure 1	Sir H. Holland ...	Marquis of Lansdowne, Governor-General of Canada	States that the Imperial Government would be prepared to accelerate the survey if the Colonial Governments concerned would provide the cost	12 July	32
Enclosure 2	Sir Graham Berry ...	Mr. Gillies ...	Telegram. *Vide* P.88/137 *supra.*		
				1888.	
P.88/619	Sir S. W. Griffith ...	Mr. Gillies ...	Telegram. Asks whether Victoria has made representations to the Imperial Government *in re*, and how the matter stands generally	24 Feb.	33
No. 88/757	Mr. Gillies ...	Sir S. W. Griffith ...	Telegram. Gives the present position of the matter as desired, and thinks that the Home Government might now be addressed *in re*	25 „	33
No. 88/897	Mr. Gillies ...	Sir H. B. Loch ...	Brings under notice a Resolution of the recent Postal Conference regarding the proposed Pacific Cable Survey, and asks that the Imperial Government may be moved to undertake the survey accordingly	5 Mar.	33
No. 88/978	Mr. Gillies ...	Sir Graham Berry ...	Forwards copy of the above	9 „	34
P.88/1415	Sir H. B. Loch ...	Mr. Gillies ...	Communicates a Cablegram from the Colonial Office respecting the desired survey	28 April	34

APPENDICES.

1. Enclosures to Mr. Sandford Fleming's letter of 4th November, 1886.

2. Memorandum by Mr. Sandford Fleming, with documents attached (enclosed in letter of 8th November, 1886), bearing date 20th November, 1882.

3. The Pacific Telegraph Company's proposals as first submitted to the Colonial Conference, dated 20th April, 1888.

4. Two papers submitted by Mr. Sandford Fleming to the Colonial Conference on 27th April and 6th May, 1888.

5. Statement showing the countries through which Australian and European telegrams pass—

(*a.*) From Victoria to England, *vid* Asia.

(*b.*) On the proposed Pacific route.

CORRESPONDENCE.

P.86/3709.

FROM MR. SANDFORD FLEMING, C.M.G., TO THE CHIEF SECRETARY OF VICTORIA.

SIR, Ottawa, Canada, 4th November, 1887.

I beg leave to address you on behalf of a company whose object is to connect the Australian Colonies telegraphically with the Dominion of Canada, and through Canada with Great Britain.

The *printed documents which I have the honour to enclose include communications which show that the Government of Canada has taken the initiative in endeavouring to obtain the assistance of Her Majesty's Government as well as the co-operation and assistance of the several Colonial Governments interested in the undertaking.

* Printed as Appendix I., pages 37-43.

Since the dates of the within documents the Pacific and Atlantic coasts of North America have been brought into telegraphic connexion by a new telegraph system, the main line of which crosses the continent by the route of the Canadian Pacific Railway. The new system extends, or will shortly extend, to all the principal cities in Canada and the United States; in connexion with an Atlantic cable it connects Vancouver, the western terminus of the Canadian Pacific Railway, telegraphically with England.

On behalf of the company I represent, I have effected arrangements by which Australian telegraphic messages on reaching Vancouver can be transmitted to England at remarkably low tariff rates.

From London to Vancouver is two-fifths the whole distance to Australia, and it is proposed to establish telegraphic connexion over the remaining three-fifths by laying electric cables across the Pacific from Vancouver.

The total length of cable to be laid, allowing for slack, is estimated at 8,900 nautical miles.

A moderate subsidy from each of the several Governments will enable the company to complete the undertaking and secure to the Colonies a very great reduction in the cost of telegraphy, together with the important advantages which will accrue from the possession of a new and independent line of communication.

The rate at present charged for the transmission of ordinary messages between England and Victoria is nine shillings per word. On the opening of the new line the charges will certainly be reduced to four shillings per word, and the company will be prepared to enter into engagements which will secure a still further reduction. It is firmly believed that with the new line established, and an improved system of working introduced, in a short time the business will be greatly augmented, and the charges will be lowered to three shillings per word, eventually to two shillings and sixpence for the whole distance.

The annual subsidy required to secure the establishment of the line, as estimated by a committee of gentlemen in London last July, for the High Commissioner for Canada, will be found at page 27* of the accompanying documents. If the arrangements therein referred to with the Imperial Government be effected, the estimated subsidy may be apportioned as follows:—

* See Appendix I., page 43 of this Return.

(1.) Great Britain, on behalf of the United Kingdom, India, and the Crown Colonies	£45,000
(2.) Canada	9,000
(3.) Queensland	9,000
(4.) New South Wales	9,000
(5.) Victoria	9,000
(6.) New Zealand, Tasmania, and Western Australia ...	9,000
	£90,000

If your Government should have a preference for assisting the enterprise in part on the principles laid down on pages 16, 20, and 25,* the fixed subsidy might proportionately be diminished. I would venture to suggest that a bonus which would be equal to four per cent., or one twenty-fifth part of the savings effected in each year by the reduction in rates on the gross foreign telegraph business of the colony, would admit of a considerable reduction in the subsidy. If assistance takes this form, it is obvious that for every two shillings and one penny (2s. 1d.) saved, the community would gain directly and indirectly two shillings, while the odd penny would become payable to the company by whose instrumentality the gain would be effected. Whatever the amount of subsidy, a direct equivalent is offered in return on the part of the company. Referring to pages 10, 17, and 28,* it will be seen that it is proposed to transmit all Government messages free of charge, thus affording to each contributing Government a direct return in each year for the whole subsidy granted.

* See Appendix I., pages 40, 41, 42.

* See Appendix I., pages 38, 40, 43.

No one can doubt that the establishment of telegraphic connexion by the new route between the Australian Colonies, New Zealand, and Great Britain will prove of great advantage to Victoria and to the whole Colonial Empire. I trust, therefore, it may be confidently assumed that your Government will co-operate in carrying out a work of so much general importance.

Under the circumstances in which I write, I hope I may be pardoned for addressing you, and I may be permitted to add that it will be a great satisfaction to all interested in the question I have ventured to bring before you to learn in what form your Government will be disposed to assist in promoting the undertaking.

I have, &c.,
SANDFORD FLEMING.

THE HONORABLE THE CHIEF SECRETARY OF VICTORIA,
MELBOURNE.

P.86/3710.

FROM MR. SANDFORD FLEMING TO THE CHIEF SECRETARY OF VICTORIA.

SIR, Ottawa, Canada, 8th November, 1886.

I had the honour to address you a few days back in reference to the proposal to connect the Australian Colonies and New Zealand telegraphically with Canada and Great Britain by a direct cable across the Pacific Ocean. I now beg leave to enclose *parliamentary returns bearing upon the subject.

It will be seen by these papers that the question of establishing a submarine telegraph across the Pacific has for several years back been before the Canadian Government.

* Senate Return, 19th March, 1881. Memorandum, 20th November, 1882.†—Printed as Appendix II., pages 44–50.

I have, &c.,
SANDFORD FLEMING.

THE HONORABLE THE CHIEF SECRETARY OF VICTORIA,
MELBOURNE.

No. 48/87.

FROM THE SECRETARY TO THE PREMIER TO MR. SANDFORD FLEMING.

Premier's Office,
SIR, Melbourne, 6th January, 1887.

I have the honour, by direction of the Premier, to acknowledge the receipt of your letters, dated the 4th and 8th November last, respectively, submitting a proposal to connect the Australian Colonies by telegraph with the Dominion of Canada.

Mr. Gillies desires me to inform you that the subject will receive consideration.

I have, &c.,
E. J. THOMAS,
Secretary to the Premier.

SANDFORD FLEMING, ESQ., C.M.G., &c., &c.,
OTTAWA, CANADA.

† Return (41), 4th Session, 4th Parliament of Dominion of Canada, 45 Vict. 1882—not reprinted. For abstract of the contents, however, *vide* Appendix 6 to the memorandum enclosed with this letter.

P.87/230.

FROM THE SECRETARY THE PACIFIC TELEGRAPH COMPANY LIMITED, LONDON, TO THE PREMIER OF VICTORIA.

Pacific Telegraph Company Limited,
34 Clement's-lane, Lombard-street, London, E.C.,
8th December, 1886.

SIR,

I am instructed to notify to you that a company, under the above title, was registered in London on the 23rd November, 1886, and that its first meeting was held yesterday.

The captial of the company is two millions sterling.

It has been formed for the purpose of establishing an entirely new line of telegraphic communication between England and Australasia—a line under exclusively British control. Favorable terms having been secured by the company for the transmission of their messages between England and Vancouver Island, all that will remain to complete the chain of communication will be the laying of a submarine cable from the latter point to New Zealand and Australia, touching at Hawaii and Fiji. The soundings already taken by the U.S. surveying ship *Tuscarora* along the projected line afford the certainty that the Pacific Ocean bed will be found extremely favorable for laying the proposed cable.

The following advantages are confidently claimed for the scheme:—

1. That, from an Imperial and strategic point of view, it is impossible to overestimate its importance. It will, in fact, supply the one essential link which is now wanting to complete the chain of Imperial security. It will place our Pacific fleet in direct relations with the Home Government on the one hand, and with Australasia on the other, while affording in case of war the only trustworthy communication between England, Australasia, India, and the East. The land lines used by the company, being exclusively on British territory, will be completely protected in time of war, and following, as they do, a main line of railway, will be at all times under constant supervision, and not liable to interruption.

2. The Continent of America will be placed for the first time in direct electric communication with Australasia and the islands of the Pacific, and a great development of the Pacific trade must follow as a natural consequence.

3. The company will be enabled to reduce materially the existing tariffs between England and Australasia.

The signatories to the Articles of Association, whose names I annex, are gentlemen of influence in England or occupying positions in the Dominion of Canada and Australasia, and representing, as they do, the varied interests of the Home and Colonial possessions, they accurately reflect the amount of support which the company may expect to receive from their respective Governments.

It is the desire of this company to enter into negotiations with the Government which you represent, and with the other Governments interested, with the view of obtaining from them assistance in carrying out this important Imperial project, and I shall hope to learn from you that your Government will look with favour on the scheme, and will afford it their countenance and support.

I have, &c.,

OWEN JONES,
Secretary (*pro tem.*) Pacific Telegraph Company Limited.

List of Signatories to the Articles of Association of the Pacific Telegraph Company Limited.

The Earl of Milltown, representative peer of Ireland in the Parliament of Great Britain.

Sir Donald A. Smith, director Hudson's Bay Company, Montreal.

Sir James P. Corry, Bart., M.P., member for Armagh in the Parliament of Great Britain.

Sir Daniel Cooper, Bart., London.

The Viscount Folkestone, M.P., member for Middlesex in the Parliament of Great Britain, Comptroller of H.M. Household.

Hugh G. Reid, Esq., J.P., Warley Hall, near Birmingham.

Sir Alfred Slade, Bart., Receiver-General of H.M. Inland Revenue.

Sandford Fleming, Esq., C.M.G., director Canada-Pacific Railway and Hudson's Bay Company, Ottawa.

J. Henniker-Heaton, Esq., M.P., member of Parliament of Great Britain for Canterbury.

E. M. Young, Esq., banker, London, general manager of the Australian Mortgage, Land, and Investment Company.

Edward Palliser, Esq., late captain 7th Hussars.

Randolph C. Want, Esq., solicitor, London.

Sir W. J. Clarke, Bart., Queen-street, Melbourne.

The Hon. P. Perkins, London, late Minister of Public Works, Queensland.

Sir Samuel Wilson, Bart., M.P., member for Portsmouth in the Parliament of Great Britain.

The Hon. Murray E. G. Finch Hatton, M.P., member for Lincolnshire in the Parliament of Great Britain,

George Coote, Esq., F.S.I., Smeetham Hall, Sudbury.

No. 300/87.

FROM THE SECRETARY TO THE PREMIER TO THE SECRETARY PACIFIC TELEGRAPH COMPANY LIMITED.

Premier's Office,
Melbourne, 27th January, 1887.

SIR,

I am directed by the Premier to acknowledge the receipt of your letter of the 8th December last respecting the establishment of the Pacific Telegraph Company Limited, and requesting that the company may receive the support of this Government.

I am to state that the subject-matter of your letter will receive due consideration.

I have, &c.,
E. J. THOMAS,
Secretary to the Premier.

THE SECRETARY PACIFIC TELEGRAPH COMPANY LIMITED,
34 Clement's-lane, Lombard-street, London, E.C.

No. 482/87.

FROM THE SECRETARY TO PREMIER TO THE SECRETARY PACIFIC TELEGRAPH COMPANY, LONDON.

Premier's Office,
Melbourne, 9th February, 1887.

SIR,

In continuation of my letter of the 26th ultimo., No. 300, I have the honour to inform you that your letter of the 8th December, asking the co-operation of this Government in connexion with a proposal to establish telegraphic communication between England and Australasia *viâ* America, has had careful perusal by the Honorable the Postmaster-General, as well as by Mr. Gillies himself.

In reply, I am directed by Mr. Gillies to say that the improving of cable communication with Australasia is a subject the importance of which is fully apprehended by this Government. You will, no doubt, however, be aware that a Conference is about to be held in London, of representatives of the principal Colonial Governments, and that the question of the promotion of commercial and social relations, by the development of postal and telegraphic communication, is to have a prominent place in the deliberations of the Conference.

Under these circumstances, it would seem desirable to wait the result of the proceedings of the Conference before dealing with matters of the nature referred to.

I enclose for your further information a copy of the despatch from the Right Honorable the Secretary of State for the Colonies relative to the Conference, in paragraph 5 of which you will observe the passage referred to relating to this subject.

I have, &c.,
E. J. THOMAS.

OWEN JONES, Esq., Secretary *pro tem.*,
Pacific Telegraph Company Limited,
Clement's-lane, Lombard-street, London.

[Enclosure.]

Extract from Despatch from the Secretary of State for the Colonies to the Governor of Victoria.

Downing-street, 25th November, 1887.

* * * * * * * * * * * *

5. Second only in importance to this great question is one concerning in a special degree the interests of the Empire in time of peace. The promotion of commercial and social relations by the development of our postal and telegraphic communications could be considered with much advantage by the proposed Conference. It is a subject the conditions of which are constantly changing. New requirements come into existence and new projects are formulated every year. It is obviously desirable that the question of Imperial intercommunication should be considered as a whole, in order that the needs of every part of the Empire may, as far as practicable, be provided for, and that suggestions may be obtained from all quarters as to the best means of establishing a complete system of communications without that increased expenditure which necessarily results from isolated action.

P.87/280. From the Agent-General to the Premier.

Victoria Office, Victoria-street, Westminster, S.W.,

Sir, 24th December, 1886.

In continuation of previous correspondence on the subject of transatlantic telegraphic communication, I have the honour to enclose for your information copy of a letter which I have received from the Pacific Telegraph Company Limited, submitting for your consideration, and that of the other Governments interested, a proposal for the establishment of a new line between England and Australasia, to be exclusively under British control.

I have also received, on the eve of closing the mail, a letter from the Eastern Extension Telegraph Company with reference to the question of cheapening the cable charges between the Australasian Colonies and Great Britain. A copy of this letter, with its enclosures, is also forwarded herewith for your information.

I have, &c.,

The Honorable the Premier, Melbourne. Graham Berry.

[Enclosure 1.]

Vide P.87/230 *ante*.

[Enclosure 2.]

The Eastern Extension, &c., Telegraph Company Limited.

50 Old Broad-street, E.C.,

Sir, 23rd December, 1886.

I have the honour to inform you that, in view of the Conference proposed by the Secretary of State for the Colonies, to be held in this country early next year, I have forwarded a letter to your Government, containing information in regard to the existing telegraphic communication, and as to the best manner, in my judgment, of cheapening the cable charges between the Australasian Colonies and Great Britain, and enclosed I send you a printed copy of the letter for your information.

I also enclose a copy of a memorandum which I have forwarded to the Colonies in reference to the proposed Pacific cable.

I have, &c.,

Sir Graham Berry, K.C.M.G., &c., &c., Agent-General for Victoria. John Pender, Chairman.

[Sub-Enclosure 1.]

The Eastern Extension Australasia and China Telegraph Company Limited.

Winchester House, 50 Old Broad-street,

Sir, London, E.C., 23rd December, 1886.

As the question of Imperial intercommunication, which will doubtless embrace submarine or international telegraphic communication, is referred to in the published

despatch addressed by the Secretary of State for the Colonies to the Colonial Governors, as one of the subjects for consideration at the Conference proposed to be held next year, and as the Eastern Extension Company, over which I have the honour to preside, is the pioneer of telegraphic communication with Australasia and is anxious to further serve the Colonies in every possible way, I take an early opportunity of placing before you the accompanying information in regard to the existing submarine telegraph cables and as to the best manner, in my judgment, of establishing cheap tariffs, in order that your Government may be in possession of all the facts of the case before deciding upon the instructions which they may deem it right to give to the delegates who will represent them at the Conference.

The Australasian Colonies are at present in telegraphic communication with the rest of the world by means of the Eastern Extension Company's cables as far as India and China; with Egypt, Africa, Europe, and the rest of Asia, by the lines of the Eastern Telegraph Company, the Indo-European Government Telegraph Department, and the Indo-European Telegraph Company (with which administrations the Eastern Extension Company has a working agreement), and with America, North and South, by the numerous cables laid across the Atlantic.

This communication between Australia and the outer world was established by the Eastern Extension Company in 1871, without subsidy or assistance of any kind from the Colonies or the Imperial Government, and, subsequently, when the importance of telegraphy became more fully recognised, and a duplicated system a public necessity, not because a single line was unequal to the transmission of the traffic, but in order to provide against the interruptions inseparable from a single line of cables, the Colonies of Victoria, New South Wales, South Australia, and Western Australia agreed to give the company a subsidy of £32,400 per annum for twenty years, to enable it to duplicate the cables between India and Port Darwin. Since then external submarine telegraphic communication may be said to have been practically uninterrupted, a result due to the duplication, and in some sections triplication, of the company's cables, and to the fact that they are laid for the most part in shallow water, and consequently easily repaired at almost all seasons of the year.

Thus the Colonies are at present furnished with a complete and efficient telegraphic service by the existing cables, which are not only equal to the transmission of a much larger traffic than they now carry, but enjoy the immense advantage of being under English control and worked by English operators throughout their whole length. It is true that objections have been made to the present communication on the ground of its being dependent upon a single land line through Australia, but this defect could be at once and at no great cost remedied by connecting the telegraph systems of South Australia and Queensland, a proposal which the Eastern Extension Company has long urged, and to carry out which has offered to lay a cable at its own expense from the River Roper to Normanton.

I may here point out that while the route between Australia and China and Europe followed by the cables of this and the allied companies is incomparably the most secure in time of peace, it would be the more surely and easily protected in time of war, inasmuch as it is one of the sea routes most frequented by the mercantile marine, and would, therefore, be the special object of the vigilant care of the Royal Navy.

I would, therefore, submit that the existing company, as the pioneer of telegraphic communication with Australasia, is entitled to a large share of consideration at the hands of the Colonies, and should have the earliest opportunity afforded to it of learning the views of the Colonial authorities as to any increased telegraphic facilities which may be desired, so that it may endeavour to meet their wishes as far as lies in its power.

With regard to the question of cheap tariffs, which has for some time past engaged the attention of the Colonies, there is no doubt that the existing charges are an obstacle to the general use of the telegraph. The Eastern Extension Company and its allied companies cannot, however, be reasonably asked to run the risks which a large reduction would involve, seeing that theirs is a commercial enterprise, and that after fifteen years' working they are only enabled to give a moderate return to their shareholders. They have already considerably cheapened telegraphy by reducing the original rate of £9 9s. for twenty words to a word rate of 9s. 4d. for public messages, and 2s. 8d. for the press, which for the distance traversed is one of the lowest press rates on record. The latter reduction the companies had long striven to bring about, and were only lately able, after patient and persistent effort, to overcome the opposition

to it by certain Government administrations. They have, moreover, shown in every possible way their desire to further reduce the tariff, and amongst other propositions submitted to your Government, the Eastern Extension Company has, subject to the assent and co-operation of the other interested administrations, offered to make the rate any figure acceptable to the Colonies down to the limit of their outpayments (at present 2s. 4d. per word), provided the average receipts for the last three years are guaranteed to them by the Colonies. The acceptance of this offer would of course reduce the companies' risk to a minimum so far as the traffic is concerned, but their responsibility of maintaining an efficient service would remain unchanged; on the other hand, it would give the Colonial Governments full control over the tariff, and enable them to establish a cheaper rate and on more favorable conditions than could be obtained in any other way.

If the tariff were reduced to 4s. per word, and 100 per cent. increase of traffic took place, the amount of guarantee required would be about £55,000, which, based on the 1884 Census and spread over all the Colonies, would be from—

Victoria	£16,353
New South Wales	15,672
New Zealand	9,599
South Australia	5,321
Queensland	5,274
Tasmania	2,221
Western Australia	560
	£55,000

Opinions have been frequently expressed by leading colonists and by the public and press that a large reduction of rates would lead to a correspondingly large increase of traffic. If these views should prove to be well founded, the suggested guarantee would be practically nominal. I cannot, therefore, help thinking that the guarantee proposal submitted by the Eastern Extension Company would be the solution of the tariff question most beneficial to the telegraphing public generally, and well worthy of the consideration of the Imperial Government and the Australasian Colonies.

As I am anxious that your Government should have the fullest possible information on the subject, which the company from their long practical experience can furnish, I have instructed the company's agents to accept from you and transmit as "service messages" all telegrams you may wish to forward to the company bearing upon this particular question.

I am, Sir,
Your most obedient humble servant,
(Signed) JOHN PENDER, Chairman.

TO THE HONORABLE THE POSTMASTER-GENERAL OF

[SUB-ENCLOSURE No. 2.]

Memorandum relative to proposed Pacific Cable.

My attention has been drawn to a proposal for the establishment of submarine telegraphic communication between the Australasian Colonies and Canada, *viâ* the Pacific.

As a scheme having this object in view has been for many years contemplated, and has received the careful consideration of the telegraph companies of which I am chairman, I may perhaps be permitted to state the grounds on which it has been regarded as one not calculated in the long run to attain the objects for which it is advocated, viz.:—

A substantial and permanent lowering of the tariff; and,

Secondly, the providing of a reliable alternative route, especially in time of war.

It is not disputed that to provide a *single* line of cables only between Australasia and Vancouver would require a capital of £2,000,000, but to put the line on the same footing of security as the existing telegraphic service, which is duplicated and in some places triplicated, a capital of over £4,000,000 would be required.

On the other side will be seen two estimates*, one based on the figures said to be given by the promoters of the Pacific cables, and the other on the experience of the several submarine telegraph companies with which I have been for many years connected, and which, I have no hesitation in stating, are figures that can be confidently relied upon.

* See pages 14 and 15.

Assuming for a moment the accuracy of the first, or promoters' estimate, it will be seen that in consideration of a subsidy of £100,000, the tariff is to be fixed at 4s. a word. But the companies which I have the honour to represent have offered the same tariff in consideration of a subsidy of £75,000 a year, and on the guarantee principle suggested by the companies a 4s. rate might be established on still more favorable conditions to the Colonies.

Let me now examine the promoters' estimate with a view to ascertaining how far the figures set forth in it are likely to be realized. Judging by the light of the experience gathered during many years of submarine telegraph management, I cannot estimate the expenses of working a single line of cables connecting Australia and Vancouver Island at less than £135,000 a year, or £85,000 a year in excess of the promoters' estimate. Again, the estimate of receipts seems to be greatly exaggerated. Assuming that a Pacific cable would take half the existing traffic with 100 per cent. increase, in consequence of the reduced tariff, the result would be a net revenue of £175,000 a year, or only just sufficient to meet debenture interest and working expenses.

From the above statement I think I am entitled to say that the establishment of telegraphic communication by the Pacific would merely operate to saddle the Colonies for 25 years with an annual payment of £100,000, at the same time augmenting the total capital invested in providing telegraphic communication between the Colonies and Great Britain by the large sum of £2,000,000 in the case of a single line, or £4,000,000 if it were duplicated.

It is urged, however, that admitting in time of peace the present means of communication are adequate, in time of war the existence of an alternative route would be a great advantage. The reply I would make to this is that it would be impossible for the British Government, however anxious to do so, to provide the necessary means of protection in the case of cables laid across the Pacific, far away from the routes followed by merchant ships, and at immense distances from coaling stations. Moreover, the Pacific line would necessarily consist of long stretches across enormous and practically unsurveyed depths, terminating on coral reefs, and would, consequently, be exposed to constant interruptions, which would render its maintenance most costly and difficult.

Instead of a Pacific cable benefiting the Colonies, I believe that the laying of such a line would only benefit its promoters and would be inimical to the interests of the telegraphing public, as it would inevitably lead to a war of tariffs which would eventually impoverish both the Pacific and the existing cables, and result in a starved and inefficient service, the only remedy for which would be higher tariffs or much larger contributions from the Colonies.

If the principal object which the Colonies have in view is to obtain a cheaper tariff, it would, I submit, be more profitable to apply the amount asked for by the promoters of the Pacific scheme, or whatever other sum the Colonies may be prepared to expend, towards enabling the Eastern Extension Company and its allied companies to make a substantial reduction in the present cable charges.

JOHN PENDER,
Chairman of the Eastern and Eastern Extension Australasia and China Telegraph Companies.

Winchester House, 50 Old Broad-street, London, E.C., 23rd December, 1886.

PACIFIC CABLE SCHEME.

As said to be put forward by Promoters—	Estimated cost by Eastern Extension Company, based on actual experience of Cable working—
Length, about 8,300 nautical miles.	Length, about 8,300 nautical miles.
Capital, say £2,000,000— £1,000,000 in £10 shares, £1,000,000 in 4 per cent. Debentures.	Capital, say £2,000,000.
Tariff, 4s. per word.	Tariff, 4s. per word (3s. for Pacific Cables and 1s. for Atlantic Cables and Land-lines).

PACIFIC CABLE SCHEME—*continued.*

EXPENSES.		EXPENSES.		
Cost of working, estimated at ...	£50,000	Cost of working Stations and London expenses	£20,000	
Interest on Debenture Capital at 4 per cent.	40,000	Two steamers and maintenance of Cables	40,000	
		Amortization to renew Cables in 20 years	75,000	
				£135,000
		Interest on Debenture Capital at 4 per cent.		40,000
	£90,000			£175,000
RECEIPTS.		RECEIPTS.		
Traffic, estimated at	£150,000	Half existing traffic with 100 per cent. increase, say 500,000 words at 3s. per word ...		£75,000
Subsidy	100,000	Subsidy required to cover expenses		100,000
	£250,000			£175,000
Leaving a balance of £160,000, or 16 per cent. Interest on the Share Capital.		Leaving nothing whatever for Interest on the Share Capital, which at 5 per cent. would require an additional subsidy of £50,000.		

NOTE.—The 6d. per word calculated for Atlantic Cables would probably be increased to 1s. or 1s. 6d., in which case balance for Pacific Cables would be 2s. 6d. or 2s. respectively, which would reduce the estimated receipts from £75,000 to £62,500 and £50,000 respectively.

If the Australasian Colonies granted the subsidy of £100,000 asked for by the promoters of the Pacific cable, the amount required from each colony on basis of population, as compared with the Eastern Extension Company's guarantee proposal (assuming that traffic increased 100 per cent. by reduction of tariff), would be as follows:—

Colony.	Subsidy for Pacific Scheme.	Proposed Guarantee to existing Companies for 4s. Tariff.
Victoria	£29,734	£16,353
New South Wales ...	28,497	15,672
New Zealand ...	17,454	9,599
South Australia ...	9,674	5,321
Queensland	9,585	5,274
Tasmania	4,037	2,221
Western Australia ...	1,019	560
	£100,000	£55,000

No. 516/87.

FROM THE PREMIER TO THE AGENT-GENERAL.

Premier's Office,
Melbourne, 11th February, 1887.

SIR,

I have the honour to acknowledge the receipt of your letter of the 24th December last, No. 4685, enclosing copy of a communication from the secretary *pro tem.* of the Pacific Telegraph Company Limited, dated 8th December, 1886, and of a letter (with enclosure) from the chairman of the Eastern Extension, bearing date 23rd idem.

I have received from Mr. Owen Jones the letter of which you forwarded a copy, and I enclose herewith*, for your information, a copy of my reply.

I have, &c.,
D. GILLIES,
Premier.

THE HONORABLE SIR GRAHAM BERRY, K.C.M.G.,
AGENT-GENERAL FOR VICTORIA, LONDON.

P.87/773.

FROM THE SECRETARY OF STATE FOR THE COLONIES TO THE GOVERNOR OF VICTORIA.

Downing-street, 13th January, 1887.

SIR,

I have the honour to inform you that I have received from the chairman of the Eastern Extension Company Limited copies of a letter and memorandum†, dated 23rd December last, with reference to the existing telegraphic communication, and to the proposal for a Pacific cable.

I shall be glad to be furnished with a copy of any reply which your Government may make to Mr. Pender's letter.

I have, &c.,
EDWARD STANHOPE.

THE OFFICER ADMINISTERING
THE GOVERNMENT OF VICTORIA.

P.87/1018.

FROM THE AGENT-GENERAL TO THE PREMIER.

Victoria Office, Victoria-street,
Westminster, S.W., 11th March, 1887.

SIR,

In continuation of previous correspondence relating to transatlantic telegraphic communication, I have the honour to forward herewith, for your information, copy of a letter which I have received from the Pacific Telegraph Company, enclosing the accompanying memorandum by their secretary in reply to the memorandum on the subject addressed to the Government in December last by Mr. Pender, the chairman of the Eastern Extension Telegraph Company.

I have, &c.,
GRAHAM BERRY.

THE HONORABLE THE PREMIER, MELBOURNE.

[ENCLOSURE.]

FROM THE SECRETARY THE PACIFIC TELEGRAPH COMPANY LIMITED TO THE AGENT-GENERAL FOR VICTORIA.

London, 8th March, 1887.

SIR,

On the 23rd December, 1886, Mr. John Pender addressed a communication to your Government with regard to the proposed Pacific Cable Company.

I have the honour to forward herewith copy of a memorandum which I have drawn up at the request of my directors in answer to Mr. Pender's statement.

I should be much obliged if you would forward it to your Government.

I am, &c.,
HAROLD FINCH HATTON.

THE AGENT-GENERAL FOR VICTORIA.

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* For this enclosure, *vide* No. 482/87 *ante*.

† *Vide* sub-enclosures to P.87/280 *ante*.

17

THE PACIFIC TELEGRAPH COMPANY LIMITED.

[Sub-Enclosure.]

34 Clement's-lane,
London, E.C., 4th March, 1887.

Sir,

My attention has been drawn to a memorandum, dated 23rd December, 1886, addressed by Mr. Pender, the chairman of the Eastern Extension Company, to your Government on the subject of Imperial communications.

In the first part of the memorandum referred to, which treats of existing cable communication, propositions so extraordinary are laid down that it is difficult to believe that their author was serious when he wrote them. In the second part, which relates to the proposed Pacific cable between Vancouver Island and Australia, statements most inaccurate and misleading are set forth, which cannot be allowed to pass unchallenged.

The object of the memorandum is to prove the superiority of the existing lines to Australia and the East over the Pacific route, but apparently Mr. Pender has nothing to advance except arguments, of which the worthlessness will at once be recognised by experts.

In the first place, he claims as an advantage for his lines that they are laid in shallow water, while the Pacific cable would have to be laid at a great depth. The whole weight of available evidence, including Mr. Pender's own statements in past years, goes to prove that the deeper a cable is laid, the more secure it is, both from submarine disturbances, and from the destructive attacks of insects.

In a statement laid before the Cable Conference of New South Wales, 3rd October, 1876, with regard to the probable duration of the proposed duplication to Australia, Mr. Pender said: "Taking into consideration the warm shallow seas in "which the greater part of this cable is to be laid, teeming as they do with animal "life, which has hitherto proved very destructive to the cables already submerged, it "would not be fair in the present instance to estimate it at too long duration."

This is perfectly correct, experience having shown that the existing Australian lines are laid in seas the most destructive to cables in the world, abounding in coral reefs and insects, the waters between Singapore and Batavia being infested with a species of boring insect unknown at a depth of over 300 fathoms.

The Pacific cable from Vancouver Island to Australia would be laid at a depth which would effectually protect it from submarine disturbances. The bottom, the whole way, is most favorable for prolonging the life of a cable, being clay and ooze, with the exception of the approaches to the island, which could be easily protected.

Mr. Pender's next claim for his company's lines is that "they have the immense "advantage of being under British control, and worked by British operators throughout "their entire length," and that "while they are incomparably the most secure in time "of peace, they would be the more surely and easily protected in time of war, inasmuch "as it is one of the sea routes most frequented by the mercantile marine."

That the existing lines are under British control in time of peace is perfectly true, but that they would be so in time of war I entirely deny. Can Mr. Pender really imagine that, if war broke out, his "British operators" would continue to "control" his lines? A very considerable portion of his whole system of cables to the East consists of a series of foreign toll-bars, from each and all of which his employés would be summarily ejected at the first outbreak of any hostilities in Europe, in which England was directly or indirectly involved.

The latter part of his argument relating to the mercantile marine is a self-evident fallacy, proving indeed the very reverse of what Mr. Pender wishes to prove.

Wherever the mercantile marine of any nation is found, there will the enemy's cruisers be gathered together, and it is, of course, from an enemy's cruisers that danger to cable communication is to be apprehended. In the event of war, the Mediterranean would be at once converted into a cruising ground for the ships of all nations, in which cable communications could not by any means be preserved for a week.

Besides this, the land lines across Egypt offer the most vulnerable point of attack possible. A chain is no stronger than its weakest part, and even if by any possible means the rest of the existing system could be rendered secure, the transit through Egypt alone would constitute a vital defect which no power could remedy.

Another grave defect in the present means of communication, so far as Australia is concerned, is the 2,000 miles of land line between Port Darwin and Adelaide, passing through country, for the most part, an uninhabited desert.

The northern portion of this line is exposed to the full fury of the monsoon, and it is here, as stated by Mr. Cracknell, that interruptions most frequently occur. Also large tracts of the country through which the line passes are subject to floods, which render repairs temporarily impossible.

The proposed line from Vancouver Island would establish communication between Great Britain and Australasia, which would be actually instead of only nominally under British control, passing through British territory, with the exception of the Sandwich Islands, throughout its entire length. The great advantages of this route over any other in time of war are sufficiently obvious.

The points of call are few and far between, and could easily be defended. The cable would be laid through seas where it would be of no advantage for an enemy's cruisers to be stationed, the line being, as Mr. Pender himself points out, "far away from "the route followed by merchant ships." Added to this must be considered the great depth of the ocean, which would render any attempts to cut the cable exceedingly difficult and costly.

The assertion that the line is "practically unsurveyed" is quite incorrect. The whole line from San Francisco to Sydney *viâ* Hawaii has been surveyed by the *Tuscarora* — the bottom being reported as clay and ooze all the way, with the exception, as above stated, of the approaches to the islands.

This is further corroborated by the soundings of the *Challenger* to the north of Hawaii.

The chairman of the Eastern Extension Company next proceeds to attack the proposed Pacific cable from a commercial point of view. He says, "I believe that the "laying of such a line would only benefit the promoters, and would be inimical to the "interests of the telegraphing public, as it would inevitably lead to a war of tariffs, "which would eventually impoverish both the Pacific and the existing cables, and result "in a starved and inefficient service."

Here is a commercial theory which has, at all events, the merit of being entirely new. It is probably the first time that a man of any commercial standing has ventured seriously to assert that a "war of tariffs," in other words, competition, is inimical to the interests of the public, and likely to lead to an inefficient service.

On the question of the benefit likely to accrue to promoters, no one will deny Mr. Pender's right to form a judgment, but any comparison upon this point between existing lines and the proposed Pacific cable is strongly deprecated. The laying of the Eastern extension, a distance of 2,150 miles, was handed over to the Telegraph Construction Company (of which Mr. Pender was at one time a director), and carried out at a cost of £600,000, being at the rate of nearly £300 per mile, while it is notorious that the cost of such construction ought not to exceed £200 per mile at the very outside. That there is profit in a transaction such as the above is evident, and we must all concur with the chairman of the Eastern Extension Company in regretting that it has not found its way in the shape of dividends into the pockets of the shareholders.

In attempting to deal with the question of tariffs, Mr. Pender shows undisguised alarm lest the proposed Pacific cable should "impoverish the existing lines."

His alarm is so far justifiable, in that the Pacific Telegraph Company has been formed for the express purpose of very largely reducing the tariffs to Australia.

That the new company will be in an infinitely better position to do so than ever the Eastern Extension Company can hope to be will readily be seen from the following considerations.

Before the Eastern Extension Company can reach India, where their lines to Australia begin, they have to pay 4s. per word for messages.

The Pacific Telegraph Company, on the other hand, can get their messages transmitted from England to Vancouver Island, a distance of 5,700 miles, at an outside cost of 8½d. per word.

The number of toll-bars at which Mr. Pender has to pay toll before reaching India make it impossible, as he has himself repeatedly and recently stated, that he can reduce his tariff. It is obvious, therefore, that he can never hope to work upon anything like such favorable terms as a line operating from Vancouver Island.

In attempting to block the construction of a Pacific cable, Mr. Pender has entered upon a hopeless task. If anything were wanting to show that he is himself conscious of the desperate nature of his case, it would be the proposition contained in his memorandum to the Colonial Governments.

The "telegraphing public" will be delighted to hear that "The Eastern "Extension Company has, subject to the assent and co-operation of the other "interested administrations, offered to make the rate any figure acceptable to "the Colonies, down to the limit of their outpayments (at present 2s. 4d. per word), "provided that the average receipts for the last three years are guaranteed to them "by the Colonies. The acceptance of this offer," Mr. Pender adds, with a touch of humour, of which he is apparently quite unconscious, "would reduce the company's "risk to a minimum." What the other "interested administrations" may have to say in the matter I do not pretend to know, but that the Colonies will value this concession at its true worth there is not a shadow of doubt. There are probably few companies who would not be glad to enter into similar arrangements.

With regard to the cost of construction and working, and probable receipts of the proposed Pacific cable, Mr. Pender's estimates are such as no evidence can be found to justify.

For instance, his estimate of the cost of two repairing steamers is £40,000 per annum.

Colonel Glover's estimate (as stated in his evidence before a Committee of the House of Assembly, New South Wales, 10th May, 1878), is £10,000 per annum for each steamer.

It is certainly not from "past experience" that Mr. Pender is enabled to estimate the necessary sum for amortization to renew cables at £75,000 per annum.

The directors of the Pacific Telegraph Company have perfect confidence in the success of their undertaking from a commercial point of view, the calculations upon which their estimates are based having been most carefully made by the best possible authorities.

In estimating receipts, no allowance whatever has been made for the vast increase of traffic, which cannot fail to be the consequence of bringing Canada, the United States, South America, and the Pacific Islands into direct communication with Australia.

But, indeed, no arguments which can be advanced in favour of the existing systems of cables have any bearing whatever upon the question of constructing a line across the Pacific. From a commercial point of view it is absolutely essential that the various parts of the Empire should be connected by lines as far as possible free from interruption, both in peace and war. Further, it is most desirable that the existing tariffs should be greatly reduced. Both these objects, it is submitted, can be better effected by a Pacific cable than by any other means, with the additional advantage, which no other route could offer, of connecting Canada with Australia, and so completing the girdle of the world's telegraphic communications.

From a strategic point of view the advantages are, if possible, stronger.

Military authorities are now unanimously of opinion that, in the event of a European war, the Suez Canal could not possibly be relied on as a means of transport to the East. The military road to India and the East, therefore, must undoubtedly be *viâ* the Canadian Pacific Railway to Esquimalt, and thence by steamer across the

Pacific. The importance of establishing telegraphic communication in this ocean cannot be overrated, as a cable from Vancouver Island to Australia would supply an alternative means of communication with India and the East, in the event of the lines through the Mediterranean and Egypt being severed, as they infallibly must be in time of war.

These are considerations which have apparently escaped the notice of Mr. Pender, though they are not likely to be overlooked by any one who has a just appreciation of the bearing of Imperial communications upon the science of Imperial defence.

A cable from Vancouver Island to Australia would not only be of great commercial advantage to the nation, but it would also be a move of paramount importance in Imperial strategy. It is, in fact, a development which must inevitably take place, in obedience to the laws of expanding civilization.

No one can deny that the scheme is one of vital importance to the whole British Empire, and its accomplishment is not likely to be materially retarded by Mr. Pender's appeal *ad misericordiam* for the continuance of a monopoly, in the advantages of which not even his own shareholders have been allowed to participate fully.

I am, Sir,
Your obedient servant,
HAROLD FINCH HATTON,
Secretary.

P.87/2609.

FROM THE AGENT-GENERAL TO THE PREMIER.

Victoria Office, Victoria-street,
SIR, Westminster, S.W., 22nd July, 1887.

I have the honour to inform you that I have received, from the High Commissioner for the Dominion of Canada, the enclosed correspondence on the subject of a survey in the Pacific in connexion with a cable from Australasia to Canada. The correspondence consists of:—

1. Letter to Sir Henry Holland, Colonial Minister, from 21 delegates to the Colonial Conference, dated May 16th, 1887.
2. Letter from Mr. Sandford Fleming to Mr. Baillie Hamilton, Secretary, in reference to the above, dated May 16th.
3. Letter from the Colonial Office to the Admiralty, dated May 23rd, 1887.
4. Letter from the Admiralty to the Colonial Office, dated May 28th, 1887.
5. Letter from the Colonial Office to Mr. Sandford Fleming, dated June 3rd, 1887.
6. Letter from Mr. Sandford Fleming to the Colonial Office, asking for a reconsideration of letter No. 1, dated June 8th, 1887.
7. Resolutions of the Colonial Conference, adopted May 6th, 1887.

I have, &c.,
GRAHAM BERRY.

THE HONORABLE THE PREMIER, MELBOURNE.

[ENCLOSURE 1.]

FROM THE DELEGATES TO THE COLONIAL CONFERENCE TO THE SECRETARY OF STATE FOR THE COLONIES.

SIR, London, May 16th, 1887.

Referring to the discussion on the subject of the postal and telegraphic communication of the Empire before the Colonial Conference, the question was raised as to the practicability of submerging cables in the Pacific Ocean, so as to connect Canada and Australasia telegraphically, and as all doubts on the question should be removed with as little delay as possible, a thorough and exhaustive nautical examination should be at once made.

The undersigned, therefore, on behalf of the Governments they represent, respectfully request that Her Majesty's Government will cause such survey to be made.

We have the honour to be,
Sir,
Your obedient servants,

(Signed)	A. Campbell,	for Canada.
	Sandford Fleming,	,, Canada.
	James Service,	,, Victoria.
	P. A. Jennings,	,, New South Wales.
	S. W. Griffith,	,, Queensland.
	John Forrest,	,, Western Australia.
	Wm. Fitzherbert,	,, New Zealand.
	J. S. Dodds,	,, Tasmania.
	Adye Douglas,	,, Tasmania.
	Robert Wisdom,	,, New South Wales.
	Sep. Burt,	,, Western Australia.
	Saul Samuel,	,, New South Wales.
	A. Shea,	,, Newfoundland.
	Robert Thorburn,	,, Newfoundland.
	John Robinson,	,, Natal.
	Alfred Deakin,	,, Victoria.
	James Lorimer,	,, Victoria.
	Charles Mills,	,, Cape of Good Hope.
	Graham Berry,	,, Victoria.
	James F. Garrick,	,, Queensland.
	F. D. Bell,	,, New Zealand.

The Right Honorable Sir Henry Holland,
Secretary of State for the Colonies.

[Enclosure 2.]

From Mr. Sandford Fleming to the Secretary of the Colonial Conference.

London: 9 Victoria Chambers, S.W.,
16th May, 1887.

Dear Mr. Baillie Hamilton,

May I ask you to lay before Sir Henry Holland the enclosed communication from the members of the (late) Conference generally, suggesting that, inasmuch as the connexion of Canada and Australasia by a direct cable is a question of very great importance, its practicability should be established as speedily as possible by a proper survey and examination, under the authority of the Imperial Government.

As I have given some attention to this question, I would be glad, should Sir Henry Holland deem it advisable, to discuss with any officer of the Government the means by which the survey and soundings may be carried out.

I may mention that I have determined to extend my stay in London until the 25th inst.

Believe me, &c.,
Sandford Fleming.

Baillie Hamilton, Esq., C.M.G.,
Secretary to the Colonial Conference.

Pressing.

[Enclosure 3.]

The Colonial Office to the Admiralty.

Downing-street, 23rd May, 1887.

Sir,

I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Lords Commissioners of the Admiralty, for any observations which they may have to offer, a copy of a letter from Mr. Sandford Fleming, C.M.G., one of the delegates from Canada to the late Colonial Conference, enclosing a letter, signed

by all the delegates to the Conference, recommending that a survey should be made, with a view to determining the practicability of laying a cable between Canada and Australia.

I am to suggest that Mr. Fleming should be placed in communication with the Hydrographer to the Admiralty, with a view to discussing this question.

I am, &c.,

THE SECRETARY TO THE ADMIRALTY. R. H. MEADE.

[ENCLOSURE 4.]

THE ADMIRALTY TO THE COLONIAL OFFICE.

SIR, Admiralty, 28th May, 1887.

I have laid before my Lords Commissioners of the Admiralty your letter of the 20th instant, enclosing a recommendation signed by the delegates to the late Colonial Conference, that a survey should be made with a view to determining the practicability of laying a cable between Canada and Australia; and, further, suggesting that Mr. Fleming should be placed in communication with the Hydrographer to the Admiralty with a view to discussing the question.

2. In reply, their Lordships desire me to state, for the information of Sir Henry Holland, that if Mr. Fleming has not already left London, he will find the Hydrographer to the Admiralty on any day he may like to fix.

3. My Lords, however, desire me to add that unless the Secretary of State has reason to believe that a submarine cable is likely to be laid from Vancouver to Australia very shortly, their Lordships would not propose to despatch a surveying vessel for the sole purpose of obtaing soundings over the route, but that they will endeavour to arrange that soundings shall be gradually obtained during the next few years in the ordinary course of hydrographic surveys.

I am, &c.,

EWAN MACGREGOR.

THE UNDER SECRETARY OF STATE, COLONIAL OFFICE.

[ENCLOSURE 5.]

THE UNDER SECRETARY COLONIAL OFFICE TO MR. SANDFORD FLEMING.

SIR, Downing-street, 3rd June, 1887.

With reference to your letter of the 16th ultimo, I am directed by the Secretary of State for the Colonies to transmit, for your information, a copy of correspondence with the Admiralty respecting the proposed nautical survey of the Pacific, with a view to determining the practicability of laying a cable between Canada and Australia.

I am, &c.,

R. H. MEADE.

SANDFORD FLEMING, ESQ., C.M.G.

[ENCLOSURE 6.]

MR. SANDFORD FLEMING TO THE UNDER SECRETARY OF STATE FOR THE COLONIES.

SIR, London, 8th June, 1887.

I have the honour to acknowledge the receipt of your letter of the 3rd instant, enclosing copies of letters between the Colonial Office and the Admiralty, respecting the proposed nautical survey of the Pacific in connexion with the laying of a cable between Canada and Australasia.

I beg leave to direct attention to the third paragraph of the letter from the Admiralty, which reads as follows:—"My Lords, however, desire me to add that unless "the Secretary of State has reason to believe that a submarine cable is likely to be "laid from Vancouver to Australia very shortly, their Lordships would not propose "to despatch a surveying vessel for the sole purpose of obtaining soundings over the

"route, but that they will endeavour to arrange that soundings be gradually obtained "during the next few years in the ordinary course of hydrographic surveys."

Since the receipt of your letter of the 3rd instant, I have, with the permission of the Lords Commissioners of the Admiralty, placed myself in communication with the Hydrographer, who has explained to me what is to be understood by the last part of the above quoted paragraph. From these explanations I have learned that it is not intended to do anything until next year; that next year it is expected that a surveying vessel will be despatched to Australian waters for other purposes, and that while there the officers will be instructed, in the ordinary course of their duties, to endeavour to obtain some information which may be useful in connexion with the question of laying a cable. It is intended to follow the same course year by year, but, from all I can learn, no definite idea can be formed as to the time which will be expended before the work will be completed; indeed, it does not appear quite certain that anything will be done even next year, or if commenced next year, it is hinted that the work may be interrupted and the surveying vessel taken away.

It is scarcely necessary for me to point out that the course proposed to be followed will not accomplish the desired end. The records of the Conference will show how much importance is attached by every delegate to the telegraphic connection of Canada and Australasia. In an Imperial point of view its importance was held at the Conference to be second to no other question brought forward for discussion, and I think I may venture to say, on behalf of the twenty-one delegates who attached their names to the letter of the 16th May, addressed to Sir Henry Holland, that it will be a grave disappointment to them and to the Governments they represent, if no other course than that proposed, and explained to me by the Hydrographer, be followed.

Sir Henry Holland, who presided over the Conference, will remember how strongly individual members spoke on the subject, and he knows also the views of the Conference as a body. On the last day of the Conference a resolution on the question was unanimously adopted, to which I think it would be well to direct the special attention of the Admiralty.

I respectfully submit that the Lords Commissioners of the Admiralty appear to have misapprehended the object of the application of the 16th May. I may therefore venture to explain that, as some of the officers of the Government and other gentlemen examined before the Conference gave testimony which raised doubts as to the practicability of establishing a direct telegraph across the Pacific, a general feeling prevailed that the question was of such paramount importance as to demand immediate attention, and that every doubt should be set at rest by having a thorough and exhaustive survey made under the highest nautical authority. No one who attended the meetings of the Conference, or who has seriously considered the relations of the great self-governing Colonies to the Mother Country, can for a moment doubt that an electric cable from Canada to Australasia is imperatively demanded, and that, if practicable, will be established. The question of practicability, however, is precedent to all others, and it is therefore of the utmost importance that the request of the delegates to the Conference, made collectively and individually, on behalf of their respective Governments, should be considered.

I have, &c.,
SANDFORD FLEMING.

THE UNDER SECRETARY OF STATE,
THE COLONIAL OFFICE.

[ENCLOSURE 7.]

Resolutions unanimously adopted by the Conference, 6th May, 1887.

First. That the connexions recently formed through Canada from the Atlantic to the Pacific, by railway and telegraph, opens a new alternative line of Imperial communication over the high seas and through British possessions, which promises to be of great value, alike in naval and military, commercial, and political aspects.

Second. That the connexion of Canada with Australasia by direct submarine telegraph across the Pacific is a project of high importance to the Empire; and every doubt as to its practicability should, without delay, be set at rest by a thorough and exhaustive survey.

P.O.3278/87.

FROM THE SECRETARY THE PACIFIC TELEGRAPH COMPANY LIMITED TO THE POSTMASTER-GENERAL OF VICTORIA.

Pacific Telegraph Company Limited,
SIR, 34 Clement's-lane, London, 12th May, 1887.

By order of my directors, I have the honour to submit for your consideration a proposal on behalf of this company to lay a cable from Vancouver Island to Australia. The proposal is in the amended form in which it was laid before the Colonial Conference on the 6th of May, 1887.

The directors hope that the very moderate nature of the company's proposal, combined with the exceptional strategic and commercial advantages of the Pacific route, will ensure the favorable consideration of your Government.

Awaiting the favour of a reply,

I am, &c.,
HAROLD FINCH HATTON,
Secretary.

THE HONORABLE THE POSTMASTER-GENERAL OF VICTORIA,
MELBOURNE.

[ENCLOSURE.]

[CONFIDENTIAL.]

PACIFIC TELEGRAPH COMPANY LIMITED.

SIR, 34 Clement's-lane, London, 3rd May, 1887.

Referring to the proposal* submitted by the Pacific Telegraph Company for the consideration of the Colonial Conference on the 20th April, 1887, I am now instructed by the directors of the company to submit, as an amended proposal, the following:—

1. The Pacific Telegraph Company shall lay a line of cable from Vancouver Island to Australia, touching at Hawaii, Fanning Island, Samoa, Fiji, and New Zealand.
2. The Governments of Great Britain, of Canada, and of the Australian Colonies shall guarantee to the Pacific Telegraph Company Government traffic to the amount of £75,000 per annum, in such proportions as may be mutually agreed upon by the said Governments.
3. The above guarantee shall date from the completion of telegraphic communication between Canada and Australia by the company, and shall continue in force for 25 years from that date, subject to the following conditions:—
4. In the event of telegraphic communication being interrupted, 35 days shall be allowed to the company for repairs; if at the expiration of 35 days telegraphic communication shall continue to be interrupted, then the guarantee shall be suspended from that date until telegraphic communication be re-established.
5. The rate per word payable by the Governments shall be the current rate charged by the company to the general public, but such rate shall never exceed 4s. per word for the transmission of messages from England to Australia.

In my statement to the Colonial Conference on the 27th April,† I mentioned that the proposal of the Pacific Telegraph Company, which was then before the Conference, for an annual subsidy of £100,000 for 25 years was based upon calculations as to the approximate cost of constructing and laying a cable which were made some time ago.

I further stated that the company was at that very time actually engaged in collecting expert evidence as to the most recent improvements in the manufacture of cables, and the consequent reduction in the cost of constructing and laying them. The result of the investigation has been to convince the directors that the original estimate for the cost of the undertaking will bear some reduction.

Vide Appendix 3, page 50. †*Vide* Appendix 4, page 51.

In addition to the above, the directors have been influenced by considerations of even greater weight. Events of very recent date point to the certainty of the Pacific Ocean being shortly developed as one of the main waterways of the world's commerce. In view of the very largely increased intercolonial telegraphic traffic which must inevitably follow any such development, the directors feel justified in accepting the extra risk which the reduction of the guarantee from £100,000 to £75,000 per annum will entail.

As above stated (in clause 5), the directors of the Pacific Telegraph Company bind themselves to start by reducing the rate to 4s. per word for the transmission of ordinary messages from England to Australasia, and further bind themselves not to exceed such rate.

The reduction to 4s. per word, however, is by no means intended to be final, for if the estimates of increased traffic are in any way realized, the company will be in a position to effect very considerable further reductions.

I have, &c.,
HAROLD FINCH HATTON.

TO THE CHAIRMAN OF THE COLONIAL CONFERENCE,
LONDON.

P.87/3576.

MR. SANDFORD FLEMING, C.M.G., TO THE CHIEF SECRETARY OF VICTORIA.

SIR, Ottawa, Canada, 26th September, 1887.

I have the honour to address you on the subject of the proposed telegraph to connect the Australian Colonies with England by way of Canada.

I beg leave, in the first place, to refer to the following correspondence which it became my duty to transmit to you before I left London in June last, viz.: —

*(1.) Letter, 16th May, 1887, to Sir Henry Holland, Secretary of State for the Colonies, from the delegates to the Colonial Conference on behalf of the Governments they represented, requesting that Her Majesty's Government will cause an exhaustive survey to be made without delay in order to set at rest all doubts raised as to the practicability of establishing a telegraph cable across the Pacific Ocean between Canada and the Australian Colonies.

(2.) Letter, 16th May, 1887, to Mr. Baillie-Hamilton, Secretary of the Conference, on the same subject.

(3.) Letter, 3rd June, 1887, from the Colonial Office, covering correspondence with the Admiralty on the same subject.

(4.) Letter, 28th May, 1887, from the Admiralty to the Colonial Office, stating that the Lords Commissioners are not prepared to make a special survey.

(6.) Letter, 8th June, 1887, to the Colonial Office, from myself, submitting reasons why the application of the delegates should be re-considered.

These communications were subsequent to the discussions on the subject at the Colonial Conference, and the published proceedings of the Conference will show that during the discussions testimony was brought forward by officers of the Government and the Eastern Telegraph Company to raise doubts as to the practicability of establishing telegraphic connexion across the Pacific. In consequence of these doubts it was deemed expedient by the delegates that a proper survey should be made as soon as possible, with that object in view. Her Majesty's Government was specially appealed to, but the reply of the Lords Commissioners of the Admiralty, by whose authority it was hoped the survey would be made, was unsatisfactory. The correspondence was transmitted to me, whereupon I ventured to submit reasons why the application of the delegates should be re-considered, but up to this date I have not learned that anything further has been decided.

I beg leave, secondly, to invite the attention of your Government to the accompanying memorandum; and I may mention that while on the one hand doubts have been raised as to the practicability of submerging an electric cable across the Pacific, on the other hand information of an important character has been obtained, at and since the

* All enclosed with P.87/2609 *ante*.

Conference. By the light which has thus been thrown on the whole subject this memorandum has been prepared.

Assuming that the survey will establish that there are no insuperable obstacles to the laying of a submarine cable, this memorandum will make it obvious that at no distant day Canada and Australia can be connected telegraphically on terms which would be just and fair to all concerned, and, I venture to think, in a manner which would be extremely advantageous to the Australian Colonies as well as to Canada and the Mother Country.

As the matter presents itself to my mind, the question of a nautical survey becomes of increased importance, and I have taken some trouble to ascertain how it can be accomplished in the event of the Lords Commissioners of the Admiralty remaining unable to see their way to have it carried out.

I have learned that, provided the Governments of the Australian Colonies and New Zealand are willing to co-operate, a proper nautical examination may be secured without difficulty or delay, and at comparatively little cost to any one of the colonies.

The Government of Canada controls a suitable steamship for such a service, and has also in its employment scientific men and officers of the Royal Navy in every respect qualified to carry out the survey. I have, therefore, taken upon myself to submit a proposition asking if the Canadian Government will be prepared to furnish the ship and officers provided the Australasian Governments are willing to co-operate in defraying the expenses to be incurred for coaling, victualling, and crew.

My object in now addressing you is to request you to submit the proposition to your Government. In doing so, I have authority to state that the matter has been discussed in the Canadian Privy Council, and that a favorable view is taken of the proposition.

The naval officer consulted is of opinion that the work of soundings may be satisfactorily completed within twelve months, and he also estimates that with the ship and officers furnished by Canada, a joint contribution of £6,000 by the Australian Colonies and New Zealand would suffice.

I feel warranted in expressing my belief that if the co-operation of your Government with the Governments of the other Colonies, in the manner suggested, be secured without loss of time, the practicability of connecting Australia and Canada telegraphically will be authoritatively set at rest before the end of next year, and with the information resulting from the survey, the establishment of the cable eventually will be materially facilitated.

I have the honour to mention that I have addressed a similar communication with the accompanying memorandum to the Governments of the other Colonies.

SANDFORD FLEMING.

THE HONORABLE THE CHIEF SECRETARY OF VICTORIA,
MELBOURNE.

[ENCLOSURE.]

Memorandum respecting the proposed Telegraph to connect India and Australia with England by the Canadian route.

At the Conference recently called by Her Majesty's Government to consider matters of common interest to all portions of the Empire, attention was directed to the question of connecting Australia and Asia with England by a postal and telegraph route through Canada.

The discussion was renewed from time to time, and the more the question was considered, the more deeply all present at the Conference became impressed with the vast significance of the issues which the new line of communication involve for England herself as well as for the Australian Colonies, India, Canada, and the whole outer Empire of Great Britain.

On the last day of the Conference the following resolutions were entered in the proceedings:—

First, "That the connexion recently formed through Canada from the Atlantic to the Pacific, by railway and telegraph, opens a new alternative line of Imperial communication over the high seas and through British

possessions, which promises to be of great value alike in naval, military, commercial, and political aspects."

Second, "That the connexion of Canada with Australasia by direct submarine telegraph across the Pacific is a project of high importance to the Empire; and every doubt as to its practicability should without delay be set at rest by a thorough and exhaustive survey."

These resolutions expressed the united voice of the Conference after the strenuous efforts of gentlemen acting on behalf of the Eastern Extension Telegraph Company to impress the delegates with the idea that a direct telegraphic communication between Australia and Canada was unnecessary and impracticable.

The lines of the Eastern Extension Telegraph Company extend from India easterly to China and southerly to Australia, and they form the only existing telegraph connexion between the Australian Colonies and Europe.

This company has for some years enjoyed a monopoly of all telegraph business, and, naturally solicitous for the future, its representatives left nothing undone to advance views adverse to the projected new line. Day by day, Mr. John Pender, the chairman of the company, was in attendance. He was allowed to address the Conference, and to circulate documents of various kinds among the delegates, and in every way he used his influence against the project in the private interests of the company he represents. Notwithstanding these efforts, the above resolutions were adopted, and it is not a little remarkable that they are the only resolutions which were formally submitted, and unanimously assented to at the Conference.

The arguments offered on behalf of the company were combatted on public grounds by some of the delegates; and during the discussion, the Postmaster-General, Mr. Raikes, stated very forcibly that it would be absolutely impossible for the English people or for Her Majesty's Government to recognise the monopoly which the company seem to claim. He, however, pointed out that while the position assumed by Mr. Pender for his company was one which could never be accepted either by the Colonies or by the British Parliament, it was a matter of extreme difficulty for the English Government to assist in carrying out the new scheme in such a way as to constitute itself a competitor with the existing company. While he pointed out the difficulty, the Postmaster-General gave expression to his warm sympathy with those who were seeking to promote what he termed the most beneficial changes which can come out of the Conference.

In the proceedings of the Conference of the 27th April and 6th May will be found recorded the general principles of a scheme which completely obviate the difficulty mentioned by Mr. Raikes. The scheme has much in common with one propounded by the Postmaster-General of New Zealand, Sir Julius Vogel. The proposal is to combine the several telegraph systems of the Australian Colonies under one management, to include the submergence of a cable across the Pacific from Australia to Canada, and to provide for taking over at a valuation, whenever the company may desire, all the cables of the Eastern Extension Company.

While this proposal assumes that a change is demanded by public expediency, it also recognises that the existing company, as the pioneer of a system of communication which has materially assisted in developing Australian trade, is entitled to just and reasonable consideration. If the new Pacific line will destroy the monopoly of the company, and put an end to the profits which the shareholders have hitherto enjoyed, the proposal carried into effect would return to them the full value of the property which would be rendered no longer profitable to them. Moreover, although it would scarcely be reasonable for the proprietors to expect compensation for unearned profits, they may fairly claim and be allowed all the profits obtainable until the new line be in operation.

A question will arise as to the value of the cables of the Eastern Extension Company. The testimony of Mr. Pender, at the Conference, shows that they were laid at an average cost of £184 per mile. They have, however, been laid a number of years, and have depreciated in value according to the length of time submerged. Mr. Pender estimates the life of a cable at twenty years, and the published official statements of the company furnish full information as to the length and age of the cables it controls. With this data, it is an easy matter for an actuary to prepare an estimate of the value, at any given year, of the whole system of cables owned by the

company. Appended hereto will be found such an estimate, by which it appears that all the cables of the Eastern Extension Company are valued as follows:—

In 1887, total value	...	...	...	£960,195
1888, „	...	...	...	£849,473
1889, „	...	...	...	£738,751
1890, „	...	...	...	£629,685

If we add the cost of the new line across the Pacific, reckoning it at the rate per mile as the cables of the company, when first laid, we shall be enabled to form a tolerably correct idea of the new capital required to carry out the general scheme. According to the scheme submitted to the Colonial Conference, new capital would not be required for the land lines handed over by the Australian colonies. These would be worked in common with all the cables under one management, each Colony retaining an interest in revenue in proportion to the value of the lines handed over.

It may be assumed that the Eastern Extension Company will not desire to hand over their property so long as it can be worked at the old scale of profits, that is, until the new line be ready for business; as in all probability much time will be spent in negotiations, preliminary arrangements, and surveys, the new line can scarcely be in operation before 1890. Accordingly, we may take into calculation the estimated value of the company's cables for that year as under:—

Estimate of New Capital.

(1.) Valuation of the cables of the Eastern Extension Company in the year 1880	£630,000	
(2.) Cost of new cables to connect Australia with Canada, 7,600 miles, at £184 per mile ...	£1,400,000	
		£2,030,000

The total new capital then required to carry out this comprehensive scheme designed to bring under one harmonious management all the telegraphs within the Australian Colonies, and all the cables existing or projected from Australia to India and to Canada, appears to be little over two millions sterling. The sum is very much less than that spoken of at the Conference, but it is impossible to impugn the estimate without calling in question the accuracy of the data which is supplied by the Eastern Telegraph Company itself.

£2,030,000 on a joint Government guarantee (Imperial and Colonial) could be raised at a very low rate of interest. At three per cent. it would come to £60,000 per annum, a sum which is almost equalled by the subsidies now being paid or available, as the following table will show:—

British Subsidies.

(1.) Paid by New South Wales	£12,617		
(2.) „ Victoria	14,479		
(3.) „ South Australia	4,805		
(4.) „ Western Australia	499		
(5.) „ Tasmania	4,200		
		£36,600	

Foreign Subsidies.

(1.) Paid by Malacca	£1,000		
(2.) „ Manilla	8,000		
(3.) „ Tonquin	10,600		
(4.) „ Macao	500		
(5.) Offered by Hawaii	4,000		
		£24,100	
Total Subsidies		£60,700	

To this list of subsidies it will be noticed that only five British Colonies contribute, while ten British Governments in all are more or less directly and specifically interested in the establishment of the new line of telegraph. It would manifestly be

unfair to these five Colonies if they were left to bear the whole burden. It seems proper that the other five British Governments should bear an equitable share of the cost.

The available foreign subsidies amount in all to £24,100 per annum. If we deduct this annual asset from the cost per annum of the new capital, £60,000, there remains £36,000 to be met in equitable proportions by the ten British Governments concerned in the scheme. Let us assume, suggestively, that half this annual charge be borne by the five contributing Governments, and the other half by the five Governments not now contributing, the account will stand thus:—

Payable by—		
New South Wales Victoria South Australia Western Australia Tasmania	... ...	£18,400
The United Kingdom India Canada New Zealand Queensland	... ...	£18,400
		£36,800

The exact proportions payable by each Government can only be determined by negotiations and mutual agreement, but the above sets forth generally the features of a scheme which seems well calculated to accomplish the desired object. Five of the Australian Colonies are bound by agreement to contribute until the end of the present century a subsidy of £36,600. According to the above division, these Colonies would have their liability reduced to £18,400 per annum, scarcely more than half what they now pay. Their direct gain would be £18,200 per annum, while their indirect gains, resulting from reduced charges and facility of intercourse, would be infinitely greater.

In view of the important advantages in which all would participate, it cannot be urged that the other Governments not now contributing would be greatly burdened by the joint payment of £18,400 per annum.

It will not be overlooked that when the foreign subsidies expire, a further charge of £24,100 per annum will have to be met from some source. Even if it be required to be borne by the ten Governments in equitable proportions, it could not weigh heavily on any of them, but it is anticipated that when all the subsidies run out the revenue from the telegraphs will be amply sufficient to meet interest and every other charge. The new Pacific Telegraph system, as a Government work, will be established with capital secured at a very low interest, making it possible for a profitable business to be done at exceedingly low schedule rates. The great reduction in rates thus rendered possible would give a wonderful impetus to telegraphy, and, as a consequence, the business, it is believed, would so greatly increase as to admit of revenue meeting fully every proper charge against it. This will be more apparent when it is considered that at no time would revenue be chargeable with dividends or bonuses which the shareholders of all private companies mainly look for.

After the discussion at the Conference it can no longer be held that the existence of the Eastern Extension Company must preclude the establishment of the new line of communication across the Pacific; a line demanded not simply by colonial growth and general commercial progress, but in a still greater degree by the exigencies of the Empire. That it is vitally expedient to secure the new line as a measure of defence can be judged by the magnitude of the consequences which at any time may result from neglect in establishing it. This has been emphatically recognised by the highest authorities in England and likewise acknowledged by members of Her Majesty's Government and by the representatives of all the Colonies at the Conference.

It is claimed that the scheme set forth meets all the objections which have been raised, and goes far to harmonize every interest; it would undoubtedly establish the new line of communication at the least possible cost, and enable the principal self-governing Colonies to co-operate with the Home Government in carrying out a project of a very great Imperial importance.

Ottawa, 26th September, 1887. SANDFORD FLEMING.

Nos. 4818–23/87.

[TELEGRAM.]

THE PREMIER OF VICTORIA TO THE PREMIERS OF QUEENSLAND, SOUTH AUSTRALIA, TASMANIA, NEW ZEALAND, COLONIAL SECRETARIES OF NEW SOUTH WALES AND WESTERN AUSTRALIA.

Melbourne, 23rd December, 1887.

Pacific Cable.—Seems highly important that practicability be set at rest by a survey, as proposed by the Colonial Conference. I suggest that the matter might be moved a step forward, if the several Colonies move Governor to wire the Secretary of State representing the desirability of giving effect to the two resolutions of the Conference adopted on 6th May. If this is concurred in, I will act accordingly as regards Victoria.

D. GILLIES.

No. 4833/87.

THE PREMIER TO THE AGENT-GENERAL.

Melbourne, 23rd December, 1887.

Pacific Cable.—Ask whether Fleming's letter, 8th June, to Secretary of State for the Colonies not yet answered. Am suggesting Colonies wire through Governors.

D. GILLIES.

P.87/4098.

[TELEGRAM.]

THE PREMIER OF NEW ZEALAND TO THE PREMIER OF VICTORIA.

Wellington, 24th December, 1887.

Pacific Cable.—Suggestion approved. Have requested Governor to urge Secretary of State. We have heard from Mr. Fleming that Canadian Government are willing to undertake survey if Australian Governments contribute to cost. Have wired Premier, Sydney, who has not replied.

H. A. ATKINSON.

P.87/4115.

[TELEGRAM.]

THE PREMIER OF QUEENSLAND TO THE PREMIER OF VICTORIA.

Brisbane, 28th December, 1887.

I should like to have the opportunity of discussing the question of the Pacific Cable survey with you before anything definite is done.

S. W. GRIFFITH.

87/4866.

[Telegram.]

The Premier of Victoria to the Premier of Queensland.

Melbourne, 28th December, 1887.

Pacific Cable.—I observed your name as signatory of a letter to Sir H. Holland, dated London, 16th May, requesting Her Majesty's Government to take action on the resolutions of the Conference *in re*. I therefore relied on your concurrence, and have telegraphed to other Colonies in same terms as to you. New Zealand replies quite agreeing, and has moved Governor accordingly. Have you any new objection?

D. Gillies,
Premier.

P.87/4122.

The Premier of Tasmania to the Premier of Victoria.

Hobart, 28th December, 1887.

Pacific Cable.—Consequent upon negotiations proceeding with Eastern Extension Company, respecting Bass Straits cable contract, this Government unwilling to move. This subject is specially fitted for reference to the Postal and Telegraph Conference to be shortly held at Adelaide.

P. O. Fysh.

P.87/4144.

[Telegram.]

The Premier of Queensland to the Premier of Victoria.

Brisbane, 30th December, 1887.

I assumed that you had received Mr. Sandford Fleming's circular letter, containing proposals for carrying out survey, to which I have replied, saying that I hoped shortly to have an opportunity of consulting other Governments. I think his proposals should be considered before making request through Governor as suggested by you. I hope to be in Melbourne on the twelfth.

S. W. Griffith.

No. 87/4912.

[Telegram.]

The Premier of Victoria to the Premier of Queensland.

Melbourne, 30th December, 1887.

Mr. Fleming's proposals for a survey were, I understood, as an alternative in default of a survey by the Imperial Government. But as far as I am aware the Imperial Government has not yet refused to perform the work, and it is premature to proceed with other proposals. My idea, therefore, was to press for a reply to the delegates' letter of 16th May, and if that is unfavorable, then it will be time enough to consider an alternative scheme.

D. Gillies,
Premier.

P.88/51.

The Premier of South Australia to the Premier of Victoria.

Adelaide, 4th January, 1888.

Re survey for Pacific Cable, we consider this is a subject that might be fairly discussed at Postal Conference about to be held.

T. Playford.

P.88/89.

THE COLONIAL SECRETARY OF WESTERN AUSTRALIA TO THE PREMIER OF VICTORIA.

Perth, 7th January, 1888.

Pacific cable matter seems scarcely sufficiently advanced for this Government to take any step.

MALCOLM FRASER.

P.88/137. [TELEGRAM.]

THE AGENT-GENERAL TO THE PREMIER.

London, January 12th, 1888.

Pacific Cable.—Fleming's letter answered. Holland says if Colonial Governments concerned provide necessary funds, Admiralty will be urged accelerate survey.

GRAHAM BERRY.

P.88/490.

THE AGENT-GENERAL TO THE PREMIER.

Victoria Office, Victoria-street,

SIR, Westminster, S.W., 13th January, 1888.

With reference to your telegraphic despatch of the 23rd ultimo, asking whether Mr. Sandford Fleming's letter of the 8th of June to the Secretary of State for the Colonies had been answered, I have the honour to enclose, for your information, copy of the despatch of Sir Henry Holland to the Marquis of Lansdowne on the subject, which I have received through the courtesy of the Canadian office. I telegraphed the substance of Sir Henry Holland's letter to you yesterday, in the despatch of which a copy is subjoined.

GRAHAM BERRY.

THE HONORABLE THE PREMIER, MELBOURNE.

[ENCLOSURE NO. 1.]

THE SECRETARY OF STATE FOR THE COLONIES TO THE GOVERNOR-GENERAL OF CANADA.

MY LORD, Downing-street, 12th July, 1887.

I have the honour to transmit to your Lordship, for communication to your Government, a copy of a letter from the representatives to the Colonial Conference of Governments interested in the question of the proposed cable between Canada and Australia, with correspondence, between this Department, the Admiralty, and Mr. Sandford Fleming, C.M.G., on the subject.

I would observe that as there is at present no sufficient prospect of the necessary funds being available for the maintenance of a telegraph cable across the Pacific, even if the ocean bed to be traversed should prove to be exceptionally favorable, it would be impossible to justify a heavy special expenditure in pushing on the surveys; but if it could be established that the Colonial Governments concerned would be prepared to provide the necessary funds, I should be in a better position to urge upon the Lords Commissioners of the Admiralty the desirability of accelerating the survey.

I request that Mr. Sandford Fleming may be informed of the contents of this despatch.

H. T. HOLLAND.

GOVERNOR-GENERAL,

THE MOST HONORABLE THE MARQUIS OF LANSDOWNE, G.C.M.G.,

&c., &c., &c.

[For Enclosure No. 2, see P.88/137, *ante*.]

P.88/619.

[Telegram.]

The Premier of Queensland to the Premier of Victoria.

Brisbane, 24th February, 1888.

Have you made any representations to Imperial Government with respect to soundings for Pacific cable? Have you any further information how matter stands?

S. W. Griffith.

No. 88/757.

[Telegram.]

The Premier of Victoria to the Premier of Queensland.

Melbourne, 25th February, 1888.

Pacific Cable.—I have not, so far, made representations to Imperial Government with a view to get soundings made for Pacific cable. You will remember that I suggested this course to the other Colonies, but only New Zealand responded, and the matter stood over for the Postal Conference in Sydney. Of course you are acquainted with the resolution of the Postal Conference in the matter. I see no reason why we should not now make representations on this basis to Imperial Government.

D. Gillies.

No. 88/897.

The Premier to the Governor.

Premier's Office,
Melbourne, 5th March, 1888.

Memorandum to His Excellency the Governor.

The Premier presents his duty to Your Excellency, and begs to bring under Your Excellency's notice the following resolution, relative to the proposed Pacific telegraph cable, which was passed at the Postal Conference held at Sydney in January (ultimo), and at which the whole of the Australasian Colonies were represented, viz.:—

> "That this Conference is of opinion that it is desirable that a survey should be made of a suitable route for an ocean telegraph cable, by way of the Pacific, *viâ* Vancouver Island, the cost of the survey to be defrayed by Great Britain, Canada, and the Australasian Colonies represented at this conference.
>
> "This, however, is not to bind any of the countries named to accept the proposals of the Pacific Cable Company; and that the subject of the resolution be communicated to the various Australasian Governments."

New South Wales dissented.

This Government concurs in the recommendation contained in the resolution referred to, and will be prepared to bear its proportion of the cost, as suggested by the Conference.

Mr. Gillies begs to request, therefore, that Your Excellency will have the goodness to communicate by telegraph with the Right Honorable the Secretary of State on the subject, and ask that the Board of Admiralty may be moved to undertake the desired survey at the earliest possible date.

D. Gillies,
Premier.

No. 88/978.

THE PREMIER TO THE AGENT-GENERAL.

Premier's Office,
Melbourne, 9th March, 1888.

SIR,

With reference to my telegram of the 23rd December last, and to your telegram in reply of the 12th January, relative to the proposed Pacific cable, I have the honour to forward herewith, for your information, a copy of a memorandum on the subject, addressed to me by His Excellency the Governor, bearing date of the 5th instant.

I have, &c.,
(For the Premier) E. J. THOMAS,
Secretary to the Premier.

THE HON. SIR GRAHAM BERRY, K.C.M.G.,
AGENT-GENERAL FOR VICTORIA, LONDON.

[For Enclosure, *vide* No. 88/897, *ante*.]

P.88/1415.

THE GOVERNOR TO THE PREMIER.

Government House, Melbourne.

The Governor begs to forward to the Honorable the Premier the enclosed copy of a cablegram which he has this day received from the Secretary of State for the Colonies with reference to the survey of a suitable route for a Pacific Ocean Telegraph Cable *viâ* Vancouver Island.

HENRY B. LOCH.

[ENCLOSURE.]

[*Telegram.*]

THE SECRETARY OF STATE FOR COLONIES TO GOVERNOR SIR HENRY B. LOCH.

London, 28th April, 1888.

Your despatches, 8th March, and your telegram, 7th March, communicated to Admiralty. Question of survey cannot be decided pending receipt of Postal Conference proposals and views of Canadian Government; but H.M.S. *Egeria* is about to leave Sydney for survey duty, including soundings between New Zealand and Sandwich Islands.

No. 88/1798.

THE PREMIER TO THE GOVERNOR.

Premier's Office,
Melbourne, 5th May, 1888.

Memorandum to His Excellency the Governor.

The Premier presents his duty to Your Excellency, and has the honour to acknowledge the receipt of Your Excellency's memorandum of the 28th ultimo, forwarding a copy of a cablegram from the Secretary of State for the Colonies of the same date, relative to the proposed survey by the Admiralty of a suitable route for a Pacific Ocean telegraph cable *viâ* Vancouver Island.

It is stated in the cablegram referred to that the question of making the desired survey cannot be decided until the Postal Conference proposals and the views of the Canadian Government are in the possession of the Imperial Government.

The Report of the Proceedings of the recent Postal Conference will doubtless be forwarded to Lord Knutsford through His Excellency the Governor of New South Wales, in which colony the conference was held; but with the view, if possible, of expediting a conclusion with regard to the particular subject to which this correspondence relates, Mr. Gillies begs to enclose a printed copy of those proceedings, and to

request that Your Excellency will have the goodness to transmit it to the Secretary of State for the Colonies.

The resolution relating to the Pacific Ocean telegraph cable appears in pages 7 and 12 of the Report.

D. GILLIES,
Premier.

P.88/2264. [CIRCULAR.]

THE SECRETARY OF STATE FOR THE COLONIES TO THE GOVERNOR OF VICTORIA.

SIR, Downing-street, 1st May, 1888.

I have the honour to transmit to you, for communication to your Government, a copy of a letter which I caused to be addressed to the Lords Commissioners of the Admiralty, respecting the survey which Her Majesty's Government have been requested to make of a route for a cable telegraph between Canada and Australia across the Pacific Ocean, together with an extract from their Lordships' reply.

Her Majesty's Government concur in the opinion expressed in the letter from the Admiralty, that the question of accelerating the survey must remain open until there is a prospect that the funds for the construction of the cable will be found. My telegram of the 27th ultimo was founded on the letter from the Admiralty annexed to this Despatch.

I have, &c.,
KNUTSFORD.

THE OFFICER ADMINISTERING
THE GOVERNMENT OF VICTORIA.

[ENCLOSURE 1.]

COLONIAL OFFICE TO ADMIRALTY.

SIR, Downing-street, 16th March, 1888.

With reference to your letters M./1212 of the 28th of May, and M./1557 of the 5th of July last, on the subject of a proposed telegraph cable between Canada and Australia, I am directed by Lord Knutsford to transmit to you, to be laid before the Lords Commissioners of the Admiralty, a copy of a telegram received from the Governor of Victoria, urging that an early survey may be made of a suitable line for a cable.

As the Colonial Governments of Australia appear to be prepared to provide, in conjunction with the Imperial Government and the Government of Canada, a proportionate share of the expense of such a survey, Lord Knutsford, with a view to that further consideration of the question which has become necessary, would be obliged if their Lordships would furnish him, if it is in their power to do so, with an approximate estimate of the probable cost of a survey.

I am, &c.,
JOHN BRAMSTON.

THE SECRETARY TO THE ADMIRALTY.

[ENCLOSURE 2.]

[TELEGRAM.]

THE GOVERNOR OF VICTORIA TO LORD KNUTSFORD.

Melbourne, 7th March, 1888.

In accordance with resolution passed by Postal Conference held Sydney, the whole of Australian Colonies being represented, my Government ask that Admiralty may be moved to make early survey of suitable route for ocean cable telegraph by way of Pacific Ocean *viâ* Vancouver Island, cost to be defrayed by Her Majesty's Government, Government of Canada, and Australasian Colonies.

[Enclosure 3.]

Extract from a Letter from the Admiralty to Colonial Office, dated 4th April, 1888.

* * * * *

5. H.M.S. *Egeria* is now on the point of sailing from Sydney to perform the important work of clearing up the dangers, and fixing the positions of, and surveying the Islands on the route from New Zealand to Vancouver, a work which my Lords understood was strongly urged by Rear-Admiral Sir George Tryon on the representations of the Colonies.

6. In the course of this work the *Egeria* has orders to obtain deep soundings, which will in two or three years furnish more detailed information than now exists as to the varieties of depths to be expected on the general line of cable.

7. To survey a route for a cable to any purpose would, however, entail long searching for the best line, examination of contours of coral islands, and continuous close sounding; and three years' steady work at that and nothing else would probably not complete the survey.

8. The operations on which the *Egeria* is about to be employed will provide for work of immediate value to, and of urgent necessity in connexion with, the commerce now springing up; and will also furnish gradually (at a minimum cost) the preliminary information required, and a great part of that directly bearing on the laying of a cable.

9. My Lords do not, therefore, consider that it is advisable to make any alteration in the orders under which the *Egeria* is about to act; and as no vessel can be spared from her hydrographic work in any other part of the world, the question of hastening the survey by providing another vessel must, in their Lordships' opinion, remain open until Lord Knutsford is able to inform this Department that there is a reasonable prospect that the funds for the construction of the submarine cable across the Pacific will be found, and that time is of importance in Imperial interests.

10. In reply to the inquiry contained in the last part of your letter, my Lords desire me to state that the annual cost of H.M.S. *Egeria* is about £12,000, and that if a similar vessel is provided especially for the purpose of making a complete survey of the best ocean route and landing-places the cost would be about £36,000. The foregoing estimate is irrespective of the value of the vessel, and the cost of fitting her out.

* * * * *

No. 3557–62/88. [Circular.]

The Premier of Victoria to the Premiers or Colonial Secretaries of the Australasian Colonies.

Premier's Office,
Melbourne, 20th August, 1888.

Sir,

With reference to previous correspondence relative to the desirableness of a survey being made of a suitable route for an Ocean Telegraph Cable by way of the Pacific, and to the resolution of the Postal Conference, held in Sydney in January last, on the same subject, I have now the honour to request that you will be so good as to inform me whether your Government will be prepared to contribute towards the cost of the proposed survey on the basis of the Conference resolution referred to.

It may be well to point out that the circular despatch of the Right Honorable the Secretary of State for the Colonies, dated 1st May last, contains an estimate of the cost of such a survey if carried out by the Imperial Government.

I have, &c.,
D. Gillies,
Premier.

APPENDIX I.

(CONTENTS OF A PAMPHLET ENCLOSED IN MR. SANDFORD FLEMING'S LETTER OF 4TH NOVEMBER, 1886.)

ORDER IN COUNCIL IN REFERENCE TO THE ESTABLISHMENT OF TELEGRAPHIC CONNECTION BETWEEN THE AUSTRALIAN COLONIES, CANADA, AND GREAT BRITAIN.

Privy Council, Canada,
Ottawa, 10th June, 1886.

SIR,

By direction of the Right Honorable the President of the Council, I forward you a copy of an Order in Council, dated 8th June, 1886, with respect to the subject of the proposed establishment of telegraphic communication by cable from the Australian Colonies, for your action and co-operation as therein expressed.

I have the honour to be, Sir,
Your obedient servant,

JOHN J. MCGEE,
Clerk, Privy Council.

The Hon. Sir CHARLES TUPPER, G.C.M.G, C.B.,
High Commissioner for Canada,
9 Victoria Chambers, London, S.W.

CANADA.

Certified copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council, on the 8th June, 1886.

On a memorandum, dated 22nd May, 1886, from the Minister of Public Works, submitting a communication from the High Commissioner for Canada in London, enclosing a copy of a circular addressed by the Colonial Office to the Agents-General of the Australian Colonies, on the subject of the proposed establishment of telegraphic communication by cable from those colonies to San Francisco; the last paragraph of which is as follows:—

"In view of the completion of the Canadian Pacific Railway, it would seem to deserve consideration whether such a cable, if constructed, might not more advantageously have its terminus in British Columbia,"

The Minister represents that several communications have been received from Mr. Sandford Fleming, C.E., setting forth the scheme of a company, represented by him, to connect either Queensland or New Zealand with Vancouver, B.C., by way of Fiji and Hawaii, by which it appears that the estimated cost of the cable would exceed £2,000,000 (say 10,000,000 dols.); and that as it is the intention of the company to very greatly reduce the rates at present existing for telegraphic messages between England and Australia, the company would require assistance from the different Governments interested, in the shape of a subsidy, which is roughly estimated at about £70,000 per annum for a period of about 20 years. Mr. Fleming represents that the Governments interested in the project are Canada, Great Britain, India, Victoria, New South Wales, New Zealand, South Australia, Queensland, Tasmania, Western Australia, Hawaii, and Fiji, and states that advances have already been made towards some of the Agents of the Australian Colonies, with a view to having the terminus of the proposed cable in British Columbia instead of San Francisco, which have been favorably received. Mr. Fleming suggests that as Canada is greatly interested in establishing direct telegraphic communication with Australia, India, and the East, it would be advisable that this Government should take the initiative in the matter, and invite a conference of the Agents of the Colonies interested to discuss the subject.

The Minister, agreeing with the suggestions made as to the advantages likely to accrue to Canada from the establishment of direct cable communication between British Columbia and the East, and that it would be advisable that this Government should take the initiative in the matter, recommends that advantage be taken of the Colonial and Indian Exhibition, now being held in London, and the presence in that city of representatives from the colonies interested, to obtain an expression of opinion on the project, and that the High Commissioner for Canada be requested to invite a conference of the Agents-General of all the colonies interested, and ascertain how their respective Governments would be disposed to act in the matter, and what amount of assistance they would be prepared to give; also, that the High Commissioner should ascertain from the Imperial authorities what assistance might be expected from them on behalf of the United Kingdom and India, and that the High Commissioner report the result of his inquiries as speedily as possible.

The committee concur in the report of the Minister of Public Works and the recommendations therein made, and submit the same for your Excellency's approval.

The committee further recommend that the High Commissioner be instructed to put himself in communication with the Secretary of State for the Colonies, and endeavour to secure the co-operation of Her Majesty's Government on the subject.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council.

DIRECT TELEGRAPHIC COMMUNICATION BETWEEN AUSTRALIA, CANADA, AND GREAT BRITAIN.

Batt's Hotel, Dover-street,
London, 10th July, 1886.

SIR,

Having learned that the Canadian Government has instructed you to confer with the representatives in London of the other Governments interested in the projected telegraph communication between Australia and the United Kingdom, by what may be termed the Canadian route, I beg leave to submit the accompanying documents bearing on this important question.

I desire to direct your attention more particularly to the enclosed memorandum, of date, London, 1st July. In this document I have ventured to explain the views I have formed with respect to the projected telegraphic communication and the principles upon which a company may be organised for carrying out the undertaking.

I have consulted a number of capitalists, as well as experts in ocean telegraphy, and have quite satisfied myself that, with a very moderate Government subsidy, a substantial company can be formed to establish and work the new line of telegraph on the principles laid down in that memorandum.

The whole capital of the Company, to complete an independent telegraphic connection between Great Britain, Canada, New Zealand, and the Australian Colonies, may be placed at £2,500,000.

This capital may be divided into two parts—viz., £1,500,000 to bear a low rate of interest, secured for 25 years by Government subsidies; £1,000,000 to be share capital, apportioned between Australian, Canadian, and English capitalists.

This capital will be ample for the whole undertaking. With regard to the Restoration Sinking Fund, I have consulted some of the best experts on ocean telegraphy on the general question, and I learn that opinions are rapidly changing with respect to the life of modern cables. The first cables laid may be considered to have been, to a large extent, experimental, and advantage may now be taken of the very large experience gained.

It is found that in ordinary cases the breakages are apt to take place within a comparatively few years after the cables are laid, and that, once properly repaired, faults are not likely to recur.

The opinion is gaining ground that the life of a cable, as now made, instead of being ten or twelve years, is more likely to be double that period. As the conductors and insulating materials employed are practically indestructible, it is difficult to conceive that a cable, after lying 20 or 25 years at the bottom of the ocean, performing its functions satisfactorily, will not continue to be serviceable for an indefinite period. I mention these views to show that there does not appear to be any sufficient reason for burdening an enterprise at its inception by providing a large Sinking Fund for restoration at a very early date. Be that as it may, the soundness of the principles I have laid down in the memorandum cannot be gainsaid.

We are aiming to establish a work which will result in all future years in a great saving to each Colony. It is suggested that each Colony, in proportion to the saving effected, should set aside a small portion of the money so saved to keep the work which effects the economy, in an efficient condition. For every hundred pounds saved, ten pounds, or perhaps eventually five pounds or less, is proposed to be funded to cover possible contingencies.

With regard to the probable earnings for revenue purposes, it will be seen, on reference to the memorandum of 6th April, that the foreign business of the Australian Colonies for the year 1889 is estimated to be 85,000 messages, or about 850,000 words. It is not to be expected that the whole traffic will come to the new line, for the existing telegraph company will undoubtedly reduce its charges in order to retain a share of the business.

Let us assume that the business will be equally divided, and that the new Company will only have half of the 850,000 words; this will give 425,000 words, and we may reckon this business at four shillings per word, as the terms made with the Canada Pacific Railway Company will admit of "through" messages being sent at that rate.

425,000 words at 4s.	£85,000
Less cost of working and land service, say	40,000
Giving a balance of	£45,000

Equal to 4½ per cent. on £1,000,000. This estimate is for the first year the line can be in operation. On careful examination it will be seen that the estimate is an exceedingly moderate one, no allowance having been made for the great impulse which will undoubtedly be given to telegraphy and general business by the large reduction in charges.*

There cannot be a doubt that the earnings will go on greatly increasing, while the working expenses will increase but little. It would not be at all a high estimate to double the net earnings in a very few years. This would give 9 per cent. on the whole share capital, and it may be assumed as certain that the increase would continue year by year.

I have explained that a subsidy is needed for the purpose of securing a million and a half of pounds at a low rate of interest. If the Government subsidies be sufficient to provide a sinking fund to pay off the £1,500,000 in twenty-five years, it would be proper to carry all excess of revenue over a given dividend, say over 7 or 8 per cent., to the Restoration Sinking Fund.

It will be noted, as one of the proposed conditions, that not only will the charges on messages be reduced to less than half the present rates, but that messages sent by any Government shall be transmitted free to the full amount of its subsidy. This feature will place it in the power of each contributing Government to receive directly back each and every year its full proportion of the subsidy contributed.

I respectfully submit that the scheme above outlined is perfectly practicable; it will no doubt find warm and active hostility on the part of those pecuniarily connected with the existing telegraph company —those whose policy has been to maintain high rates in order to secure large profits. Such objections as they may offer should have little weight in view of the great Imperial and Colonial advantages which the

* Referring to the recent great reduction in charges between London and New York, the Report of the Directors of the Direct United States Cable Company for the six months ending 30th June last states: "So far the reduction has resulted in more than doubling the volume of traffic, and the Directors are not without hope that with a revival of trade it may be still farther increased." The Report of the Anglo-American Telegraph Company also states that the traffic has increased over 110 per cent. since the rates were reduced.

new undertaking will secure. The better policy for the companies to adopt will be to lower charges on messages and derive profits from the greatly augmented business which will certainly follow.*

The terms and conditions which I have indicated would undoubtedly command the organisation of a substantial and energetic Company to carry out this new and important undertaking in the most satisfactory manner.

I have the honour to be, Sir,
Your obedient servant,
SANDFORD FLEMING.

SIR CHARLES TUPPER, G.C.M.G., C.B.,
HIGH COMMISSIONER FOR CANADA.

TELEGRAPH BETWEEN AUSTRALIA, CANADA, AND GREAT BRITAIN.

Memorandum by Sandford Fleming.

1. It is proposed that a Company be formed for the purpose of establishing telegraphic communication between Australasia and Great Britain by a new and independent line. This new telegraph is projected to traverse lands and seas beyond the control of any Power likely to prove hostile to the British Empire.

2. It is proposed that a chain of electric cables be laid across the Pacific Ocean, to connect the Australian group of Colonies with Vancouver, the western terminus of the Canadian Pacific Railway. The cables to land at such intermediate islands as may be found suitable for mid-stations.

3. Arrangements have already been made with the Canadian Pacific Railway Company for the transmission of all through telegraph business between the Pacific and Atlantic Oceans on extremely favorable terms.

4. It is proposed to acquire complete control of one of the existing Atlantic cables landing on the shores of Canada, or to lay a new cable from Canada to Great Britain.

5. The whole line may be divided into three great Sections, viz.:—

(*A.*) *The Pacific Section.*

This section will consist mainly of electric cables, the lengths of which after allowing for slack will approximately be as follows:—

	Knots.
(1) Brisbane or Sydney to North Cape, connecting at the former with the Australian telegraph system, at the latter with the telegraph system of New Zealand	1,300
(2) North Cape to one of the Fiji Islands	1,300
(3) Fiji to Fanning Island	2,270
(4) Fanning Island to one of the Sandwich Islands	1,260
(5) Sandwich Island to Barclay Sound or Port San Juan, Vancouver Island	2,730
(6) Barclay Sound, across Vancouver Island and the Strait of Georgia to Vancouver City, the terminus of the Canadian Pacific Railway	100
Geographical miles	8,900

(*B.*) *The Canadian Section.*

This section will extend along the Canadian Pacific Railway and the Inter-Colonial Railway to connect with an Atlantic cable. If it be found necessary to lay a new Atlantic cable, the land line will probably terminate at Gaspé in the province of Quebec. Distance from Vancouver to Gaspé Statute miles 3,450

(*C.*) *The Atlantic Section.*

A new Atlantic cable from Gaspé *viâ* the Straits of Belle Isle to Ireland Geographical miles 2,450

6. These three great sections connected, and the business under one management, it will be possible to reduce permanently the charges on messages to the lowest practicable rates, and thus render the line of the greatest commercial utility. It is believed that the reduction in rates contemplated, and rendered possible by the satisfactory terms agreed upon with the Canadian Pacific Railway Company, will give a great impetus to telegraphy and promote the development of intercolonial intercourse and commerce.

7. The arrangements proposed, and the terms agreed upon, will admit of messages being sent from Australia to Great Britain on the opening of the new line at less than half—eventually, it is believed, at one-third—the charges at present exacted.

8. While the new line, established as set forth, will stimulate commercial activity between the countries to be connected, its political, naval, and military value will be very great indeed. It is well known to naval and military commanders that no reliance can be placed on the permanency of communications by way of the Mediterranean and the Red Sea, and it becomes obvious that the line through Canada may, during any emergency, assume incalculable importance. The cable across the Pacific will always be removed from the theatre of European complications. It will not only be a direct means of communication between the Australian Colonies and the Mother Country, but if an emergency arises to render every wire through Europe and Egypt useless, it will still be possible to communicate with India; indeed, every British station between South Africa and Port Hamilton may continue in telegraphic connection with London.

9. To secure advantages so great—and it is difficult to say whether in a commercial, political, naval, or military aspect the advantages would be greatest—Government aid and co-operation is necessary; but as there are twelve Governments more or less interested in the undertaking, moderate assistance from each will suffice.

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* Since the date of this letter the Reports of the Associated Atlantic Cable Companies for the past half-year have been published. They generally favour this new policy. The low tariff introduced has resulted in a very much larger augmentation of traffic than was anticipated as a first result. "The unexpected increase in the volume of traffic immediately upon the introduction of the Sixpenny Tariff has induced the Directors to consider the expediency of adopting permanently a system of low rates. . . . It is obviously their interest to encourage a very large traffic at low rates."—*Report A. A. Tel. Company.*

10. The following Governments are interested in the new line of telegraph:—

1.	The Government of	Great Britain.	7.	The Government of		Queensland.
2.	„	„ Canada.	8.	„	„	Victoria.
3.	„	„ Hawaii.	9.	„	„	South Australia.
4.	„	„ Fiji.	10.	„	„	Western Australia.
5.	„	„ New Zealand.	11.	„	„	Tasmania.
6.	„	„ New South Wales.	12.	„	„	India.

Of these Hawaii has offered twenty thousand dollars a year (say £4,000) for fifteen years to be connected telegraphically with San Francisco, and it may be assumed that that subsidy will be available to the proposed company. The principal assistance, however, will require to be furnished by Great Britain and her Colonies.

11. It is proposed that Government aid should be directed to two main objects, viz. :—(1) To secure the establishment of the cables across the Pacific Ocean ; (2) To provide for their permanent efficiency.

The first main object—the establishment of the cables across the Pacific—can be effected if the Government assistance takes the form of an annual subsidy sufficient in amount to pay a low rate of interest and provide for amortization on a large portion of the capital required for this section of the undertaking. The remaining capital may be share capital, and will have to depend for dividends on earnings.

12. The perpetual efficiency of the cables can be maintained in another way. It has been customary to make provision for this purpose out of earnings, but this course necessarily has a tendency to keep rates for the transmission of messages high. The policy recommended is to reduce traffic rates to a minimum, and, in order to do so, earnings should be charged with as little as possible beyond working expenses. It is therefore suggested that the renewal and duplication of the cables may be effected by a special provision. In the memorandum attached hereto (6th April, 1886), it is clearly shown that the establishment of this new line in the manner set forth will result in a very large saving in the gross foreign telegraph business of all the Colonies it will serve. A comparatively small percentage of the savings so effected would provide for renewing, duplicating, and maintaining the cables in perpetual efficiency. It is proposed, therefore, that a restoration fund be provided from this source. Taking as a basis for computation the difference between present charges and reduced charges, probably five per cent. or less will eventually be found sufficient; but it is suggested that at first ten per cent. of the savings accruing to each colony should annually be funded for the purpose set forth. If after a period of ten or more years it be found that less than ten per cent. will effect the desired purpose, a smaller percentage of the savings may be carried to the restoration fund. The object in view is to provide sufficient, but no more than sufficient, to restore the cables whenever they may become unserviceable, and to maintain the line of communication in the highest condition of efficiency for the business to be transacted.

13. These provisions assented to it will be possible, immediately on the cables being laid, to adopt a scale of charges for ordinary messages between the Australian Colonies and Great Britain of four shillings per word, press messages at half or considerably lower rates. It is proposed that Government messages be transmitted free of charge to the full amount of the subsidy and to take precedence of all other business.

Batt's Hotel, Dover-street,
London, 1st July, 1886.

(*Appended to Letter dated London, 10th July*, 1886.)

CANADIAN AND AUSTRALIAN CABLE.

Memorandum submitted to the Canadian Government by Sandford Fleming.

Ottawa, 6th April, 1886.

A few years back attention was directed by the undersigned to the importance and practicability of connecting Great Britain telegraphically with China, India, Japan, and the Australian Colonies, by a line passing through Canada, and by one or more cables laid in the Pacific Ocean.

The subject was reverted to last year in a letter dated 20th October, 1885, addressed to the Premier, the Right Honourable Sir John A. McDonald.

Since these dates the Canadian Pacific Railway Company has completed a line of telegraph from the Atlantic to the Pacific, thus establishing an important section of the original scheme, leaving to be completed only the cable across the Pacific.

The Australian Colonies are already connected telegraphically with England by way of Port Darwin, Singapore, Penang, Madras, Bombay, Aden, Alexandria, and through the Mediterranean Sea. The charges for messages are, however, very high, and there is always danger of interruption to business when political events assume a threatening attitude in Egypt or in Europe.

A cable from the Australian Colonies, *vid* Fiji and the Sandwich Islands, to Vancouver, the western terminus of the Canadian Pacific Railway, would connect them telegraphically with England by a line which would have the great advantage to every British interest of being entirely removed from all European complications. Moreover, a very large aggregate saving in the cost of transmission would be effected.

The Australian Colonies were first connected with England in November, 1872, consequently the following year (1873) was the first year the International line was in operation. The business in 1873 consisted of 8,952 messages to and from the colonies. The last returns are for 1884, when the messages sent and received reached 48,896 ; showing an extraordinary development in eleven years, averaging an annual increase of 40 per cent. This increase may, however, be abnormal, and, as the last three years of the period show a more moderate growth, it will be safe to take the latter as a basis on which to estimate future business.

The number and cost of messages between the Australian Colonies and Europe, for the three years referred to, was as follows:—

	No. of Messages.	Cost.
1882	39,175	£225,567
1883	43,334	251,277
1884	48,896	270,766

These results give a fair indication of the steady growth of the business under the present high tariff.

The annual increase in the number of messages is equal to 12½ per cent., and the average cost of each message sent during the three years 1882, 1883, and 1884, is £5 13s. 9d.; the charge of ordinary messages per word (between Sydney and London) being 10s. 10d., Government messages 8s., and press messages 6s. 7d.

The undersigned has brought the question of a cable from Vancouver to Australia before the Board of Directors of the Canadian Pacific Railway, and has succeeded in effecting arrangements of a most satisfactory character. This company will, within a few weeks, have telegraphic connexions with all the principal points in the United States, including all the important cities on the Pacific coast, and will be able to transmit messages on such terms as will enable the Pacific Cable Company to secure practically the entire business between the continent of America and the Australian colonies. The cable leading from Port Darwin, in the direction of India, will, moreover, enable the new company to command a very large share, if not all, the business between America and Asia.

It will be practicable under these arrangements with the Canadian Pacific Railway Company to transmit messages between the Australian Colonies and England at considerably less than one-half, possibly at one-third, the present charges, and between the colonies and all the important cities in the United States and Canada at one-quarter the rates now exacted.

It is proposed, immediately on the Pacific cable being laid, to lower the charges on ordinary messages between Australia and England from 10s. 10d. to 4s. per word. This reduction will bring the cost of an average message from £5 13s. 9d. down to £2, and, without doubt, will give a very great impetus to telegraph business. It is not easy to estimate with any approach to accuracy what increase would result from this cause—men of experience in such matters are of opinion that the business would probably be doubled; but even if we limit our expectations to its ascertained normal growth, and base our calculations on a steady increase of traffic of only 12½ per cent. per annum, we shall see that the advantage of the new line to the Colonies will be immense.

The latest returns, with 12½ per cent. per annum added, give 85,000 messages for 1889. Assuming that the new cable would then be laid, and the Canadian route in operation throughout, the estimate for a series of years would be as follows:—

	No. of Messages based on an annual growth of 12½ per cent.	Saving effected, being the difference between £5 13s. 9d. and £2, or £3 13s. 9d. per Message.
1889	85,000	£313,400
1890	95,000	350,275
1891	107,000	392,550
1892	119,000	438,800
1893	133,000	490,420
1894	148,000	542,050
1895	166,000	612,125
1896	186,000	685,875
1897	208,000	767,000
1898	234,000	862,000
Total ...	1,481,000	£5,456,497

It will thus be seen that, without taking into account any additional increase in the number of messages which the great reduction in charges would undoubtedly produce, a very great saving would be effected in the Australian business. If the estimate be well founded, it would amount to £5,456,497 within the first ten years, being an average saving of over half a million pounds per annum.

The new line, when established, will form a connexion through South Australia with Port Darwin, and thence by existing telegraph lines with Asia and Africa. It is obvious, therefore, that it possesses a peculiar interest to the Imperial Government, as it will afford the means of communicating, not only with the Australian Colonies independently of lines passing through the Mediterranean, but also with India and every British station between Hong Kong and South Africa.

Canada has already done much towards establishing the new line of telegraph between Great Britain, Australia, and Asia. She has, by an enormous expenditure in connexion with her national railway, brough Vancouver within telegraphic reach of England, and she has thus rendered it a comparatively easy task to complete the whole connexion. It has cost in all about £40,000,000 of public and private money to establish the railway and its adjunct the telegraph, by which Vancouver has attained the commanding position which it occupies in respect to the Pacific Cable scheme. The Pacific Cable is, however, in some degree a corollary to the line across the continent, and it is reasonable to expect that the Canadian Government will readily co-operate in its establishment.

The following Governments are more or less interested in the undertaking:—

1. The Government of Great Britain.
2. „ „ Canada.
3. „ „ Hawaii.
4. „ „ Fiji.
5. „ „ New Zealand.
6. „ „ New South Wales.
7. The Government of Queensland.
8. „ „ Victoria.
9. „ „ South Australia.
10. „ „ Western Australia.
11. „ „ Tasmania.
12. „ „ India.

It will not be possible to carry out the undertaking by a private company without Government assistance. As electric cables are perishable, provision must be made for renewing or duplicating them when circumstances require it. It is also obvious that the reduced charges which are proposed will require a greatly increased business to yield a sufficient profit to meet dividends on capital. The company would, therefore, require a subsidy for a term of years, or until the business increased to such a volume as to render the line self-sustaining; but as the subsidy would be borne by so many Governments, it would fall lightly on each.

The first step to be taken is to ascertain to what extent the several Governments would be disposed to co-operate in establishing the work.

(*Appended to Letter dated London, 10th July*, 1886.)

TELEGRAPH FROM CANADA TO AUSTRALIA.

Letter to the Premier of Canada by Sandford Fleming.

SIR, Ottawa, 20th October, 1885.

I had the honour a few years back to submit to the Canadian Government a scheme for forming a great Inter-Colonial and Inter-Continental telegraph system, a prominent feature of which was the laying of an electric cable across the Pacific Ocean, from the western coast of British Columbia to Asia. The great object which the scheme had in view was the establishment of an unbroken chain of telegraphic communication between England and Japan, China, India, Australia, New Zealand, and South Africa, directly through Canada, thus connecting telegraphically all the great British possessions in every quarter of the globe without passing through Europe.

The accompanying memorandum, dated London, Nov. 20, 1882, together with the documents submitted by the Secretary of State to the Canadian Parliament on the 20th February of the same year, will recall to your recollection the important public objects which the scheme had in view, and the efforts then made to carry it out. You are aware that through various causes these efforts proved unsuccessful; but the time which has elapsed has in no way lessened the importance of the project, or rendered it more difficult of accomplishment.

The political events which have so frequently assumed a threatening attitude in Europe, the difficulties which are never entirely absent in Egypt, point to the constant danger of interruption to existing communications by the Red Sea, and the immense importance of securing an independent line of telegraph removed from all Eastern complications. The projected line, extending from England through Canada to the Pacific coast, in the Province of British Columbia, and thence across the Pacific to Asia and the Australian Provinces, would supply an independent line of communication so much desired, and in so doing would indirectly, but it is held very materially, strengthen the military and naval power of Great Britain, while it would directly promote the highest interests of every one of the great Colonial possessions.

Within the present year, an overland line of telegraph will be completed along the route of the Canadian Pacific Railway, thus spanning the American continent, and there are a number of electric cables in operation across the Atlantic from England to Canada. The Canadian Pacific Railway Company have expressed a desire to facilitate the despatch of through telegraphic business along their line in every possible way, and are prepared to enter into a permanent agreement, which, with the competition existing on Atlantic lines, will secure exceedingly low tariff rates between England and the coast of British Columbia. There only remains to be established the submarine telegraph across the Pacific Ocean.

When the accompanying memorandum was issued, it was thought that the Pacific cable should follow a northern route by the Aleutian Islands and Japan. It was generally believed that in the great central area of the Pacific Ocean sub-aqueous rocky ledges and coral reefs prevailed to such an extent as to render the establishment and maintenance of an electric cable practically impossible. That opinion was based on an imperfect knowledge of the physical character of the Pacific Ocean, and on the charts which at one time were strewn with islands, reefs, and shoals, many of which were inserted on doubtful authority, and have consequently been omitted from the latest publications. Since then, also, it may be supposed that submarine telegraphy is better understood. Be that as it may, the view is now entertained that it may not be absolutely necessary to follow a northern route, and that the successful establishment of an electric cable running directly from British Columbia to the Australian Provinces may be quite within the range of practicability.

There are, indeed, extensive coral reefs in the central and southern Pacific; but the most authentic hydrographic information establishes that those reefs are generally in great groups, separated by wide and deep depressions, free from obstructions. It is further revealed by the latest bathymetric data that those depressions or troughs present (as far as ascertained) a sea floor precisely similar to that of the Atlantic, so suitable for submarine telegraphy. Those ocean depressions, alike by their geographical position and their continuity, open up the prospect of connecting Canada and Australia by a direct cable. The course of the cable would be from Vancouver to the Fiji Islands, touching at the Sandwich Islands and Fanning Island as mid-stations. From the Fiji Islands, a cable connexion would be formed with the existing Australian and New Zealand telegraph sytems.

Whatever route be followed by the cable across the Pacific, the object will be to bring the group of Australian Colonies into direct connexion with Canada, and secure a means of communication between them and England independent of all lines passing through or in proximity to Europe. Messages will be conveyed by the new line at lower rates than are now exacted, and the immediate effect which must follow its establishment is manifest. The cost of telegraphing between Australia and England will be reduced, intercourse will be facilitated between the sister Colonies and Canada, and an impulse given to commercial activity.

Apart altogether from the political advantages of the new independent telegraphic connexion, the gain to the general commerce of the Colonies which it would serve would justify them in co-operating with Canada in promoting the undertaking.

The undertaking may be promoted by the several Governments agreeing to give for a term of years a subsidy sufficient to induce a company to embark in it. The subsidy may be a fixed sum, contributed in

equitable proportions, or it may be dependent on the business transacted by each respective colony, and on the reduction in rates which would follow immediately on the line going into operation.

It is quite obvious that the gross foreign telegraph business of any one colony, reckoned at the difference between the present high rates and the reduced charges, would produce a considerable aggregate sum. That sum might be taken to represent the year's savings accruing to the colony from the establishment of the new line of telegraph, and it would obviously well repay that colony to share the amount so saved with the Telegraph Company. Suppose the accrued saving so reckoned in any one year to be £50,000, a moiety to the company as a subsidy would be £25,000, while the colony itself would gain a direct pecuniary benefit from the undertaking to a like extent. The illustration as presented will explain the principle on which a subsidy may be based.

Among the British possessions in the southern hemisphere directly interested in the work are Fiji, Tasmania, New Zealand, Western Australia, Queensland, New South Wales, South Australia, and Victoria. I venture to think that their co-operation with Canada in the manner set forth would, without difficulty and with no great delay, secure to them and to the whole British colonial system all the political and commercial advantages to result from the projected line of communication.

As the contemplated work is of special importance to the Mother Country and all her Colonies, I trust I may be allowed to entertain the hope that you will be pleased to bring the subject under the notice of the respective Governments.

I have the honour to be, Sir,
Your obedient servant,
SANDFORD FLEMING.

The Right Hon. Sir John A. Macdonald.

TELEGRAPH BETWEEN AUSTRALASIA, CANADA, AND GREAT BRITAIN.

SIR, London, 19th July, 1886.

The undersigned, who were present at the meeting of the Agents-General on the 12th instant, having been requested by you to ascertain the amount of subsidy which would be necessary to enable a company to connect England telegraphically with Australia through Canada and the Pacific Ocean, have the honour to state :—

We have considered the whole question, and are of opinion that a substantial company can be formed to establish an efficient telegraph connexion on the route proposed for a total annual subsidy of £100,000 for twenty-five years.

The subsidy may be apportioned as follows, *i.e.*:—

1. Great Britain, on behalf of the United Kingdom, India, and the Crown Colonies	£50,000
2. Canada	10,000
3. Queensland...	10,000
4. New South Wales	10,000
5. Victoria	10,000
6. New Zealand, Tasmania, and Western Australia	10,000
	£100,000

Or should the Imperial Government, by an arrangement with the Colonial Governments, itself guarantee the whole amount, the total subsidy may be considerably reduced, as the Imperial guarantee would enable the company to find capital at a lower rate of interest. With such guarantee, a total subsidy of £90,000 for twenty-five years would suffice, and thus reduce the annual contributions.

The subsidy mentioned is calculated to pay interest on borrowed capital, and provide a sinking fund for its repayment in twenty-five years.

As the company would transmit all the messages of the various contributing Governments free, and the rates chargeable to the public for "through" messages would not be more than one-half the present regular tariff charges, Great Britain and the colonies would save a much greater sum than the amount of subsidies above proposed.

If the several Governments agree to pay over to the company a percentage of the gross savings which would thus be effected by each country, the company could still further reduce the charges to the public.

We have the honour to be, Sir,
Your obedient servants,
DONALD A. SMITH.
RANDOLPH C. WANT.
ANDREW ROBERTSON.
MATTHEW GRAY.
SANDFORD FLEMING.

The Honorable Sir Charles Tupper, G.C.M.G., C.B.,
High Commissioner for Canada, London.

APPENDIX II.

(CONTENTS OF A PAMPHLET ENCLOSED IN MR. SANDFORD FLEMING'S LETTER OF 8TH NOVEMBER, 1886.)

MEMORANDUM IN REFERENCE TO A SCHEME FOR COMPLETING A GREAT INTER-COLONIAL AND INTER-CONTINENTAL TELEGRAPH SYSTEM BY ESTABLISHING AN ELECTRIC CABLE ACROSS THE PACIFIC OCEAN.

The project of connecting England telegraphically with all her great Colonial possessions around the globe, by means of a line through Canada, and thence by a Submarine Telegraph to Asia, is discussed by the undersigned, as Engineer-in-Chief of the Canadian Pacific Railway, in his report for the year 1880, as follows:—

The Land Telegraph completed through Canada, and in operation from ocean to ocean, opens up a prospect of extended usefulness, and promises advantages which do not alone concern Canada.

A map of the world, setting forth the great telegraph lines in operation, shows that Canada is situated midway between the masses of population in Europe and Asia, and establishes the peculiarly important geographical position which the Canadian Overland Telegraph Line will occupy.

Seven submarine cables have been laid across the Atlantic, of which two are not now in working order. Of the remainder, three are landed on the shores of Canada.*

England is connected with Asia by four main telegraph lines. One by way of Portugal, Spain, Malta, Egypt and the Red Sea. A second, passing through France, Italy, and Greece, also follows the Red Sea. A third traverses Germany, Austria, Turkey, Russia, and Persia. A fourth passes through Russia. and follows the River Amoor to the Sea of Ookhotsh. The two first touch at Aden, at the entrance of the Red Sea, from which point a submarine line extends to Zanzibar, Natal, and the Cape Colonies. From Aden the main lines are extended to India. From India two separate lines have been carried to Singapore. From Singapore connexions are established north-easterly to Hong Kong and Japan, and south-easterly to Australia and New Zealand. The rapidity with which the telegraph cables across the Atlantic have been multiplied, and the construction of more than 400,000 miles of land and submarine telegraphs over the globe, affords evidence of the work which they are called upon to perform. The few years in which these results have been attained indicate the rapidly-growing magnitude of telegraphic traffic, and circumstances conclusively point to a demand for vastly-increased facilities of communication between the great centres of population and commerce of the world.

While, on the one hand, the telegraph has extended easterly across Europe and Asia, and, on the other hand, westerly across the Atlantic, the Pacific Ocean remains untraversed. The explanation may lie to a great extent in the fact that the character of the bed of a great part of the ocean forbids the attempt. In more southern latitudes the great central area of the Pacific Ocean is marked by sub-aqueous rocky ledges and coral reefs, the existence of which has deterred any telegraphic enterprise from being carried out. Submarine cables have at different times been projected to cross the Pacific, one of which was to have started from San Francisco to touch at the Sandwich Islands, but on account of the broken and unsuitable character of the ocean bed, the project, after considerable expense had been incurred, was eventually abandoned.

The chart of the United States Surveys (1877) of the northern part of the Pacific Ocean shows that a line from the north end of Vancouver Island to the Aleutian Islands, and from the Aleutian Islands to Japan *viâ* the Kurile Islands, has a depth averaging from 2,000 to 2,500 fathoms, and the soundings reveal a soft, oozy bottom, presenting similar conditions to the North Atlantic Ocean, on the plateau of which cables have been successfully laid.

From her geographical position, Canada presents unusual facilities for taking advantage of these favorable conditions, and the belief is warranted that when a submarine telegraph is laid from America to Asia its location will naturally be in connexion with the Canada overland telegraph to the Pacific coast.

The cable may start from one of the deep-water inlets at the north end of Vancouver Island, and be sunk in a direct course to Japan, or it may touch, about midway, Amlia, one of the Aleutian Islands. At Yesso, in Japan, the connexion would be made with the Asiatic telegraphs. As an alternative route, the submarine line may land on one of the Kurile Islands, north of Japan, and thence extend direct to Hong Kong. Either course would complete the connexion with the whole Eastern telegraph system, and effect important results.

1. It would connect San Francisco, Chicago, Toronto, New York, Montreal, Boston, and all the great business centres of America, with China and the principal ports of Asia, much more directly than by the present lines of telegraph by way of Europe.

2. It would open a new means of communication between America and Asia, to be employed for purposes of general commerce, at much lower rates than by existing channels.

3. It would obviate the objections to lines which pass through countries where different languages are spoken, a circumstance which often causes error in the transmission of messages. The new line will be employed for the most part by the English-speaking people of both hemispheres, and consequently one language only need be used by the telegraph operators. Thus a fruitful source of mistakes would be avoided, and the charges for transmission would be freed from all incidental additions, and reduced to the lowest remunerative rates.

4. It would complete the telegraphic circuit of the globe, and would be available for highly-important scientific investigations.

5. It would bring Great Britain, Canada, India, Australia, New Zealand, South Africa, indeed all the outer provinces and the Colonial possessions of Great Britain, in unbroken telegraphic communication with each other, in entire independence of the lines which pass through foreign European countries.

6. It would scarcely fail to prove of very great advantage for purposes of State, as the line might be so established as to remain under Government control, to be immediately serviceable on any emergency.

* Since the above was written, additional cables have been laid, and there are at the present time six cables in working order from the United Kingdom to British North America.

The Government of Canada has given its full consideration to the project, and has passed certain Orders in Council granting important concessions, and has promised every assistance in its power to carry out the undertaking. Correspondence has at various times passed between His Excellency the Governor-General of Canada and the Secretary of State for the Colonies on the subject.

Through the intervention of the Imperial Government, the Japanese Government has granted permission to land the cable at a suitable point on the coast of Japan.

The Government of the United States has also given permission to land the cable on one of the Aleutian Islands, and to use the Island as a mid-station.

The Parliament of Canada has authorized the Canadian Government to incorporate the undersigned, and such persons as may be associated with him, as a company for the purpose of carrying out the undertaking.

The importance of the scheme has from the first been recognised. The recent Egyptian war has established the necessity of carrying it into execution with as little delay as practicable. For a period last summer there was a complete interruption to postal and telegraph service, through Egypt, with India, China, Australia, South Africa, and the East. The war was happily brief, and this interruption to these services between England and her Eastern possessions was terminated by a brilliant campaign. The interruption, however, was of value, as it confirmed the soundness of the views of General Lord Wolseley on the question of communication with the East. Not long since, that distinguished authority publicly expressed his conviction that it would be unwise and suicidal to depend on the existing telegraph system as a means of communication with our Eastern possessions. All far-seeing men, who, like Lord Wolseley, consider the question, must attach the utmost importance to this proposal to establish a telegraphic communication through the Dominion of Canada with the Eastern Empire.

Last summer, when the two cables in the Red Sea, and from the Red Sea to Bombay, were rendered entirely useless, the only means of communication was by the line passing through Germany, Russia, and Persia. It is not difficult to judge how far that line could be relied on in the event of a general, or even a partial, Mahometan rising, or any European complication whatever.

It is held that the projected submarine telegraph across the Pacific Ocean, from the western cost of Canada, would accomplish the following objects :—

1. It would establish the link at present wanting to complete an unbroken chain of Electric Telegraphs to connect Great Britain and her Dominions in ever quarter of the globe, *without passing through or approaching Europe or the Mediterranean.*

2. In connexion with the vitally important question, "The Defence of the Empire," it would establish an alternative means of communication between London and Asia, Australia and South Africa. It would form a telegraphic connexion between England, the Indian Empire, and Eastern possessions, independent of existing lines, all of which pass through foreign countries, Russian or Mahometan, countries which are not always friendly, and which are liable at any time to become hostile.

3. It would promote colonial intercourse with the Mother Country, and assist in developing and facilitating general commerce.

4. It would advance the general interests of Canada, by directly connecting the Dominion, telegraphically, with all the other great British possession in both hemispheres.

5. It would assist in bringing into prominence portions of the British Dominions, embracing Vancouver Island and British Columbia, which, for all practical purposes, are at the present time the most distant of our Colonial possessions.

6. There cannot be a doubt that the projected undertaking would materially serve the interests of British commerce.

7. Whatever complications may arise in Europe, or whatever might be going on around the Mediterranean, it would unquestionably secure the safety and certainty of telegraphic connexions between the Mother Country and every one of her great possessions.

In view of the foregoing considerations, it may be assumed that the Imperial Government would desire to see the telegraph established.

It has been found that ordinary mercantile telegraph business is not sufficient, at the present time, to induce capitalists to take up the project, purely as a commercial enterprise. Assistance, for a limited period, is therefore required.

The Canadian Government is deeply interested in the success of the scheme, and has undertaken to facilitate its establishment and give every assistance in its power.*

The Japanese Government, being also interested, it is believed will readily facilitate the carrying out of the project, and it is reasonable to expect will assist financially to a moderate extent.

If one of the Aleutian Islands be adopted as a mid-station for the cable, the enterprise would benefit the United States, by supplying telegraphic service with the territory of Alaska. There are good grounds for expecting that the Government of the United States will offer a small subsidy for this service.

But it is obvious, from what has been set forth, that, in the general interests of the Empire, Her Majesty's Government is more deeply interested than any other in the success of the scheme. It is not unreasonable to hope, therefore, that in accordance with the policy adopted with respect to other lines of electric cable the Government of Great Britain will be disposed to assist in this instance. Assistance will only be required until mercantile and ordinary traffic be developed to such an extent as to render the work self-sustaining.

Assistance may take the form of a guarantee of Government telegraphic business, or its equivalent value in a subsidy, for a fixed term of years. Assuming that a subsidy be given, it might be arranged that all Government messages be carried at agreed rates in reduction of the amount of subsidy until it be extinguished.

Such an arrangement, together with assistance from the other Governments mentioned, would be a security against loss, and would form a basis for raising the capital necessary to establish the line in a satisfactory manner.

All available information has been obtained with respect to depth of water, character of the bottom, and landing-places, and it is believed that the proposed route is the shortest and best, if not the only

* *Vide* Nos. 1, 2, 3, and 4, appended to this document

practicable general route for laying a cable across the Pacific.* The total distance on the great circle, from the point on Vancouver Island at which it is intended to start to the proposed landing-place in Yesso, is 3,622 nautical miles, divided into two spans by landing on one of the Aleutian Islands. With the necessary allowance for slack of 20 per cent., the length of cable would be about 4,400 miles. The cost has been variously estimated at from £1,250,000 to £1,750,000.

It is evident that the whole outlay would scarcely exceed the cost of a single iron-clad ship of war; and comparatively small assistance from the Government would enable a company to establish a work which would add incalculable strength to Great Britain as a great naval power.

SANDFORD FLEMING.

Empire Club, Grafton-street, London, 20th November, 1882.

DOCUMENTS APPENDED.

1. Minute of the Privy Council of Canada, dated 17th June, 1880.
2. „ „ „ „ „ 7th July, 1880.
3. „ „ „ „ „ 8th December, 1880.
4. „ „ „ „ „ 26th July, 1882.
5. Report of Commander Hull, R.N., on the proposed Route of the Cable across the Pacific Ocean.
6. List of Official Documents, in reference to the Scheme, submitted to the Parliament of Canada, 29th February, 1882.

No. 1.

MINUTE OF THE PRIVY COUNCIL OF CANADA, DATED 17TH JUNE, 1880.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council, on the 17th June, 1880,

On a Memorandum dated 20th May, 1880, from the Honorable the Minister of Railways and Canals, representing that a proposition has been received from Mr. Sandford Fleming, having in view the extension of the Pacific Railway Telegraph to Asia by submarine cable.

That the scheme which has been treated at length by Mr. Fleming, in his last report as Engineer-in-Chief of the Canadian Pacific Railway, comprises the formation of a company, and the grant of certain concessions on the part of the Canadian Government, namely—

1st. The exclusive privilege of landing a submarine cable on the Pacific coast of Canada.

2nd. The privilege of placing a wire for cable business on the posts of the Pacific Railway when erected, and that Mr. Fleming requests that these concessions may be made to himself individually as an initiatory step.

That the report of the Chief Engineer of Government Railways in operation holds that great advantage would accrue to Canada through the carrying out of this scheme.

The Minister accordingly, upon such report and the advice therein contained, recommends that the concessions stated be granted to Mr. Fleming, upon the following conditions:—

1st. That a substantial commencement of the work be made within three (3) years, and that the cable be laid across the Pacific Ocean within five (5) years from the date of the completion of the overland lines.

2nd. That after the cable connexion is made, the submarine telegraph be satisfactorily maintained for purposes of traffic, and be operated efficiently.

3rd. That unless otherwise authorized by the Governor-General in Council, the maximum rates of charges be not higher than those mentioned in Appendix No. 24 of the Canadian Pacific Railway Report of 1880, above referred to.

4th. That the Government reserve the right to take possession of the whole at any time after completion, upon payment of a sum equal to the capital expended, together with a reasonable percentage added.

5th. That the suggested terms of arrangements be subject to the approval of Parliament.

The Committee submit the above recommendation for Your Excellency's approval.

Certified, J. O. COTE, Clerk P.C.

No. 2.

MINUTE OF THE PRIVY COUNCIL OF CANADA, DATED 7TH JULY, 1880.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council, on the 7th July, 1880,

On a Memorandum, dated 2nd July, 1880, from the Honorable the Minister of Public Works, submitting that the accompanying memorial has been addressed to His Excellency the Governor-General, by S. Fleming, C.M.G., Civil Engineer, respecting a projected scheme to connect the Atlantic Telegraph system with that of Asia, by means of an overland line through the Dominion of Canada, and an electric cable across the Pacific Ocean.

That, as an initiatory step, the Canadian Government, by an Order in Council, dated 17th June, 1880, has conceded to Mr. Fleming, on certain conditions, the exclusive privilege of landing a submarine cable on the Pacific Coast of the Dominion, and the placing of a wire for Cable business on the line of the Canadian Pacific Railway. That Mr. Fleming, in his memorial, states that it will not be possible to take any practical step for the commencement of that undertaking until the spot for landing the cable has been

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* *Vide* No. 5. Nautical Report by Commander Hull, R.N.

definitely secured, and he, therefore, solicits the intervention of His Excellency the Governor-General, with the Imperial Government, to open negotiations with the Japanese Government either for the transfer of one of the smaller islands of the Kurile group to the British Crown, or for securing the landing privileges necessary for the success of the undertaking.

That the project of Mr. Fleming is one deserving serious consideration.

The Minister, therefore, recommends that His Excellency the Governor-General may be pleased to cause a copy of the memorial in question, and of the other documents accompanying it, to be transmitted to the Imperial Government for their favorable consideration.

The Committee submit the above recommendation for Your Excellency's approval, and further recommend that Sir A. T. Galt be instructed to communicate with the Colonial Minister on the subject.

Certified, J. O. Cote, Clerk P.C.

The Hon. Minister of Public Works.

No. 3.

MINUTE OF THE PRIVY COUNCIL OF CANADA, DATED 8TH DECEMBER, 1880.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council, on the 8th December, 1880,

On a Report, dated 6th December, 1880, from the Hon. the Minister of Public Works, stating that a memorial, addressed to His Excellency the Governor-General by Mr. Sandford Fleming, has been referred to him through the Hon. the Secretary of State.

That the said memorial sets forth that, by an Order in Council dated the 17th June, 1880, certain concessions were granted to the memorialist, having in view the promotion of the establishment of electric cable communication between British Columbia and Asia.

That it is represented that steps are now being taken by the Imperial Government, in order to the obtaining of permission, to land a cable upon the shores of Japan; and that, prior to the introduction of the scheme to the notice of capitalists, it is advisable that more detailed information than is at present possessed should be obtained respecting the waters through which the cable should be laid, and the shores whereon its landing may be effected.

That Mr. Fleming suggests that, in order to avoid the heavy expense which would be entailed by the sending out of a special vessel for this purpose, permission might be sought from the Imperial Government whereby the services of one Her Majesty's ships stationed in the North Pacific waters may be utilized, through the extension of one of her ordinary cruises, for the obtaining of the information required.

Concurring in the views expressed by Mr. Fleming, and believing the object to be one of much importance, the Minister recommends that the necessary steps be taken for the submission to the Imperial Government of a request on the part of this Government that the services of one of Her Majesty's ships may be conceded for the purposes indicated.

The Committee concur in the foregoing recommendation, and submit the same for Your Excellency's approval.

Certified, J. O. Cote, Clerk P.C.

Hon. Minister of Public Works.

No. 4.

MINUTE OF THE PRIVY COUNCIL OF CANADA, DATED 26TH JULY, 1882.

Copy of a Report of a Committee of the Honorable the Privy Council for Canada, approved by His Excellency the Governor-General in Council on the 26th July, 1882,

On a Report, dated 21st July, 1882, from the Minister of Public Works, stating that Mr. Sandford Fleming represents that, in consequence of the war cloud over Egypt, a most opportune time has arrived for promoting the Asiatic Cable scheme, for which he obtained a Charter from Parliament. That at any moment the telegraph by the Red Sea may be cut, and traffic and intercourse completely interrupted between England and her Eastern possessions, which evidently shows the necessity of an independent means of communication with India, Australia, &c., one that could be relied on whatever might occur in Europe or in the Mediterranean.

The Minister states that Mr. Fleming also represents that a telegraph from Canada across the Pacific Ocean could not but be of immense value, not only to commerce but in the vitally important question, "The Defence of the Empire," and with this view he intends to bring his scheme to the notice of the Imperial Government.

That, inasmuch as this country, not only as a part of the Empire but also as the Dominion of Canada, is interested in the success of the scheme, and in order to promote the object in view, the Minister recommends that the Secretary of State be informed that Mr. Fleming is a gentleman of high standing and respectability, and that full confidence may be placed in his integrity and entire disposition to carry into effect any undertaking into which he may enter.

The Committee concur in the recommendation of the Minister of Public Works, and they advise that a copy of this Minute, when approved, be transmitted for the information of Her Majesty's Government.

JOHN J. McGEE,
Clerk Privy Council of Canada.

No. 5.

Nautical Report on the Proposed Route of the Cable, by Commander Hull, R.N.

Remarks upon a proposed line of Telegraph Cable to be laid from Vancouver's Island in British Colombia to Yezo Island in Japan.

Barclay Sound, in Vancouver's Island, and Akishi Bay, in Yezo, may be taken as two eligible ports for the termini.

Barclay Sound is in lat. 48° 48′ N. long. 125° 13′ W. Akishi Bay is in lat. 43° 2′ N. long. 144° 52′ E. The length of an arc of a great circle between these ports is therefore 3,543 nautical miles.

This arc, entering the Aleutian group, near the northern end of Unalashka Island, passes north of the chain, and re-enters the Pacific Ocean just south of the Island of Agattu.

Deep-sea soundings have been taken in the vicinity of this arc by the United States Government, and it is from these soundings that the sections have been drawn.

Captain's Bay, in Unalashka Island, in which is situated the town of Iliuliuk, and Kyska Harbour, in the Island of Kyska, appear to invite attention for the establishment of an intermediate station.

Between Iliuliuk and Kyska Harbour the soundings were obtained southward of the great circle along the northern shore of the Aleutian Islands.

The distances of the proposed track for the cable are—

From Barclay Sound to Iliuliuk	1,602	miles.
Iliuliuk to Kyska Harbour	590	„
Kyska Harbour to Akishi Bay	1,430	„
	3,622	„
If taken on to Hakodadi (see page 20 of this report), add ...	212	„
	3,834	„

Leaving Toquart Harbour, in the north-west part of Barclay Sound, the cable might pass through the western channel to the sea, over an average soft bottom, in depths of 25 fathoms.

The first of the deep-sea soundings will be met with about 60 miles W.N.W. (true) of the entrance to Barclay Sound.

In the first section drawn on North Pacific Chart, No. 787, the cable will lie over a soft and level bottom, in depths of from about 1,000 to 2,500 fathoms, to the meridian of 154° W., after which the ocean deepens to 2,910 fathoms; the cable has been here taken to the northward to endeavour to avoid the deep water, 3,359 fathoms to the south-east of the Shoumagin Islands. After passing the meridian of these islands it has been drawn to the southward, so as to avoid the rough ground at the entrance of the Unimak Pass.

Captain's Bay, on the northern end of Unalashka Island, appears to offer many advantages for an intermediate station. The town of Iliuliuk is in this bay, and it has been used as the head-quarters of the United States Coast Survey Party, under W. H. Dall. There are eight villages in Unalashka, of which Iliuliuk is the chief. In 1867 there were 570 people living on the island, of which 309 resided at Iliuliuk.

In Mr. Dall's report, Ulakhta Harbour, known as Dutch Bay, is spoken of as having good holding ground in soft black mud and shell in 14 to 16 fathoms.

The prevalent winds in winter are south-east, and bring rain and fog. North-east winds bring clear weather, and north and north-west, snow. The heaviest gales are said to come from the south-west. The winds generally veer from east to south and west. Squalls blow with considerable force. Skim ice, destructive to boats, will form on a calm winter's night, but it is broken up by the first breeze. No ice obstructs the entrance to Captain's Bay. Earthquakes are said to be frequently experienced.

A southerly current appears to set constantly along the coast of the Alaska peninsula with a velocity of about one mile an hour, but it runs with more force through the Akutan and Unalga passes. To the northward of the Aleutians the current is said to set to the westward.

Westward of Unalashka is the volcanic island of Bogoslov, which rose from the sea in 1792. A reef of submerged rocks is said to extend to this island from Unmak, but Mr. Dall found no bottom with 800 fathoms when on the line of this reef. The cable has been drawn to the northward of Bogoslov.

From Iliuliuk to Kyska Island the soundings are taken along the north shore of the Aleutian Islands, and are consequently irregular, the greatest depth being 1,755 fathoms off the Island of Kasatochu. From Tanga Island to Kyska, a distance of 160 miles, no soundings have been taken.

The cable has been drawn to Kyska Island, as it is reported to possess an excellent harbour, perfectly protected from all winds, with good holding ground, a moderate depth of water, and a level floor of sandy mud. The island, however, is uninhabited.

If a second station is not required upon the Aleutians, the cable might follow the arc of the great circle from Iliuliuk to meet the deep-sea soundings off Aguttu. Judging from the soundings obtained in Behring Sea, less water might be found upon this track than along the shores of the Aleutian chain.

Soundings have been obtained westward of Tanaga, but they are to the southward of Amchitka, and the Rat Islands.

A line of soundings on the arc of the great circle above referred to would be extremely valuable. They could be easily obtained in the summer, by a trained officer, provided with Sir William Thomson's sounding machine, in one of Her Majesty's ships.

The other islands that afford facilities in the Aleutian group are Atkha, Amlia, and Adakh.

Atkha is the principal island of the group. 300 people were living here in 1867. Nazan Bay on the east, and Korovinsky on the west side were examined by Mr. Dall, but he does not report favorably on either. The contour of the south coast of this island, drawn for Admiral Lutke (see Lutke's voyages) by an intelligent native, shows several deep bays and possible harbours, but there is no more reliable information ; they have not been examined by sailors.

On the south side of Amlia Island, the island next eastward of Atkha, about sixteen miles from the east end of Amlia, is the port of Svetchnikoff. In this bay surroundings of from sixteen to five fathoms were found over a sandy bottom. There is a village on the west end of Amlia.

Adakh, to the westward of Atkha, has a good harbour known as the Bay of Islands; this was examined by Mr. Dall, who speaks of "an excellent anchorage, with good holding ground, and shelter behind what proved to be an island forming part of an archipelago, which closes the mouth of a very large and beautiful bay, known as the Bay of Islands." A sketch of this anchorage was made. Adakh Island is uninhabited.

In 1867 there were 200 people living on Attu, the western island of the Aleutian chain.

From Kyska the cable is drawn to the southward to meet the line of deep-sea soundings. Between Rat Islands and Agattu two shoal casts, of 303 and 332 fathoms, were obtained over a bottom of black sand. After passing the meridian of Agattu the ocean suddenly deepens, and in long. 171° E. the great depth of 4,037 fathoms was found; from this it shoals to 1,777 fathoms in 167° E., after which it gradually deepens to 3,754 fathoms.

The soundings then lie along the eastern shore of the Kurile Islands, depth varying from 317 to 1,445 fathoms. About 100 miles to the south-east of these islands very deep water is found; the soundings showing 4,041 and 4,655 fathoms.

Shoaler water may be found by sounding farther to the northward, between Attu Island and Kamchatka, towards Behring Island, but from the general nature of the bottom in these regions, it is to be feared that a valley of over 3,000 fathoms must be crossed in taking a cable from the west end of the Aleutian Islands to the Asiatic Continent.

Akishi Bay, in Yezo Island, appears to form a favorable position for landing the cable. The bay is spacious, well sheltered, water not too deep, with a sandy floor, and has been well surveyed by Messrs. C. W. Ballie and Oldfield, of the English Naval Surveying Service.

There is a Japanese settlement here, consisting of 40 Japanese and 160 Ainos. Fish are abundant. Junks bring provisions in summer, and overland is a path to Hakodadi.

Should it be thought advisable not to land the cable at Akishi Bay, but to carry it on to Hakodadi, there will be no difficulties to be overcome. From Akishi Bay (by which the cable must pass) to Cape Yerimo, the south-east point of Yezo, the distance is 92 miles. A line of inshore soundings, nine miles from the coast, show depths of from 50 to 60 feet fathoms; 30 miles from the coast no bottom could be found with 127 and 200 fathoms, while at 60 miles soundings were obtained in from 1,108 to 1,619 fathoms, mud and sand, and gravel and sand; sixteen miles from Cape Yerimo there is 78 fathoms fine sand.

From Cape Yerimo to Hakodadi, the distance is 120 miles, the soundings from 156 fathoms to no bottom at 350 fathoms. This stretch, if used, makes an addition of 212 miles to the original length, making the total distance, Barclay Sound to Hakodadi, 3,834 miles.

From a long personal experience in the North Pacific Ocean, gained during a service of over thirteen years, 1845 to 1859, in Her Majesty's discovery and surveying vessels as a navigating officer; having on six occasions crossed the Aleutian chain during passages made to and from Behring Strait, the Sandwich Islands, and the North-west coast of America; from having also made the passage to Behring's Strait from the Sandwich Islands, westward of the Aleutian chain, calling at Petropaulski on the Asiatic coast; from having consulted the weather reports made by Mr. W. H. Dall, in Appendix No. 10 to his report of the Geographical and Hydrographical Explorations on the coast of Alaska, to the Government of the United States of America, in 1872 and 1873; from information obtained of the waters under consideration during the compilation of the present Admiralty Wind and Current Charts of the Pacific, Atlantic, and Indian Oceans; in fact, from my own varied experiences, and from information obtained from every available source, I am able confidently to report that the climatic difficulties to be encountered in laying this cable in the North Pacific are not greater than those met with in the North Atlantic, where so many cables have been successfully laid.

Bad weather in both Oceans, Atlantic and Pacific, seems to be caused by the cold Arctic currents coming in contact with the warm streams from the south—the Gulf stream in the Atlantic, and the Kuro Siwo in the Pacific Ocean. But the volume of the Arctic stream in the Pacific is very much smaller than that in the Atlantic, and consequently the climatic disturbance is less; besides which, the cold current from Behring's Strait does not meet the warm waters of the North Pacific, until after passing the Aleutian chain, and in consequence there is comparative peace along the general route of the proposed cable to the northward of these islands.

There is one difficulty with respect to which the North Pacific is free—icebergs are unknown, while in the Atlantic, icebergs and field ice, during a considerable portion of the year, are continually met with.

I would submit that more deep-sea soundings should be obtained, especially upon or near the arc of the great circle from Iliuliuk to Agatu Island; also northward of a line between Attu Island and Cape Lopatka, in Kamchatka, towards Behring Island. By this means shoaler water than that referred to by me in the foregoing part of the report may be found, and by a slight détour, the valley that appears to lie between the Aleutian Islands and the Continent of Asia may be avoided.

(Signed) THOMAS A. HULL,
Commander R.N.,
Late Superintendent of Admiralty Charts.

Mamre, Honor Oak, S.E.,
London, 22nd August, 1882.

No. 6.

OFFICIAL DOCUMENTS RELATING TO THE SCHEME OF MR. SANDFORD FLEMING FOR CONNECTING CANADA WTH ASIA BY SUBMARINE TELEGRAPH.

Submitted to the Canadian Parliament, 29th July, 1882.

(RETURN 41.)

1.	Letter from Sandford Fleming to Sir Charles Tupper ...	14th May, 1880.
2.	Report of the Chief Engineer of Railways in operation ...	20th May, 1880.
3.	Order in Council	17th June, 1880.
4.	Memorial to His Excellency the Governor-General ...	27th June, 1880.
5.	Memorandum referred to in memorial to His Excellency ...	
6.	Letter to Secretary of State enclosing memorial	

6½.	Memorandum, Minister Public Works	2nd July, 1880.
7.	Order in Council	7th July, 1880.
8.	Letter to Sir Charles Tupper	22nd October, 1880.
9.	Letter from Department of Railways and Canals to Sandford Fleming	4th November, 1880.
10.	Memorial to His Excellency the Governor-General ...	4th December, 1880.
11.	Order in Council	8th December, 1880.
12.	Department Public Works to Sandford Fleming	13th January, 1881.
13.	Earl of Kimberley to the Marquis of Lorne, Governor-General	4th December, 1880.
14.	Sir. A. T. Galt to the Earl of Kimberley	2nd September, 1880.
15.	Colonial Office to Foreign Office	2nd September, 1880.
16.	Colonial Office to Foreign Office	1st December, 1880.
17.	Under-Secretary of State to the Minister of Public Works ...	28th December, 1880.
18.	Department Public Works to Sandford Fleming	29th December, 1880.
19.	Sir A. T. Galt to Secretary of State	9th December, 1880.
20.	Copy of Telegraph to Charge d'Affaires at Yeddo	8th December, 1880.
21.	Secretary of State to Minister of Public Works	20th December, 1880.
22.	Sir A. T. Galt to Secretary of State	30th November, 1880.
23.	Sir A. T. Galt to Secretary of State	2nd December, 1880.
24.	Colonial Office to Sir A. T. Galt	1st December, 1880.
25.	Earl of Kimberley to the Marquis of Lorne, Governor-General	18th December, 1880.
26.	The Foreign Office to the Colonial Office	14th December, 1880.
27.	Memorandum by Sir Harry Parkes	
28.	Translation of cypher telegram	21st December, 1880.
30.	Under-Secretary of State to Minister of Public Works ...	10th January, 1881.
31.	Sir A. T. Galt to Secretary of State	23rd December, 1880.
32.	The Colonial Office to Sir A. T. Galt	22nd December, 1880.
33.	Department Public Works to Sandford Fleming	28th January, 1881.
34.	Sandford Fleming to Department of Public Works ...	29th January, 1881.
35.	Earl Kimberley to the Marquis of Lorne...	25th January, 1881.
36.	The Admiralty to the Colonial Office	18th January, 1881.
37.	Sandford Fleming to the Minister of Public Works ...	4th February, 1881.
38.	Department of Public Works to Sandford Fleming... ...	10th February, 1881.
39.	Sandford Fleming to the Hon. H. L. Langevin	15th February, 1881.
40.	Sandford Fleming to the Minister of Public Works ...	23rd February, 1881.
41.	Sandford Fleming to the Minister of Public Works ...	2nd March, 1881.
42.	Sandford Fleming to the Minister of Public Works ...	10th March, 1881.

APPENDIX III.

[CONFIDENTIAL.]

Pacific Telegraph Company Limited, 34 Clement's-lane,
London, April 20, 1887.

SIR,

We are deputed by the Pacific Telegraph Company Limited to furnish to you, for the information of the Conference, a proposal which it is intended to submit on behalf of the company to the Imperial Governments, and to the Governments of Canada, Victoria, New South Wales, Queensland, South Australia, Western Australia, New Zealand, and Tasmania.

We are also deputed to attend the sittings of the Conference in person if desired, in order to give any further information that may be wished for.

Proposal.

The company to lay and maintain a cable from Vancouver Island to Australia, touching at the Sandwich Islands, Fanning Island, Samoa, Fiji, and New Zealand.

The company to reduce the existing through rates from Great Britain to Australasia by at least one-half.

The Imperial Government and the Colonial Governments above referred to to furnish to the company, in such proportions as they may agree upon, a subsidy of £100,000 per annum for twenty-five years; each Government to have during that period the free use of the company's cable for Government messages to the full amount of its proportion of the subsidy at current rates.

The company to give Government messages precedence over ordinary messages.

We have, &c.,

MURRAY FINCH HATTON.
RANDOLPH C. WANT.

To the Right Honorable
Sir Henry Thurston Holland, M.P., &c.

APPENDIX IV.

[CONFIDENTIAL.]

TELEGRAPHIC COMMUNICATION TO INDIA AND AUSTRALASIA BY THE CANADIAN ROUTE.

Submitted at the meetings of the Colonial Conference, London, by Mr. Sandford Fleming.

Fourteenth Day—April 27th, 1887.

In the remarks which I was permitted to submit to the Conference on the 20th instant, I confined myself to showing how important to Australasia and to the Empire is the establishment of an alternative telegraph line between the Mother Country and her great Southern Colonies. I attempted to demonstrate the facility with which such a line could be secured by taking advantage of the works which Canada has carried out. I touched upon the enormous advantages which such a route possessed, owing to its geographical position. I alluded to the important fact that the cables would be laid in deep water, and would therefore be free from natural enemies, and much more secure from the attacks of hostile vessels. I referred to the commercial and political advantages which it offered in binding together the most important of the Colonies, and bringing into circuit nearly all the remote and outlying possessions of the Crown.

If these points be satisfactorily established, it will become a matter of importance to consider how such a work can best be carried out.

Such undertakings as the one in question have hitherto been accomplished by private companies subsidized by Government; and there cannot be much doubt that the Pacific cable might be manufactured, laid, maintained, and worked by a private company, aided by a reasonable subsidy, so as to give a fair return to the owners, while securing to the public greatly reduced charges.

It may, however, be asked, Is there no better means of securing even more fully through the medium of a private company all the benefits which the new line would confer?

The one other way is for the interested Governments themselves to undertake the work, and I think it can be clearly shown that the desired results can in this manner be more satisfactorily and more cheaply obtained. In this opinion I am greatly strengthened by a memorandum submitted by the representatives of New Zealand, and yesterday placed in the hands of members of the Conference. The memorandum to which I refer has been prepared by the Postmaster-General of New Zealand, and bears date February 5, 1887. In much that it contains I cordially concur.

I think I am correct in stating that some thirteen years ago all the telegraphs in India were handed over to the Government, and have since then been managed by a department under the central authority. I believe it is found that the system works well, and that the public are better served than they were before by private companies, for the reason that the public interests only are looked to under the new management, while private companies very naturally regard their own interests as paramount.

It seems to me most desirable that all cables communicating with Australasia, and all telegraphs within the Australasian Colonies themselves, should be under one management. How this may be accomplished is a problem which I venture to suggest is well worthy the attention of the Australasian Governments. At the same time, I submit that it cannot be regarded with indifference by the Imperial Government or by Canada. I do not know what are the functions of the Australasian Federal Council, but possibly these functions could be extended so as to embrace the general control of telegraphs.

It would not be at all necessary for the Australasian Colonies to control the cables all the way to England. It would be quite sufficient that they should control the cables proposed to be laid to Vancouver on one side, and on the other side that portion of the existing system which extends from Australasia as far as India, embracing the lines of what is known as the Eastern Extension Company. It would be convenient to stop at India, as India separates the lines of the two companies—the Eastern Extension and the Eastern Telegraph Company. The Colonial Governments could not, of course, expropriate that which is private property; but possibly some arrangements mutually fair, both to the public and to vested cable interests, could be reached by which the desired result would be obtained.

It is obvious that a comprehensive scheme such as that suggested could not be carried out without much consideration and negotiation, especially with regard to the manner in which the capital required should be raised and the proportions in which it should be borne by each separate Government. But I am unable to see that the general scheme is at all impracticable. It would only be carrying out in a wider field the system adopted with so much success in India and in England with respect to telegraph service. In endeavouring to effect such a joint arrangement there are certain leading principles which might be considered.

1. It would be necessary for each of the Colonies to agree to hand over to the central authority their respective telegraph systems, retaining a pecuniary interest in revenue in proportion to the value of the works handed over.

2. The establishment of a new cable across the Pacific would require new capital, which might be raised, possibly, on the joint guarantee of the Colonies and the Imperial Government, as in the case of the Intercolonial Railway of Canada. By such means the money could be obtained at the very lowest rate of interest; and, for several reasons, it would not be necessary in the first instance to lay more than a single Pacific cable; the scheme embraces the control of the Eastern Extension lines, and hence the line from Australia to Vancouver would really give a triplicate service between Australia and England; moreover, deep-water laid cables are not liable to the same interruptions as shallow-water cables; in proof of which I may mention that the telegraph from Lisbon across the Atlantic to South America for the first ten years of its existence depended with great success on only a single line of cable throughout its entire distance. These cables were quite recently duplicated to meet the demands of business.

The capital required to lay a single cable to Vancouver from the Australian system, reckoned at the low rate of interest at which money could be obtained, would, I estimate, involve a charge of less than £50,000 a year.

3. New capital would likewise be required to purchase the lines of the Eastern Extension Company, whenever that company will be willing to sell at a fair value. This capital would also be obtained at a low

rate of interest; and thus the whole connexion between India, Australasia, Canada, and Great Britain could be most economically established, and it would become practicable to reduce charges on messages to the lowest possible tariff rates.

As the cables of the Eastern Extension Company would be acquired largely in Imperial interests, so as to give an alternate line, independently of the Suez route, to India, China, and Africa, it is reasonable to assume that the Imperial Government would render every assistance in securing them.

I have said that it would not be necessary for the proposed Central Telegraph Department to control cables or wires east of Vancouver. I do not think there would be any risk of the management being debarred at any time from the advantages of cheap telegraphy from Vancouver to England. I feel quite warranted in saying that the Canadian Pacific Railway Company would be willing to enter into an agreement for a long term of years to transmit Australasian messages at the low rates which I mentioned to the Conference on a previous occasion.

I have not cumbered these remarks with calculations. I have purposely avoided them, and referred only to principles. If the principles be sound—as I believe they are—and the scheme commends itself to the judgment of the Conference, an important step will be gained.

Twentieth day—May 6th, 1887.

While I cannot but regret taking up time at the close of the Conference, I trust I may be pardoned for venturing to add a few words on the general question of establishing telegraphic connexion between distant portions of the Empire.

The importance of the question appears to be generally recognised.

1. It is one, of the few subjects specially referred to in the circular of Mr. Stanhope, of date 25th November last, inviting the several Colonial Governments to take part in this Conference by sending representatives.

2. It is one of the questions to which great prominence was given in the opening address of the President.

3. When the matter was first discussed, on the 20th ultimo, the Postmaster-General gave utterance to his broad and sympathetic views, and suggested that the Conference should not break up without expressing in some way a decided opinion in favour of the general policy of connecting telegraphically the great self-governing Colonies on the Pacific; and he indicated as one of the possible results a perfect revolution in the communication between the Australasian Colonies and the Mother Country.

4. On the same occasion members of the Conference representing South Australia, Queensland, the Cape of Good Hope, Victoria, New South Wales, and New Zealand, expressed generally their warm sympathy with the objects aimed at; indeed, I failed to learn that there was a single gentleman present who did not recognise that in the interests of the Empire the question is one which is well worthy of the greatest attention.

There were, however, one or two points raised which I trust I may be allowed to refer to.

Some doubts were expressed as to the practicability of connecting Canada with Australasia by direct telegraph. I do not propose to refer to the statement made by Mr. Patey as to the depth of the ocean, beyond saying that that gentleman has intimated to me that he was in error. I have asked Captain Hall —who was attending the Conference a few days back—to be good enough to furnish all the information in the possession of the Admiralty on this point; and I have no doubt he will confirm the statements submitted by me, as the officers of the Admiralty can, I believe, only look to the same sources as I did for the information which I laid before you, viz., to the soundings made by the *Tuscarora* and the *Challenger* expeditions. It must be admitted, however, that the known facts regarding the Pacific are somewhat meagre, and it is really a matter of very great importance that every doubt should be set at rest by having a proper nautical survey made with the least possible delay.

Another point was raised by Sir John Downer, viz., that the Colony of South Australia had, with great enterprise, spanned the continent from south to north with telegraph wire; that this line is a benefit to all the Australasian Colonies; that it was established at the sole expense of South Australia; that it is maintained by that Colony at a loss; that the inevitable result of a new telegraph across the Pacific would be to increase the loss; and, in consequence, while the other Colonies would gain by the new line, South Australia in a pecuniary sense would suffer.

Again, it has been felt that not a little consideration is due to the private company, the Eastern Extension Telegraph Company, which has, with commendable enterprise, provided such cable communication as the whole Australasian Colonies now enjoy.

For my own part I fully recognise both claims; while at the same time, in view of vital Imperial and Colonial interests, I regard the connexion of Canada and Australasia telegraphically as an absolute necessity.

The problem which is presented to us is to harmonize all interests as far as it is possible to do so; and I venture to remark that, to my mind, its solution lies in the direction indicated in the observations submitted at the close of the discussion on the 27th ultimo; and I gather, from observations which have fallen from several members of the Conference, that the views then set forth are not unworthy of the serious attention of all concerned.

The proposal is to bring all telegraph lines, constructed and to be constructed, east and south of India, and west and south of Canada, eventually under Government control. This appears to be the general idea of the Postmaster-General of New Zealand in his memorandum; and I can scarcely think that the time has not arrived when the matter should be considered, not as a commercial question simply, but as a question of Imperial importance in a naval, military, and political aspect.

I find that the length of telegraph lines in the several Colonies, as given by Mr. Charles Todd—a gentleman who has been long and intimately associated with telegraphy in Australia—was in the year 1884, as follows:—

Victoria	4,020 miles.
New South Wales	9,756 „
South Australia	5,292 „
Queensland	6,979 „
New Zealand	4,264 „
Tasmania	1,133 „
Western Australia	1,905 „
Total	33,349 miles.

and that the total revenue in that year was £527,734.

According to the same authority, the average cost appears to be £108 per mile; so that the whole cost of the 33,349 miles may be stated at about £3,600,000.

The Eastern Extension Company's lines embrace in all 12,035 nautical miles of cable, and it will be remembered that Mr. Pender stated before the Conference that the average cost per mile was £184. The whole 12,035 miles, reckoned at that rate, amounts to £2,214,440; but if that be the first cost, the present value, owing to depreciation of the cables, must be considerably less, for I find that about 6,600 miles, or more than half the whole length of cable owned by the company, has been laid from eleven to seventeen years. The actual dates when the cables were laid, and the periods they have been submerged, are as follows:—

Laid in 1869	180 miles;	now submerged	18	years.
„ 1870	2,409 „	„ „	17	„
„ 1871	2,724 „	„ „	16	„
„ 1876	1,283 „	„ „	11	„
„ 1877	864 „	„ „	10	„
„ 1879	2,444 „	„ „	8	„
„ 1880	529 „	„ „	7	„
„ 1883	920 „	„ „	4	„
„ 1884	502 „	„ „	3	„
„ 1885	180 „	„ „	2	„
Total length ...	... 12,035 miles			

The length of cable to connect Canada with the existing telegraph system of Australasia is placed at 7,600 miles, which, computed at £184 per mile (the first cost of the Eastern Extension cables, as stated by Mr. Pender), amounts to £1,398,400.

From these data we may estimate the first cost of all the cables and land lines between Vancouver and India as follows:—

New Pacific cable	say £1,400,000
Australasian land lines	„ 3,600,000
Eastern Extension	„ 2,220,000
Total	£7,220,000

Looking at the large revenue from the Australasian land lines, it may be assumed that, taken as a whole, they pay working expenses and maintenance. It may not be necessary, therefore, to consider these lines in dealing with the question of new capital.

If we eliminate the Australian land lines, there remains £3,620,000 as the united cost of the new Pacific cable and the Eastern Extension system. To this amount should be added the value of repairing ships, stations, and other minor matters; and there ought to be deducted an allowance for depreciation of the existing cables. There may be various opinions on both points, but there can scarcely be a doubt that the round maximum sum of £4,000,000 would be amply sufficient to cover every cost necessary to establish the Pacific line and buy out the Eastern Extension Company's property on fair and reasonable terms.

The interest on £40,000,000 at 3 per cent. is £120,000 per annum, but it will be obvious that the purchase of the Eastern Extension system would bring with it large subsidies, which would considerably reduce the interest charges. These subsidies are as follows:—

Tasmanian Cable subsidy	£4,200
Malacca Cable subsidy	1,000
Australian Duplicate Cable subsidy ...	32,400
Manilla Cable subsidy	8,000
Tonquin Cable subsidy	10,600
Macao Cable subsidy	500
Total	£56,700

As the Hawaiian Legislature has passed an Act offering 20,000 dollars a year to promote the establishment of telegraph connexion with America, that sum may be considered available as a subsidy in connexion with the Pacific cable, making the total subsidies £60,700. If we take this sum as an asset, and deduct it from £120,000, it leaves a balance of only £59,300 a year to be met by the united Governments.

This estimate shows that the sum of £120,000 per annum would be required to meet interest when all the subsidies run out; but as the larger portion of the subsidies will not expire until the end of the century, it is reasonable to expect that the business will then be so enormously increased as to admit of paying all interest charges, largely, if not wholly, out of revenue. In the meantime the comparatively small sum of £59,300 per annum would be sufficient to accomplish all that is desired.

I have assumed the cost of the new Pacific cable and the value of the cables of the Eastern Extension Company together to come to £4,000,000, but, according to the opinion of some experts, that estimate is too liberal. It is held that if proper allowance be made for the depreciation of the existing cables £3,000,000 would be nearer the proper value of the two systems. If a capital of £3,000,000 suffice for all purposes, the interest at 3 per cent. will be £90,000, from which if we deduct the total subsidies—£60,700—there will remain a balance of only £29,300 per annum to be provided.

Thus an annual payment ranging from £29,300 to £59,300, in addition to the existing subsidies, would establish the Pacific cable and provide for taking over all the cables of the Eastern Extension Company. Even the maximum annual payment could not be considered burdensome divided in equitable proportions among the ten Governments more or less interested, viz., the Governments of Great Britain, India, Canada, Queensland, New South Wales, Victoria, South Australia, Western Australia, Tasmania, and New Zealand.

As the existing Colonial subsidies, amounting in all to £36,600, are paid by five only of the ten Governments interested in the larger scheme, it appears to me desirable that an arrangement should be effected by which these subsidies would be extinguished and the new capital provided on a financial basis, by which all the interested Governments would contribute in equitable proportions.

A scheme of this kind, by which all the telegraphs mentioned may be consolidated and brought within the management of one department under Government control, could, of course, only be carried out by the co-operation of all the Governments concerned; but I venture to submit that the subject is one which claims earnest consideration. The scheme outlined, if carried into effect, would bring Canada within electric touch of Australia and New Zealand; it would establish an alternative line from India and Australasia to England, removed as far as possible from the theatre of every European complication and struggle that may arise; it would bring down charges on the transmission of messages to such moderate rates as would greatly facilitate intercourse and enormously develop business between Australasia, Canada, and the mother country; it would meet the case of South Australia, and enable that Colony to paticipate in the general advantages to be conferred on all the Colonies; and it would remove all reasonable objections on the part of the Eastern Extension Company. In the event of that company being disinclined to reduce the present high charges and unwilling to enter into competition with the new line, it would have the option of handing over all its property and receiving for it a fair and full value. If, however, the Eastern Extension Company determine to reject such reasonable proposals, the amount of capital to be provided will be so much the less, and it will become a very easy matter for the Governments concerned to carry out the essentially important work of connecting Canada and Australasia telegraphically.

APPENDIX V.

COUNTRIES THROUGH WHICH AUSTRALIAN AND EUROPEAN TELEGRAMS PASS.

From Victoria to England, viâ Asia.

Victoria.	Aden.
South Australia.	Egypt.
Java.	Malta.
Straits Settlements.	Gibraltar.
Penang.	England.
India.	

When Cable between Penang and Madras (India) is interrupted, telegrams go from Penang, *viâ* Rangoon and Calcutta, to Bombay, thence to Aden and as above.

COUNTRIES THROUGH WHICH AUSTRALIAN AND EUROPEAN TELEGRAMS WILL PASS ON THE PACIFIC ROUTE.

Victoria.	Samoa.
New South Wales.	Sandwich Islands.
New Zealand.	Canada.
Fiji.	England.

SUPPLEMENT ABSTRACT.

No.	From Whom.	To Whom.	Subject.	Date.	Page.
				1888.	
P.88/3014	Mr. Fysh, Premier of Tasmania	Mr. Gillies ...	States that the matter of the Pacific Telegraph Cable Survey shall receive early consideration	28 Aug.	56
P.88/3169	Mr. Fysh	Mr. Gillies ...	Encloses copy of a communication from the Treasurer of Tasmania, giving the views of his Government	5 Sept.	56
Enclosure..	Mr. Bird, Treasurer of Tasmania	Mr. Fysh	States the position of the matter ; considers that the Imperial Government shall be again moved *in re* ; but that, in the first instance, the contributions to the present Cable Expenditure should be readjusted	3 „	56
No. 3978/88	Mr. Gillies ...	Mr. Fysh	Urges reconsideration of the decision arrived at	11 „	57
P.88/3239	Sir M. Fraser, Colonial Secretary of Western Australia	Mr. Gillies ...	Before replying to Mr. Gillies' Circular, desires to learn the nature of the replies received from other Governments	4 „	58
P.88/3257	Sir T. McIlwraith Premier of Queensland	Mr. Gillies ...	States that Queensland will contribute towards the cost of the undertaking	8 „	59
P.88/3262	Mr. Playford, Premier of South Australia	Mr. Gillies ...	Says that his Government does not propose to contribute towards the cost of the proposed survey.	12 „	59

P.88/3014.

FROM THE PREMIER OF TASMANIA TO THE PREMIER OF VICTORIA.

Premier's Office,
Hobart, 23rd August, 1888.

SIR,

I have the honour to acknowledge the receipt of your letter of the 20th instant, inquiring if this Government is prepared to contribute towards the cost of the proposed survey of a suitable route for a Pacific Telegraph Cable.

The matter shall receive early consideration.

I have, &c.,
(Signed) P. O. FYSH.

THE HONORABLE THE PREMIER OF VICTORIA.

P.88/3169. [COPY.]

FROM THE PREMIER OF TASMANIA TO THE PREMIER OF VICTORIA.

Premier's Office,
Hobart, 3rd September, 1888.

SIR,

In reference to your letter of the 20th ultimo, inquiring whether this Government will contribute towards the cost of the proposed survey of a route for an Ocean Telegraph Cable across the Pacific, I have the honour to enclose copy of a communication from my colleague the Treasurer, which fully explains the views of the Government.

I would specially draw your attention to the sixth paragraph of Mr. Bird's letter in regard to the subsidies paid by the contracting colonies to the Eastern Extension Telegraph Company, including the subsidies paid by New Zealand and Tasmania for their cable communication with Australia; a question which it is of importance to this colony should be definitely determined before the Government pledges itself to a large expenditure for the proposed survey.

I have, &c.,
(Signed) P. O. FYSH.

THE HONORABLE THE PREMIER OF VICTORIA.

P.88/3169.

[ENCLOSURE.]

FROM THE TREASURER OF TASMANIA TO THE PREMIER OF VICTORIA.

Treasury, Hobart,
3rd September, 1888.

THE HONORABLE THE PREMIER.

SIR,

Referring to the letter of the Honorable the Premier of Victoria of 20th August last, relative to the proposed survey of a route for an Ocean Telegraph Cable across the Pacific, I have the honour to make the following observations:—

1. At the Postal Conference held in Sydney, a resolution was passed (New South Wales dissenting) that it is desirable to effect a survey of a suitable route for an ocean telegraph cable by way of the Pacific, the cost to be defrayed by Great Britain, Canada, and the Australasian colonies represented at the conference.

2. From the circular of Lord Knutsford, dated 1st May, 1888, and the extract from the letter of the Admiralty to the Colonial Office which accompanied the circular, it appears (*a*) that the *Egeria*, at a minimum cost, while surveying the Pacific, will obtain gradually very much information such as is required preliminary to the laying of a cable; (*b*) that the cost of making a thorough survey of the best cable route and landing-places by a vessel specially provided for the purpose would be not less than £36,000; and (*c*) that as no vessel is at present available for such a survey, Her Majesty's Government concur in the opinion of the Admiralty that the question of accelerating the survey must remain open until there is a prospect that the funds for the construction of the cable will be found.

3. Funds for the construction of the cable are not likely to be found until the question of route has been settled by preliminary survey, and, consequently, the position taken up by the Imperial Government appears to afford no immediate prospect of Great Britain contributing towards the expense of such a survey, except in so far as the information to be obtained by the *Egeria* in her present work may be regarded as a contribution to the desired object.

4. It appears, therefore, that if the survey is to be accelerated, it can only be by the Colonies of Australia and the Dominion of Canada undertaking the work at their joint cost, and only then if the Admiralty can supply a suitable vessel.

5. I think it very undesirable that Great Britain should be relieved of her equitable obligation to share the cost of such a work, as her interests are probably larger than those of all the countries concerned combined. If, therefore, it be the joint desire of the Colonies and Canada to press the work forward, I should advise a further urgent appeal to the Imperial Government to facilitate the survey, and bear a fair share of the cost.

6. But in any case, whether the Colonies and Canada undertake to bear the entire cost of the survey, or Great Britain bears a part thereof, I think Tasmania's consent to contribute should be conditional on the carrying out by the several Australasian Governments of the resolution of the late Postal Conference (to which Queensland alone dissented) to the effect that all the Colonies interested in the maintenance of cable communication with Great Britain should contribute on the basis of population to the subsidies paid to the Eastern Extension Telegraph Company by the several contracting Colonies, including therein the subsidies paid by New Zealand and Tasmania for the cable communication between those Colonies and Australia. At present, for the benefit of cable communication with the Colonies and Great Britain, Tasmania is paying out of all proportion to her population, as compared with the Colonies of Australia, and while this question of pooling the subsidies to the Eastern Extension Telegraph Company, in accordance with the Postal Conference Resolution, is one which should be separately urged upon the various Governments which are partially pledged to it by the resolution referred to, it is, I think, a question which should be settled antecedently to any undertaking on the part of Tasmania to contribute towards the survey of the Pacific Cable Route.

I have, &c.,
(Signed) B. Stafford Bird,
Treasurer.

No. 3978.

From the Premier of Victoria to the Premier of Tasmania.

Premier's Office,
Sir, Melbourne, 11th September, 1888.

I have the honour to acknowledge the receipt of your letter of the 5th instant, with enclosure from your colleague the Honorable the Treasurer, expressing the views of the Government of Tasmania with respect to the proposal for a joint contribution by the Australasian colonies towards the cost of a survey of the Pacific Ocean Cable Route, which was conveyed by my circular letter of the 20th ultimo.

2. It is with regret that I learn that your Government is indisposed (at any rate for the present) to assist in the proposed undertaking; because the only reasonable hope of securing the early execution of this important work lies in combined

action on the part of all the colonies, in pressing the matter upon the attention of the Imperial Government.

3. I beg to point out, with reference to the 5th paragraph of the Honorable Mr. Bird's letter, that there is no apparent ground for believing that Great Britain has any desire to be relieved from her equitable obligation to share the cost of such a work.

It is true that Lord Knutsford has announced the concurrence of the Imperial Government in the opinion expressed by the Lords of the Admiralty in their letter dated 4th April, namely, that the question of hastening the survey by providing a vessel, other than the *Egeria* for the work shall remain open until the Admiralty is authoritatively informed that there is a reasonable prospect that funds for the construction of the cable will be found, and that time is of importance in Imperial interests; but there is nothing to show that (when a decision is arrived at with regard to the question of the acceleration of the survey) the Imperial Government will not be prepared to contribute its quota. Indeed, the fact of the *Egeria* having been already detailed for the preliminary work of the survey seems to be strong evidence to the contray.

4. As regards the contention that the consent of Tasmania to contribute to the proposed survey should be conditional upon effect being antecedently given to the resolution passed at the recent Postal Conference in Sydney—to the effect that *inter alia*, a division based upon population – of cost should be made between all the Colonies represented at the Conference, of the cables communicating with Tasmania and New Zealand, I beg to observe that, although the resolution quoted unquestionably deserves, and will doubtless receive full consideration at the hands of the other Colonies, it would seem scarcely wise to make its settlement an indispensable preliminary to dealing with the resolution for the survey of the Pacific Ocean Cable Route which was adopted with the concurrence of the Tasmanian representatives at the same sitting of the Conference. The question of precedence does not appear to have been raised at the time, and to press it now is to be deprecated, as opening the door to similar action on the part of other Colonies which might consider certain other special subjects deserving of precedence, and thus barring the way to one which is of undoubted importance to the interests of all.

5. Under these circumstances, I venture to request your re-consideration of the decision communicated in your letter under reply.

I have, &c.,

(Signed) D. Gillies,
Premier.

The Honorable the Premier,
Hobart.

P.88/3239. [Copy.]

From the Colonial Secretary of Western Australia to the Premier of Victoria.

Colonial Secretary's Office,
Perth, 4th September, 1888.

Sir,

With reference to your circular letter, No. 3561/88, of the 20th ultimo, relative to the proposed survey of a route for the Pacific Cable, and inquiring whether this Government would be prepared to contribute its share of the expense of such survey, I am directed by His Excellency Governor Sir F. N. Broome to reply that before expressing any opinion, this Government would be glad to learn the nature of the replies received by the Victorian Government from the Governments of the other Colonies.

I have, &c.,

Malcolm Fraser,
Colonial Secretary.

The Honorable the Premier,
Melbourne, Victoria.

P.88/3257.

FROM THE PREMIER OF QUEENSLAND TO THE PREMIER OF VICTORIA.

Chief Secretary's Office,
Brisbane, 8th September, 1888.

SIR,

I have the honour to acknowledge the receipt of your letter of the 20th ultimo, in further reference to the proposed survey of a cable route between Vancouver's Island and Australia, and to inform you that this Government is now prepared to contribute toward the cost of the undertaking.

I have, &c.,

THE HONORABLE THE PREMIER OF VICTORIA,
Melbourne.

THOMAS MCILWRAITH.

P.88/3262.

FROM THE PREMIER OF SOUTH AUSTRALIA TO THE PREMIER OF VICTORIA.

Chief Secretary's Office,
Adelaide, 12th September, 1888.

SIR,

I have the honour to acknowledge the receipt of your circular letter of the 20th ultimo, referring to previous correspondence relative to the desirableness of a survey being made of a suitable route for an Ocean Telegraph Cable by way of the Pacific, and to the resolution of the Postal Conference held in Sydney in January last on the same subject.

In reply, I beg to inform you that this Government does not propose contributing towards the cost of the survey referred to.

I have, &c.,

THE HONORABLE THE PREMIER,
Victoria.

T. PLAYFORD.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

PARLIAMENT BUILDINGS.

RETURN to an Order of *the Legislative Council*,
Dated 11th September, 1888, *for*—

A RETURN showing the sums expended as follow, up to the 31st July last :—

1. Gross amount spent on the Parliament Buildings.
2. Total cost of all fixtures, fittings, and furniture supplied to date.
3. Amount to be expended on the existing contract.
4. Total cost of land acquired or purchased and forming the Parliament Reserve.
5. Gross cost of all buildings, fences, including the lawn tennis court, and all other improvements made on the Parliament Reserve.
6. Estimated cost of completing the Houses of Parliament and offices connected therewith, in accordance with the accepted design.

(*The Honorable W. A. Zeal.*)

RETURN showing the Expenditure on Parliament Buildings, &c., to 31st July, 1888 :—

1. Gross amount spent on the Parliament Buildings	£455,526	12	5
2. Total cost of all fixtures, fittings, and furniture supplied to date ...	171,298	0	6
3. Amount to be expended on the existing contract	61,654	16	4
4. Total cost of land acquired or purchased, and forming the Parliament Reserve	10,600	0	0
5. Gross cost of all buildings, fences, including the lawn tennis court, and all other improvements made on the Parliament Reserve	8,400	19	9
6. Estimated cost of completing the Houses of Parliament and offices connected therewith, in accordance with the accepted design ...	374,022	12	11

Ordered by the Legislative Council *to be printed, 18th September, 1888.*

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

C 2.—2968.

1888.

VICTORIA.

"LADY LOCH" S.S.

RETURN to an Order of *the Legislative Council*,
Dated 14th August, 1888, *for*—

A COPY of Papers and Correspondence relating to the Application for an Engineer to be Appointed to the Steamship "LADY LOCH."

(*The Honorable W. H. Roberts.*)

Ordered by the Legislative Council *to be printed, 19th September, 1888.*

M.85/75.

SIR, Ports and Harbors, 20th January, 1885.

I have the honour to state that the engineer of the *Despatch* has been granted twelve months leave of absence, whereby it becomes necessary to obtain the services of another engineer. Mr. Thos. Rogers, who is permitted to drive the dock engine when required, is a suitable engineer for the *Despatch* and, if you have no objection to the temporary transfer of his services to this Department for the period mentioned, I will take steps to recommend such transfer accordingly.

I have ascertained that Rogers is agreeable, provided that his present position in the locomotive branch of your Department will be open to him at the termination of the twelve months.

An early reply will greatly oblige.

I have the honour to be, Sir,
Your most obedient servant,
(Signed) ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

The Secretary, Victorian Railways.

85/634.

SIR, Victorian Railways, 22nd January, 1885.

I have the honour to inform you that, in compliance with the request contained in your letter of the 20th instant, the Commissioners have consented to Thomas Rogers, of the locomotive branch, being transferred temporarily to your Department as engineer of the *Despatch*.

May I beg that you will be so good as to state the date on which his services will be required.

I have the honour to be, Sir,
Your most obedient servant,
(Signed) P. P. LABERTOUCHE,
Secretary.

Alex. Wilson, Esq.,
Engineer for Ports and Harbors.

Department of Ports and Harbors,
Melbourne, 26th January, 1885.

TEMPORARY ENGINEER FOR "DESPATCH."

Memo. for the Hon. the Commissioner Trade and Customs.

Adverting to correspondence wherein Mr. Robinson of the *Despatch* had been granted twelve months' leave of absence, I beg to state that he is desirous of being relieved from duty to-day.

With reference to a temporary successor, I have made inquiries, as will be seen from correspondence annexed, and have ascertained that Thomas Rogers, an officer of the locomotive branch of the Railway Department, and who is employed, when required, in driving the dock engines, is available for transfer to

this Department, for the period mentioned, to carry out Mr. Robinson's duties as engineer of the *Despatch* during the latter's absence.

I respectfully beg to request that the necessary steps may be taken to have transfer effected as soon as possible.

Funds are available to pay Mr. Rogers out of 70/6, extra labour, at £20 per month.

(Signed) ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

Approved by Minister.
(Initialled) A.W.M., 12.2.85.

[MINUTE.]

25.2.85.

Since recommending remuneration at the rate of £20 per month, a schedule of salaries has been issued by the Public Service Board, and therein the minimum salary for the engineer of the *Despatch* is set down as £22. I assume, therefore, that Rogers is entitled to the increased rate, and I should be glad to be informed if such is the case.

(Signed) ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

[MINUTE.]

25/3/85.

I have seen the Public Service Commissioners, and they are of opinion the salary of this engineer should remain at the figure at which he was employed, irrespective of any max. or min. since adopted.

(Signed) A. W. MUSGROVE.

[MINUTE.]

9/4/85.

Board seen again. As this case does not come under the purview of the P. S. Board, the max. and min. fixed by the Board has no effect, so that Rogers can be paid any salary sanctioned by the Minister.

(Initialled) A. W. M.

[MINUTE.]

11/4/85.

The max. and min. fixed by the P. S. Board will have the effect of making Rogers dissatisfied with the sum of £20 first recommended, and I therefore now submit for the approval of the Hon. the Minister, that Rogers' rate of pay be £22 per month.

(Signed) ALEX. WILSON,
Engineer-in-Chief, Harbors.

Appd. (Initialled) G.D.L., 14/4/85.

C.85/106.

Department of Trade and Customs,
Melbourne, 16th February, 1885.

SIR,

Adverting to previous correspondence, I have the honor to inform you that the Commissioner of Trade and Customs has been pleased to approve of the temporary transfer of Mr. Thomas Rogers to this Department, in the capacity of engineer of the s.s. *Despatch*, during the absence, on leave (12 months), of Mr. F. Robinson.

I have the honour to be, Sir,
Your obedient servant,
(Signed) A. W. MUSGROVE,
Secretary.

The Secretary for Railways.

85/1543.

Victorian Railways,
Melbourne, 19th February, 1885.

SIR,

Referring to yours of the 16th instant, would you be good enough to advise me of the date on which you will require Mr. Thomas Rogers to commence his temporary duty in your department.

I have the honour to be, Sir,
Yours very obediently,
(Signed) P. P. LABERTOUCHE.

A. W. Musgrove, Esq.,
The Secretary, Trade and Customs.

C. 85/135.

Department of Trade and Customs,
25th February, 1885.

SIR,

In reply to your letter of the 19th instant, I have the honour to inform you that Mr. Thomas Rogers commenced his temporary duties in this department, as engineer on the buoy and lighthouse tender, on the 27th ultimo.

I have the honour, &c.,
(Signed) A. W. MUSGROVE,
Secretary.

The Secretary for Railways.

85/679.

Accounts Branch,
Department of Trade and Customs,
24th September, 1885.

I should like to be informed whether T. Rogers, who was appointed engineer *Despatch* during F. Robinson's leave, is being paid out of a vote of the Department.

Up to this date no salary abstracts for said salary have reached this office.

(Signed) H. E. HOLLICK,
Acting Inspector of Accounts.

The Secretary, Trade and Customs, Mr. Wilson.

(Initialled) A. W. M.—25/9/85.

[MINUTE.]

Rogers, being a temporary man, has not hitherto been included in the monthly salaries reimbursement, but, if necessary, his voucher can be so included. He has been paid at the rate of £22 per month, out of the vote for "extra labor," since the 27th January last.

26/9/85. (Signed) ALEX. WILSON.

[MINUTE.]

Please include voucher.—(Initialled) A.W.M.—28/9/85.

Noted and returned.—J. GEO. MCKIE, Secretary.—30/9/85.

C.86/420. *Memo. for the Secretary, Trade and Customs.*

Department of Ports and Harbors,
24th March, 1886.

Consequent upon the death of Francis Robinson, as reported this day, the position of engineer of the buoy and lighthouse tender *Despatch* has become vacant.

There is not any person in the department suited for the position, and, so far as I know, the only departments from which such an officer might be selected are the Railways, Public Works, and Defence.

The duties of engineer are at present performed by Thomas Rogers, who was temporarily obtained from the Railway department during the late Mr. Robinson's leave of absence, and I am able to speak in the highest terms of Mr. Rogers' services during the above period, provided it does not stop the advancement of any officer who may have better claims, I would be glad to see him permanently appointed.

(Signed) ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

[MINUTE.]

It will be necessary to fill the vacancy. I would beg to request that an appointment be made.

(Signed) A. W. MUSGROVE.
31/3/86.

Approved.—(Initialled) W.F.W.—2/4/86.

C.86/420.

Department of Trade and Customs,
Melbourne, 31st March, 1886.

SIR,

It is with great regret I have to report that Mr. F. Robinson, engineer on the buoy and lighthouse tender, died on the 21st instant.

This unfortunate event caused a vacancy in the department which it will be necessary to fill, and I would request that the Board will take the necessary steps.

I enclose the usual form of request.

There is not any person in this department suited for the position, but I would mention that the duties are at present performed by Thos. Rogers, who was temporarily obtained from the Railway department, during the twelve months leave of absence from which Mr. Robinson only recently returned.

Mr. Rogers is spoken of by his then superior officer in the highest terms.

I have the honour to be, Sir,
Your obedient servant,

(Signed) A. W. MUSGROVE,
Secretary.

The Chairman, Public Service Board.

B.

C.86/421. *Public Service Act.*

APPLICTION FOR AN APPOINTMENT TO FILL A VACANCY.

The Permanent head of the Trades and Customs department informs the Public Service Board that a vacancy has occurred for an engineer on the buoy and lighthouse tender by the death of Francis Robinson, and that he has made request to the Honorable the Minister to have this vacancy filled.

The Permanent Head certifies to the Public Service Board that the filling of this vacancy is necessary for the carrying on of the work of the department, and request the Public Service Board to make the necessary nomination.

(Signed) A. W. MUSGROVE,
Permanent Head.
31st March, 1886.

The Secretary, Public Service Board.

Board approves.
Board certifies and nominates.

SIR, Dockyard, Williamstown, 25th March, 1886.

As you are aware, I obtained twelve months' leave of absence from the Railway department in order to take charge of the steamship *Despatch*, as engineer, during Mr. Robinson's absence on twelve months' holiday.

I believe I have performed the duties to the entire satisfaction of yourself and the captain of the vessel. My twelve months' leave from the Railway department having expired, I have been informed by the locomotive superintendent that I will either have to leave the department or return to work. I have, however, applied for an extension of three months' leave.

Mr. Robinson having, unfortunately, died, his position has been rendered vacant, and I now beg to ask that I may be appointed permanent engineer of the *Despatch*.

I entered the service of the Government on the 27th June, 1877, and for character, ability, and general conduct, I can with confidence refer to the foreman of the Williamstown workshops and the locomotive superintendent.

I shall feel obliged by an early decision.

I have the honour to be, Sir,
Your most obedient servant,
(Signed) THOS. ROGERS.

A. Wilson, Esq., Engineer, Ports and Harbors.

[MINUTE.] 31/3/86.

Forwarded to the Chairman of the Public Service Board in connexion with my letter of even date.
(Signed) A. W. MUSGROVE.

[MINUTE.] 28/4/86.

A transfer of an officer from the Railway Department cannot be made under the provisions of the Public Service Act.

By order, (Signed) H. T. GOMM, Secretary.

[MINUTE.] 4/5/86.

Applicant informed accordingly. (Signed)—ALEX. WILSON.

C.86/95. Department of Ports and Harbors, 31st March, 1886.

Re TEMPORARY ENGINEER.

Memo. for Secretary, Trade and Customs.

Consequent (1) upon the death of Mr. Robinson, the late engineer of the s.s. *Despatch*, and until his successor is appointed, and (2) upon the necessity for overhauling the dock-yard engines, I have had to retain the services of Mr. Thomas Rogers, who acted for Mr. Robinson during his twelve (12) months' leave of absence, and therefore attach for approval the usual application form for temporary employment, with rate of wages at 14s. per day when engaged in dock-yard; £22 per month when employed on the *Despatch*.

(Signed) ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

C.86/443.

Department of Trade and Customs,
SIR, Melbourne, 2nd April, 1886.

Consequent upon the death of Mr. F. Robinson, it was necessary that an engineer for the buoy and lighthouse tender should be employed.

Mr. Thomas Rogers was therefore engaged, and I enclose an application for temporary employment, signed by him, with a request that the necessary certificate be issued.

I have the honour to be, Sir,
Your obedient servant,
A. W. MUSGROVE,
Secretary.

The Chairman, Public Service Board.

No.3147.

Public Service Board,
SIR, Melbourne, 5th April, 1886.

Thomas Rogers, Verdon-street, Williamstown.

I have the honour, by direction, to forward herewith the Board's certificate for the temporary employment of an engineer on the buoy and lighthouse tender, *vice* F. Robinson, deceased.

I have the honour to be, Sir,
Your obedient servant,
H. T. GOMM,
Secretary.

The Secretary, Trade and Customs.

3148. Public Service Board, 5th April, 1886.

The Public Service Board certifies that the temporary employment of an engineer for the buoy and lighthouse tender is required by the Trade and Customs Department.

The Board certifies that there is no person in the Public Service available for transfer.

The person whose name stands first recorded for such temporary work is Thomas Rogers.

(Signed) J. M. TEMPLETON, T. COUCHMAN, M. H. IRVING, } Members.

The Hon. the Minister of Trade and Customs. H. T. GOMM, Secretary.

C.85/130. Department of Ports and Harbors, 11th May, 1886.

Memo. for Secretary for Trade and Customs.

Referring to the vacancy caused by the death of Mr. Francis Robinson, late engineer of the buoy and lighthouse tender, and the correspondence connected therewith, dated the 24th March last, an engineer has not yet been appointed, and the duties are still being performed by Mr. Rogers, the officer who was obtained from the Railway Department during the late Mr. Robinsons absence in England.

As Mr. Rogers has served in all fifteen months, I would be glad to know whether his services may be continued until the Public Service Board nominate an officer for the vacant position.

(Signed) ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

B.3809/2754. [MINUTE,]

Forwarded to the Public Service Board in connexion with my letter of the 31st March.

(Signed) A. W. MUSGROVE.
13/5/86.

[MINUTE.]

As Mr. Rogers has been engaged on board the buoy and lighthouse tender for more than twelve months, it appears to the Board to be reasonable that he shall remain until he can be relieved by the appointment of an engineer in accordance with the Public Service Act.

By order,
20/5/86. (Signed) H. T. GOMM, Secretary.

C.88/93.

Department of Trade and Customs,
SIR, Melbourne, 25th January, 1888.

I have the honour to bring under the notice of the Public Service Board that the Engineer in charge of Ports and Harbors has reported that it would greatly conduce to the efficient working of his branch if the *Lady Loch* and the Dockyard were exempted from the operation of the Public Service Act, as regards the persons employed therein, from year to year, provided the status of the present employés be not interfered with.

I would beg to urge the adoption of this course upon the Board, as the present system does not admit of dealing with the appointment of persons in a way likely to secure the most efficient men.

I have the honour, &c.,
(Signed) A. W. MUSGROVE.

The Secretary, Public Service Board.

No. 1951.

Public Service Board,
SIR, Melbourne, 3rd March, 1888.

I have the honour, by direction, to inform you that (in reference to your letter, 25.1.88, No. C.88/93), after consideration, it is decided as the best course that any particular case (such as that of engineer) requiring exemption, should be submitted to the Board, with the circumstances thereof, and if good reasons be given, the Board will favorably consider it.

I have the honour, &c.,
(Signed) FRANCIS REDDIN,
The Secretary for Trade and Customs. *Pro* Secretary.

[MINUTE.] 16/3/88.

It has been found that the limit with regard to age, 26 years, has prevented the steamer *Lady Loch* being manned with the best and most experienced men obtainable, in consequence thereof, the machinery has suffered greater deterioration than it should have done. The vessel has also been rendered inefficient from the same cause, owing to the limit of choice and consequent inexperience of both firemen and seamen.

As the Board, however, are adverse to the proposal previously made, it is now recommended that the position of Engineer of steamer *Lady Loch* be exempt from year to year.

(Signed) ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

C.88/378.
T.&C.88/1557.

Department of Trade and Customs,
Melbourne, 19th March, 1888.

SIR,

In reply to your letter, 1951, of the 3rd instant, I have the honour to state that it has been found that the limit with regard to age (26 years) has prevented the s.s. *Lady Loch* being manned with the best and most experienced men obtainable, and in consequence thereof the machinery has suffered greater deterioration than it should have done. The vessel has also been rendered inefficient from the same cause, owing to the limit of choice, and consequent inexperience of both firemen and seamen.

As, however, the Board appear to be adverse to adopting the proposal previously made, it is recommended that the position of Engineer of the s.s. *Lady Loch* be exempted from year to year from the operation of the Public Service Act.

I have the honour, &c.,
(Signed) A. W. MUSGROVE,
Secretary.

The Secretary, Public Service Board.

No. 2655.

Public Service Board,
Melbourne, 26th March, 1888.

SIR,

With reference to your letter of the 19th instant (No. C.88/378), recommending that the position of engineer of s.s. *Lady Loch* be exempted from year to year from the operation of the Public Service Act, I have the honour, by direction, to inform you that the Board, having considered the matter, will exempt for one year any individual who may be selected as suitable for the position.

I have the honour, &c.,
(Signed) H. T. GOMM,
Secretary.

The Secretary for Trade and Customs.

ENGINEER FOR H.M.C.S. "LADY LOCH."

Applications addressed to the Honorable the Commissioner of Trade and Customs will be received up to noon on Wednesday the 2nd day of May, 1888, from persons competent to act as Engineer of H.M.C.S. *Lady Loch.*

Applicants must not exceed forty (40) years of age.

Salary will commence at the rate of £22 per month.

Further particulars can be obtained on application to the Harbor Department, Custom House, Melbourne.

(Signed) W. F. WALKER,
Commissioner of Trade and Customs.

Department of Trade and Customs,
Melbourne, 11th April, 1888.

PARTICULARS *re* ENGINEER FOR H.M.C.S. "LADY LOCH."

Applicants must be in possession of a first-class engineer's certificate of competency, and must produce satisfactory testimonials of character and ability extending over the whole period of their service afloat, either as engineer or assistant engineer, and must be able to prove that they have been at least two years in full charge of marine engines of 100 nominal horse-power and upwards.

The successful applicant will require to produce a certificate from the Chief Medical Officer, certifying that he is in sound bodily health.

Appointment, if made, to be during the pleasure of the Minister of Trade and Customs, but may not extend beyond the time when the appointee shall have reached the age of sixty (60) years.

Salary to be at the rate of £22 per month, increasing to £26 per month by annual increments, at the discretion of the Minister of Trade and Customs.

ENGINEER FOR H.M.C.S. "LADY LOCH."

Applications, addressed to the Honorable the Commissioner of Trade and Customs, will be received up to noon of Wednesday the 9th day of May, 1888, from persons competent to act as Engineer of H.M.C.S. *Lady Loch.*

Applicants must not exceed forty-five (45) years of age.

Salary will commence at the rate of £22 per month.

Further particulars can be obtained on application to the Harbor Department, Custom House, Melbourne.

(Signed) W. F. WALKER,
Commissioner of Trade and Customs.

Department of Trade and Customs,
Melbourne, 11th April, 1888.

PARTICULARS *in re* ENGINEER FOR H.M.C.S. "LADY LOCH."

Applicants must be in possession of a first-class engineer's certificate of competency, and must produce satisfactory testimonials of character and ability extending over the whole period of their service afloat, either as engineer or assistant engineer, and must be able to prove that they have been at least two years in full charge of marine engines of 100 nominal horse-power and upwards.

The successful applicant will require to produce a certificate from the chief medical officer, certifying that he is in sound bodily health.

Appointment, if made, to be during the pleasure of the Minister of Trade and Customs, and subject to any regulations (as to duration) which may hereafter be made by the Public Service Board, under the authority of Act 773, but may not extend beyond the time when the appointee shall have reached the age of sixty (60) years.

Salary to be at the rate of £22 per month, increasing by annual increments to £26 per month, at the discretion of the Minister of Trade and Customs.

C.88/102.

Department of Ports and Harbors,
Melbourne, 16th May, 1888.

APPLICATIONS FOR APPOINTMENT AS ENGINEER ON BOARD H.M.C.S. "LADY LOCH."

Memo. for the Hon. the Minister, Trade and Customs.

I have examined the testimonials and certificates of applicants as per attached list, for the nomination of engineer on board H.M.C.S. *Lady Loch*, and beg to submit the names of Mr. George Torry and Mr. William Cooper as being, in my opinion, the most competent to perform the duties of the service now required.

Mr. George Torry is at present chief engineer of the s.s. *Adelaide*, and has served the Adelaide Steamship Company as chief engineer during the past twelve (12) years.

Mr. Wm. Cooper is at present chief engineer of the s.s. *Courier*, and has served Messrs. Huddart Parker and Co., as chief engineer, during the past five (5) years.

It may be stated that in submitting these names I have been guided by a knowledge of their past services as engineer afloat, and the efficient manner in which their work as such has been performed.

(Signed) ALEX. WILSON,
Engineer in charge, Ports and Harbors.

[MINUTES.]

This appointment was supposed to be due to Rogers, who had acted as chief engineer for the Department for a very long time. I have often stated in Parliament and to members, that Rogers would be appointed if the law allowed it. I have done this on the assurance of Mr. Wilson that Rogers was a suitable man, and that he would recommend his appointment. The Railway Department better be written to at once to know what Rogers lost there by acting for us.

23/5/88. (Initialled) W. F. W.

C.88/746.
T.&C.88/3466.

Department of Trade and Customs,
Melbourne, 25th May, 1888.

SIR,

I have the honour, by direction of the Commissioner of Trade and Customs, to state that Mr. Rogers, who has been for some time acting as engineer to the s.s. *Lady Loch*, has informed him that, in consequence of his absence from the Railway Department, he has lost certain advantages which he would otherwise have been entitled to.

Mr. Walker would be glad to know if such is the case, and to what extent the loss, if any, will affect Mr. Rogers.

I have the honour to be, Sir,
Your obedient servant,

(Signed) A. W. MUSGROVE,
Secretary.

Secretary for Railways.

88/6791.

SIR,

Victorian Railways, Melbourne, 18th June, 1888.

Adverting to your letter of the 25th ultimo, C.88/746, T. and C.88/3466, in the case of Mr. Rogers, who is acting as engineer to the s.s. *Lady Loch*, I have to inform you that Mr. Rogers has been seen, and he is reported to be quite satisfied that nothing has taken place in any way prejudicial to his interests in this Department.

I have the honour to be, Sir,
Yours very obediently,

(Signed) P. P. LABERTOUCHE,
Secretary.

The Secretary, Trade and Customs.

[MINUTE.]

20.6.88.

It is evident that Mr. Rogers has sustained no loss of any kind from his temporary transfer to this department, as is admitted by himself. He has, therefore, no claim on this account, neither does he, apparently, possess the qualifications set out in the conditions referred to in the advertisement calling for applications.

A. W. MUSGROVE,
Secretary.

[MINUTE.]

The engineer nominated by the engineer of Ports and Harbors better be appointed.

(Initialled) W. T. W.
11.7.88.

[MINUTE.]

MR. WILSON, 11.7.88.

Please say which of the two is recommended.

(Signed) A. W. MUSGROVE.

[MINUTE.]

13.7.88.

I would name Mr. George Torry in making such recommendation, and, in view of the Minister's Minute of the 23rd June, I beg to explain that the conditions are altogether different to what they were when a desire was expressed in favour of Mr. Roger's services being continued, inasmuch as the choice of engineers at that time was confined to Mr. Rogers or some unknown engineer under 26 years of age, whereas at the present selection is from over 40 applicants, some of whom are the most experienced engineers sailing too and from this port.

(Signed) ALEX. WILSON.

Engineer, Ports and Harbors.

Mr. Torry has been requested to report himself to you for duty.

H. W.
Pro Secretary.
16. 7.

D.88/1368.
T. & C. 88/4258.

Department of Trade and Customs,
Melbourne, 13th July, 1888.

SIR,

I have the honour to inform you that the Commissioner of Trade and Customs has appointed you to the position of engineer of H.M.C.S. *Lady Loch*, subject to the following conditions, viz.:—

That you produce a certificate from the Chief Medical Officer, certifying that you are in sound bodily health.

Your appointment shall be held during the pleasure of the Minister, and may not extend beyond the time when you shall have attained the age of 60 years.

Your salary shall be at the rate of £22 per month, increasing by annual increments, at the discretion of the Minister, to £26 per month.

You will be good enough to report yourself to Mr. Wilson, the engineer in charge of Ports and Harbors, as soon as possible.

I have the honour to be, Sir,
Your obedient servant.

(Signed) A. W. MUSGROVE,
Secretary.

Mr. Geo. Torry, s.s. *Adelaide*.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

AH TOY *v.* MUSGROVE.

RETURN to an Order of the *Legislative Council*,

Dated 9th October 1888, *for*—

COPIES of the Arguments before, and the Judgment of, the Supreme Court in the case of Ah Toy *v.* Musgrove.

(The Honorable H. Cuthbert.)

Ordered by the Legislative Council *to be printed 9th October*, 1888.

By Authority:
ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

AH TOY *v.* MUSGROVE.

Before their Honors the CHIEF JUSTICE, Mr. JUSTICE WILLIAMS, Mr. JUSTICE HOLROYD, Mr. JUSTICE KERFERD, Mr. JUSTICE A'BECKETT, and Mr. JUSTICE WRENFORDSLEY (acting).

TUESDAY, JULY 10, 1888.

The plaintiff, Chun Teong Toy (a Chinese), sued Mr. A. W. Musgrove, the Collector of Customs, to recover damages for not being allowed to land from the steamer *Afghan* into Victoria.

The plaintiff's statement of claim alleged that:—

1. The defendant is and was, at all times material to this action, Collector of Customs, within the meaning of "The Chinese Act 1881."

2. The plaintiff was an immigrant arriving from parts beyond Victoria within the meaning of "The Chinese Immigrants Statute 1865" and "The Chinese Act 1881."

3. The plaintiff, on or about the 27th April, 1888, arrived in Hobson's Bay from parts beyond Victoria on board the ship *Afghan*, the said ship being a British ship, and one George Roy was the master of the said ship, within the meaning of "The Chinese Act 1881."

4. The said master, George Roy, offered to pay, and was always ready and willing to pay, to the defendant, as such Collector of Customs as aforesaid, in respect of the plaintiff, the sum of £10 as provided in section 3 of "The Chinese Act 1881," yet the defendant refused to allow the plaintiff to land in Victoria, and hindered and prevented the plaintiff from landing in Victoria, and altogether refused and declined to receive the said sum of £10.

The plaintiff claimed £1,000.

The statement of the defence was that:—

1. Defendant admits the allegations in paragraphs 1, 2, and 3 of the statement of claim.

2. He denies that the master of the said ship offered to pay, or was always ready or willing to pay to him, as such Collector of Customs, or at all, in respect of the plaintiff, the sum of £10.

3. He denies that he refused or declined to receive the said sum of £10.

4. The plaintiff was, at the time of the committing of the grievances in the statement of claim mentioned, a subject of the Emperor of China, and owed allegiance to him, and was not a British subject, and that, whilst the several Acts of the Parliament of Victoria mentioned and referred to in the second paragraph of the statement of claim were in full force and unrepealed, the plaintiff was a Chinese immigrant within the meaning of the said Statute, and as such immigrant had arrived in the port of Melbourne in a certain British vessel called the *Afghan*, of 1,439 tons measurement, which said vessel had so arrived in the said port with 268 Chinese immigrants on board, being 254 more Chinese immigrants than under the said Statute such vessel could lawfully bring into the said port of Melbourne. And the defendant further says that he had received instructions previous to the arrival of the said ship from the Commissioner of Trade and Customs, as and being the responsible Minister of the Crown for the colony of Victoria charged and entrusted with the administration of the laws of the said colony relating to the Customs and immigration, that there was an apprehension on the part of Her Majesty's Government for the said colony that a large influx of Chinese into the said colony was imminent, and that in the opinion of the said Minister of the said Government such influx would be a danger and menace to the said colony and to the public peace thereof, and to Her Majesty's subjects residing therein, and would be in a high degree detrimental to their interests, and that in the opinion of the said Minister and Her Majesty's said Government it was for the advantage of the said subjects so residing in the said colony that such influx should be prevented, and no further Chinese other than such as are British subjects should be allowed to enter the said colony, and that the said Minister and Her Majesty's Government had determined to refuse to permit any Chinese other than such as were British subjects to land or enter the said colony, and such instructions,

opinions, and determination had been before the committing of the said grievance by the said Minister and Government communicated to the defendant. Wherefore the defendant, in obedience to such instructions and determination as such officer of Her Majesty's Customs, as hereinbefore mentioned, by command of our Lady the Queen, refused to permit the plaintiff to land in the said colony of Victoria, and hindered and prevented him from so landing, and wholly declined and refused to receive the said sum of £10 mentioned in the fourth paragraph of the statement of claim. And the defendant further says that his said acts in so wholly refusing to permit the said plaintiff to land in Victoria, and in so hindering and preventing him from landing, and in refusing to receive the said sum of £10 as aforesaid, were by him subsequently reported and communicated to Her Majesty's said responsible Ministers, and were by him and by Her Majesty's said Government ratified and approved of as being acts of State policy.

The plaintiff, in reply, as to the defence, said—

1. That he joins issue on paragraphs two and three, and on the whole of paragraph four after the figures and words "1,439 tons measurement."

2. He will object that paragraph four is no defence, as even Her Majesty's said Minister or said Government could not legally prevent the plaintiff from landing.

The questions of law raised by the pleadings were referred by consent to the Full Court, and all the Judges of the Supreme Court were present at the hearing.

Dr. Madden and Mr. Hodges appeared for the plaintiff.

The Attorney-General (Mr. Wrixon), Mr. C. A. Smyth, and Mr. Box for the defendant.

Dr. Madden.—Before entering upon the argument I wish to ask my friend, the Attorney-General, if it was intended by the averment in the fourth plea, that the act complained of was done by command of Her Majesty, that she in person commanded it with the advice of the Executive Council in England, or with the advice of the Executive Council in England ordered or ratified it. If that was not the intention of the plea, I should like to know what it means.

The Attorney-General.—I will relieve my friend from any difficulty. It is not pretended that the Imperial Advisers sanctioned the act.

Dr. Madden.—That is no answer.

The Attorney-General.—It is not pretended that the Imperial Advisers had anything to do with it. It was done by her responsible Ministers here.

Dr. Madden.—Did she order it? It is left open whether it was ordered by the Governor as representative of Her Majesty, and whether she ratified it or ordered it. That would be a matter of proof, which it is useless to require to be given. We have come down to argue this matter once for all, as I understand, and it ought not to be necessary to go back to prove mere matters of pleading.

The Attorney-General.—My argument will be that she sanctioned it through her responsible Ministers in Victoria. It was her act in and through her responsible Ministers in Victoria.

Dr. Madden.—And only by them?

The Attorney-General.—I say it was done by Her Majesty through her responsible Ministers in Victoria. I will clear it up in my reply.

Dr. Madden.—I suppose there will be no difficulty about it. To proceed with the case then: The points in this plea (the fourth) divide themselves into two large branches—the first involving what is the effect of the Chinese Acts in this colony. The second was a very much larger question, namely, whether, assuming that the power mentioned in this plea had existed in England at any time or exists now, it lies in the Government of this colony to take the same steps and do the same acts that Her Majesty in England can do. I will first refer to the Statutes of this colony on the subject, to be found in the first volume of the Victorian Statutes, page 118. The first Chinese Act of 1865 may be looked upon merely casually, to see what the word "immigrant" means. Section 3 enacts—

"The word immigrant shall mean any adult native of China or its dependencies, "or of any islands in the Chinese seas, not born of British parents, or any person born "of Chinese parents."

That was all that was important in that Statute in reference to this action. Then the Chinese Immigrants Amendment Act 1881 (No. 723) provides in section 2—

"That if any vessel having on board a greater number of immigrants (within "the meaning of the Act No. 259) than in the proportion of one such immigrant to

"every hundred tons of the tonnage of such vessel shall arrive at any time in any port "in Victoria, the master, owner, or charterer of such vessel shall be liable on convic- "tion to a penalty of £100 for each immigrant so carried in excess of the foregoing "limitation. For the purposes of this Act, the tonnage of a vessel shall be ascertained "in the manner prescribed by the Passengers Harbours and Navigation Statute 1865."

And section 3 provides—

"Before any immigrant arriving from parts beyond Victoria shall be permitted "to land from any vessel at any port or place in Victoria, and before making any entry "at the Customs, the master of the vessel by which such immigrant shall so arrive "shall pay to the Collector or other principal officer of Customs the sum of £10 for "every such immigrant, and no entry shall be deemed to have any legal effect until "such payment shall have been made, and such immigrant for whom such sum has "been paid shall receive from the said Collector or other principal officer a certificate "to that effect. If any master shall neglect to pay any such sum, or shall land or "permit to land or suffer to land or escape from such vessel at any port or place in "Victoria any immigrant before such sum shall have been paid by such master or his "agent, or before such list shall have been delivered, such master shall be liable for "every such offence to a penalty of £50 for each immigrant so landed or permitted "or suffered to land or to escape, and, in addition to such penalty, shall also pay the "sum hereby required to be paid for each such immigrant."

These are, I think, for the purposes of this suit, all the sections to which the attention of the Court need be called.

The present action is framed on these alleged facts, which are admitted for the purposes of this argument: The master of the British ship *Afghan* carried a number of Chinese passengers—268—to this colony. That number is in excess of the tonnage allowance permitted to the ship by section 2 of the Act of 1881. Having brought them here, the master of the vessel tendered, on behalf of the plaintiff, to the defendant, as Collector of Customs, the sum of £10, which the defendant, under the circumstances stated in the plea, refused to accept. The plaintiff complains that he has suffered wrong in being deprived of his statutory right, as he claims, of being allowed to land in Victoria, and therefore claims damages. This claim is attempted to be answered by stating that if the master brought a larger number of immigrants in his vessel than the Act allowed, it amounted to a deprivation of all or any of the Chinese on the vessel being allowed to land, because section 2 imposes a penalty on every master, owner, or charterer of any ship which brought more than the number allowed by law, even though they were quite willing to pay the £10 per head. We say that that is not so, and that the Statute amounts to a licence to every Chinese to land in Victoria if he pays the poll-tax of £10. We submit that section 3 practically gives that licence. It provides that "before any immigrant shall be permitted "to land, and before making entry at the Customs, the master must pay the poll-tax "to the Collector of Customs." There is no prohibition there against the Chinese landing. There is this condition precedent to his landing, that the master, for and on his account, must pay £10 for poll-tax. The Legislature had intended (in a spirit that can be easily understood) that inasmuch as Chinese who come here from China are not likely to know the provisions of such a Statute, they should not be prohibited from landing when they come here if they comply with the condition of paying a poll-tax. At the same time, it is provided that the master of every ship who brings them here is liable to a penalty for every one carried in excess of the tonnage allowance.

Mr. Justice Wrenfordsley.—You say that as long as the master is willing to pay the poll-tax, all are to be allowed to land.

Dr. Madden.—At all events the proportion of Chinese allowed to be carried should be allowed to land. Say a ship of 1,000 tons brought 100 Chinese here, the first ten that offered to pay should, at least, be allowed to land. The whole of them was not leavened by the presence of more than the ship was entitled to carry. There is nothing in the Act which states that, because an excessive number is brought, the first ten are not to be allowed to land. It is not suggested that the plaintiff here was not among the first ten who offered to pay the poll-tax. These are the claims and these are the matters which are raised in the first instance by the pleading.

Then comes the question, which is a far more important and larger question. It is this. The plea claims that Her Majesty the Queen (and the Attorney-General has been good enough to limit that to Her Majesty, acting under the advice of the Ministers of Victoria) can simply say to every ship-load of Chinese that came here, "You shan't land."

The Attorney-General.—I say "foreigners."

Dr. Madden.—I am glad of the correction—foreigners or aliens. But as the word will have to be used largely in the discussion, it will probably be better to say aliens. It is claimed that any alien coming here may be forbidden by Her Majesty's Ministers to land. This, so far as I can follow it, is what makes the defendant plead this plea. It is founded on the existence either of a prerogative of the Crown, or the exercise of what is known as an act of State. It will be therefore necessary to consider the nature and history of these matters before we come to the immediate subject—how far they can be exercised by Her Majesty's Ministers in Victoria. I shall therefore ask the Court—if I may do so—to indulge me in following the plan of argument I have suggested for myself.

The first proposition I will consider is, whether any prerogative of the nature claimed ever did exist in the law of England. I will contend that it did not.

Mr. Justice Holroyd.—You contend it never did exist.

Dr. Madden.—Yes, and if it ever did exist at any time, whether it did not constitute part of the prerogative of war and peace. I make that subdivision as a means of pointing the argument which I shall suggest to the Court hereafter. I will next ask the Court to consider whether, if it ever did exist as part of the law, it has not become obsolete long since. I will next ask the Court to consider what is an act of State in its nature. Then the next branch will be to consider whether, if this claim exists now as part of the prerogative of the Crown of England, or if it might fall within the limits of an act of State—whether it can be exercised here, either by the Governor, with the advice of Executive Council, or by the Executive Council alone. These are the broad and abstract propositions on that branch. Finally, I will ask the Court to consider, as a subdivision, whether it can be done by the Ministers for the time being in Victoria in the present instance, having regard to the legislation in force here relating to the Chinese.

Mr. Justice Wrenfordsley.—You don't say whether it can be done by the Governor alone.

Dr. Madden.—My proposition is that he can't do it with the Executive Council or without it.

Mr. Justice Kerferd.—He is part of the Executive Council. Do you draw a distinction between them?

Dr. Madden.—I want to make the distinction drawn in the plea.

Mr. Justice Holroyd.—It means Ministers there.

Dr. Madden.—I forgot that. The next question I shall consider is whether, if the prerogative exists, it can be exercised in this colony, where the Legislature of this country has passed a Statute to control the power.

Mr. Justice a'Beckett.—Are Chinese in any better position as to the right to land than an Italian or a Frenchman has? You say a Chinese has a statutory right to land here. There is no Statute relating to the right of a Frenchman or Italian to land.

Dr. Madden.—In one sense that is not so. My argument will be that, apart from the individual right to land, I will ask the Court to consider whether this so-called act of State is not controlled by a Statute of this colony.

Mr. Justice a'Beckett.—Do you mean that it is controlled as regards Chinese and not as regards other aliens—that Chinese have a statutory right which other nationalities have not? Was it the intention of the Chinese Acts to give special facilities to Chinese which Italians and Frenchmen do not possess?

Dr. Madden.—I am not prepared to say that it was. I think it was the other way; but it may well be that the Legislature, while desiring to exclude Chinese, has by legislating at all on the matter, by the operation of these Chinese Acts, deprived itself of a right to use this other alleged weapon of exclusion as against them, assuming that the right to use it against any aliens existed.

Following these propositions as I have endeavoured to state them, I shall first ask the Court to consider whether this prerogative ever existed. When its history is examined and it is run to its foundation, it will be found to rest on the flimsiest possible foundation. When the authorities are run back, it will be found that there is no authoritative legal basis for it whatever. In "Chitty on Prerogative," the plan of the work is to subdivide the prerogative of the Crown into its various heads, among others, the prerogative of making war and peace. And under the head of "War and Peace" he treats of alien friends. He says, at page 49—

"Alien friends may lawfully come into the country without any licence or pro-
"tection from the Crown, though it seems that the Crown, even at common law, and

"by the law of nations (and independently of the powers vested in it by the Alien Act "55 G. 3, c. 54, which extends even to foreign merchants) possesses a right to order "them out of the country, or prevent them from coming into it, whenever His Majesty "thinks proper."

For that he cites 1 Blackstone's Commentaries and Puffendorff. We are dealing only with alien friends for the present. He says they may come into the country without licence or protection of the Crown, and Her Majesty has the right of ordering them out of the country if she thinks proper. He calls that part of the prerogative of war and peace. It will be found on examination that neither of the authorities he cites goes as far as he does.

In "Blackstone's Commentaries," vol. 1, original edition, page 259, it is said—

"Upon exactly the same reason stands the prerogative of granting safe con- "ducts, without which, by the law of nations, no member of one society has a right to "intrude into another. And therefore Puffendorff very justly resolves that it is left "in the hands of all States to take such measures about the admission of strangers as "they think convenient, those being ever excepted who are driven on the coast by "necessity or by any cause that deserves pity or compassion. Great tenderness is "shown by our laws not only to foreigners in distress, but with regard also to the "admission of strangers who come spontaneously. For so long as their nation con- "tinues at peace with ours, and they themselves behave peaceably, they are under the "King's protection, though liable to be sent home whenever the King sees occasion. "But no subject of a nation at war with us can, by the law of nations, come into the "realm, nor can travel himself upon the high seas, or send his goods and merchandise "from one place to another, without danger of being seized by our subjects, unless he "has letters of safe conduct, which by divers ancient Statutes must be granted by the "King's Seal, and enrolled in Chancery, or else are of no effect, the King being sup- "posed the best judge of such emergencies as may deserve exemption from the general "law of arms. But passports under the King's Sign Manual, or licences from his "ambassadors abroad, are now more usually obtained and are allowed to be of equal "validity."

For that he cites "Puffendorff," book 3, chapter 3. But Puffendorff was no authority on the law of England, although he was a writer of great eminence and respect on matters on which he treated. It must be remembered that he wrote at a time when social philosophy was an interesting subject to many persons.

The title of his book was as follows:—"The law of nature and nations: or a general system of the most important principles of morality, jurisprudence, and politics." In page 252, where the passage occurs which is relied upon, he deals with the general principle of humanity as connected with the rights and duties of hospitality, and goes on to say—

"Therefore the Spanish casuist has not made many converts by the reasons "he lays down to justify his countrymen in their proceedings against the Indians. "The first right on which he founds their title is that of natural society and communi- "cation, which he draws up into this assertion: 'The Spaniards had a right of travel- "ling and of living in those countries, provided they did the natives no harm, and "from this privilege none could restrain them.' In reply to which it is well urged "that this natural communication does not hinder a just proprietor from communicating "his goods by such methods and upon such considerations as he finds necessary. And "farther, that it seems very gross and absurd to allow others an indefinite or unlimited "right of travelling and living amongst us, without reflecting either on their number "or on the design of their coming; whether, supposing them to pass harmlessly, they "intend only to take a short view of our country, or whether they claim a right of "fixing themselves with us for ever. And that he who will stretch the duty of "hospitality to this extravagant extent ought to be rejected as a most unreasonable "and most improper judge of the case. The second principle that he lays down is, "'That it was lawful for the Spaniards to traffick with those people, and the "Sovereigns on either side could not hinder their subjects from such intercourse.' But "here men of more sober and moderate judgments confess themselves unable to find "out any such liberty of trading, as princes may not abridge their subjects of, for "the good of the commonwealth; much less such as shall force and obtrude strangers "upon us, whether we will or no. His third reason is this, 'If the Indians had amongst "them any rights and privileges allowed in common to natives and foreigners, in "these they ought not to hinder the Spaniards from their share. For example, if

" other strangers were permitted to dig gold, the Spaniards might fairly claim the " same liberty.' On which point some have judged it worth considering, first, " whether those privileges were granted to others by way of debt or by way of free " gift and favour. For of those things which men cannot claim from me as strictly " their due, I may be more liberal to one than to another. And, in the next place, " whether these newcomers will behave themselves with the same justice and modesty " as the former, who made use of our goods without our prejudice or inconvenience; " and whether these late guests propose no other end of their visit. Suppose I " give one or two of my neighbours leave to come into my garden as often as they " please, and to gratify themselves with tasting my fruit; it may be there breaks in " afterwards a rude Hector, who is for tearing up my trees, and would kick me out to " plant his own body in my proper land; my case is bad if I may not be allowed to " shut the gate against such an intruding villain. But let others settle this contro- " versy. As to our main question, it is looked on by most as the safest way of "resolving it, to say, 'That it is left in the power of all States to take such measures " about the admission of strangers as they think convenient; those being ever excepted " who are driven on the coasts by necessity, or by any cause that deserves pity and " compassion. Not but that it is barbarous to treat in the same cruel manner those " who visit us as friends and those who assault us as enemies. The free admission " ambassadors is deduced from another head."

Therefore, it will be seen at once that Puffendorff deals with a social problem of some interest merely as a discussion, but not as a matter of law, much less of English law. But he does not say that the King has power to exclude an alien of his own sweet will. Parliament may pass a law to exclude them—which is all he maintains. And this is the authority on which all the others rest. It was no authority that there existed in the Crown of England a prerogative to exclude aliens other than by process of legislation.

In " Comyns' Digest," vol. 7, page 45, under heading (B 5), there is a passage on the same subject. He is a writer of very great authority. He also treats of the prerogative of war and peace, and thus deals with the prerogative in time of war:—

" The King only can make letters of safe conduct, by which he takes the alien " into his keeping and protection, and these letters of safe conduct ought to be enrolled " upon record in Chancery. By the Statute 20 H. 6. 1, they are otherwise void. " And by the Statute 15 H. 6. 3, they shall express the name of the ship, master, " number of mariners, with the portage of the ship. And by the Statute 18 H. 6. 8, " merchants may take ships of enemies not having the letters patent of safe conduct " on board, or enrolled in Chancery. No subject of a King in enmity with the King of " England can come into the kingdom without the King's licence and safe conduct. " So a sovereign of another kingdom cannot come hither without the King's licence, " though he be in amity, as the King of the Isle of Man before its subjection to the " Kingdom of England. So of ancient time, an ambassador who was pro rex could " not come without licence or safe conduct. But a subject of a King in amity may " come without licence or safe conduct. By the Statute 31 H. 6. 4, if a subject " attaches the person or goods of any one who comes by way of amity, truce, or safe " conduct, the Chancellor calling to him, any justice of the one Bench or the other, on " a bill of complaint, may make process against the offender, and may award delivery " and restitution of the person's ship or goods."

He draws the distinction that an alien enemy may not come into the country without a licence, but an alien friend may come in without a licence. The Court will observe that this very learned writer and accurate compiler, although he deals with the common law, never suggests that the King can order out an alien friend who has not come in with a licence. If such a thing had existed in England, it is almost impossible to conceive it would not be found in " Comyns," as he was a searcher in uncommon corners. If it had existed, it would have attracted his attention.

Lord Coke, in vol. 4, page 1, deals with aliens in all aspects, as to the rights and status of aliens generally, and then deals with this in particular. He says, at page 36:— " Artold, King of Man, sued to King Henry III. to come into England to confer with " him, and to perform certain things which were due to King Henry III. Thereupon " King Henry III. at Winchester, by his letters patent, gave licence to Artold, King of " Man, wherein two things are to be observed—(1.) That seeing that Artold, King of " Man, sued for a licence in this case to the King, it proveth him an absolute King, for " that a monarch or an absolute prince cannot come into England without licence of

"the King; but any subject being in league may come into this realm without "licence."

By league I suppose friendship is meant. In dealing with the whole question, Lord Coke never suggests such a prerogative as is contended for here. Although he exhausted the subject and took everything into minute consideration, I have not been able to find an instance—not one—in which this prerogative has ever been exercised, and I do not know that my learned friends will be able to furnish me with one. I am informed that there is a dim suggestion that in the reign of Henry IV. such an exercise of power was resorted to, but never since then "as I am informed and verily believe." I will want to hear what my learned friends have to say on the subject.

I now ask the Court to come to a much later period of history.

May, in his "Constitutional History of England," (4th ed.) vol. 3, pages 49, 50, 51, 52, and 53 deals with the question. He says:—

"Nothing has served so much to raise in other States the estimation of British "liberty as the protection which our laws afford to foreigners. Our earlier history "indeed discloses many popular jealousies of strangers settling in this country. But "to foreign merchants special consideration was shown by *Magna Charta*. And what-"ever the policy of the State or the feelings of the people at later periods, aliens have "generally enjoyed the same personal liberty as British subjects, and complete pro-"tection from the jealousies and vengeance of foreign powers. . . . The Crown "indeed had claimed the right of ordering aliens to withdraw from the realm, but this "prerogative has not been exercised since the reign of Queen Elizabeth, namely, in "1571, 1574, and 1575. It was not until 1793 that a departure from this generous "policy was deemed necessary in the interest of the State. The revolution in France "had driven hosts of political refugees to our shores. They were pitied and would be "welcome. But among the foreigners claiming our hospitality, Jacobin emissaries "were suspected of conspiring with democratic associations in England to overthrow "the Government. To guard against the machinations of such men, Ministers sought "extraordinary powers for the supervision of aliens, and if necessary, for their removal "from the realm. Whether this latter power might be exercised by the Crown, or had "fallen into desuetude, became a subject of controversy; but however that might be, "the provisions of the Alien Bill, now proposed, far exceed the limits of any ancient "prerogative."

So there he puts it that even at that time—1793, when the Alien Bill was first introduced—it was a matter of discussion in Parliament as to whether the power to exclude aliens or to order them from the kingdom had ever existed at all; or, if it had, whether it had not fallen into desuetude. "However that might be, the Alien Bill far "exceeded the limits of the ancient prerogative."

"An account was to be taken of all foreigners arriving at the several ports, who "were to bring no arms or ammunition; they were not to travel without passports; "the Secretary of State might remove any suspected alien out of the realm; and all "aliens might be directed to reside in such districts as were deemed necessary for "public security, where they would be registered, and required to give up their arms. "Such restraints upon foreigners were novel, and wholly inconsistent with the free and "liberal spirit with which they had hitherto been entertained. Marked with extreme "jealousy and rigour, they could only be justified by the extraordinary exigency of "the times. They were, indeed, equivalent to a suspension of the Habeas Corpus "Act, and demanded proofs of public danger no less conclusive. In opposition to the "measure it was said that there was no evidence of the presence of dangerous aliens; "that discretionary power to be entrusted to the Executive might be abused, and that "it formed part of the policy of Ministers to foment the public apprehensions. But "the right of the State, on sufficient grounds, to take such precautions, could not be "disputed. The Bill was to continue in force for one year only, and was passed "without difficulty.

"So urgent was deemed the nature of free intercourse with the continent at "this period, that even British subjects were made liable to unprecedented restraints by "the Traitorous Correspondence Bill.

"The Alien Bill was renewed from time to time, and throughout the war "foreigners continued under strict surveillance. When peace was at length restored, "Government relaxed the more stringent provisions of the War Alien Bills and pro-"posed measures better suited to a time of peace. This was done in 1802, and again "in 1814. But, in 1816, when public tranquillity prevailed throughout Europe, the

"propriety of continuing such measures, even in a modified form, was strenuously "contested.

"Again, in 1818, opposition no less resolute was offered to the renewal of the "Alien Bill. Ministers were urged to revert to the liberal policy of former times, and "not to insist further upon jealous restrictions and invidious powers. The hardships "which foreigners might suffer from sudden banishment were especially dwelt upon. "Men who had made England their home—bound to it by domestic ties and affections, "and carrying on trade under protection of its laws—were liable, without proof of "crime, on secret information and by a clandestine procedure, to one of the gravest "punishments. This power, however, was rarely exercised, and in a few years was "surrendered. During the political convulsions of the Continent in 1848, the Execu- "tive again received authority, for a limited time, to remove any foreigners who might "be dangerous to the peace of the country; but it was not put in force in a single "instance. The law has still required the registration of aliens, but its execution has "fallen more and more into disuse."

The Chief Justice.—What Act is referred to as requiring the registration of aliens?

Dr. Madden.—It is the 7th of George IV., chapter 54, and the 6th and 7th of William IV., chapter 11. My learned friend, the Attorney-General, informs me that in 1848 there was another Alien Act passed. I was not aware of that.

The Chief Justice.—Is that still in force?

The Attorney-General.—No, your Honor, I believe it is not in force. I do not rely upon it.

Dr. Madden.—The history of these Acts is, that they were passed for two years and then died out. And then this observation is made:—

"The confidence of our policy and the prodigious intercourse developed by "facilities of communication and the demands of commerce have practically restored to "foreigners that entire freedom which they enjoyed before the French Revolution.

"The improved feeling of Parliament in regard to foreigners was marked in "1844 by Mr. Hutt's wise and liberal measure for the naturalization of aliens. Con- "fidence succeeded to jealousy, and the Legislature, instead of devising impediments "and restraints, offered welcome and citizenship."

The matters there referred to bring out this suggestion, which, I think, is of considerable weight in this controversy. If the Crown had at that date any such prerogative as is relied on here, why was it necessary not only to pass these Acts through the turmoil, and trouble, and the great difficulty which the Legislature offered, and at the same time run the risk of limiting by written law the very much more elastic prerogative? If the prerogative was a thing which existed for the protection of the State, and was then in existence, why was it necessary to resort to legislation in the face of grave opposition? Now the history of the passing of the Act, 55 George III., chapter 54, is contained in the *Hansard* of the time. There was a great debate referring to the whole of these Acts. This *Hansard* has not been available to me, and I am indebted to my learned friend, Mr. Shiels, for extracts.

The Attorney-General.—I propose to refer to Volume 34 of the *Imperial Hansard* of the year 1803.

Dr. Madden.—This would be the debate on the later Bill—the one of 1848. I have not had an opportunity of reading the debate in *Hansard*, but my learned friend, Mr. Shiels, has handed me the references which he has made to it in Parliament.

The Chief Justice.—What was the tenor of this debate? Was there a general discussion on the subject?

Dr. Madden.—It involved a general discussion on the subject, though I believe the Bill was directed to the exclusion of one individual. It revived the discussions which had previously occurred. The Statute 55, George III., chapter 54, is a general Statute, enacting all sorts of restrictions and penalties upon aliens, and imposing the duty of registration licenses and passports, and a variety of other matters. I cannot cite authorities which are judicial, but those I refer to are well-known persons who have a claim to be acknowledged as authorities on matters of history. The observations are valuable, and it does not matter a jot as to what Statute they relate to. They are observations relating to the general proposition as to whether or not this prerogative existed, and I wish to refer more immediately to the observations of Sir William Molesworth. He says, speaking of the earliest time, 1793, when the first Alien Bill was introduced:—

"This Bill had been opposed on principle, without reference to its details or "period of duration, by every man of any note connected with the liberal party; by "two generations of statesmen, who had so utterly repudiated the principle of the "measure that they never would consent to consider its details." (*Hansard*, Parl. Debs., 3rd series, vol. 98, p. 563.)

Mr. Fox, the leader of the Liberal party, Sir Samuel Romilly, Lord Lansdowne, and other Liberal statesmen, all denied that this prerogative had ever existed. Then Sir William Molesworth also remarks:—

"That doctrine of the prerogative of the Crown to send aliens out of the country "had been strenuously denied by Mr. Fox, Lord Grey, the present Lord Lansdowne "Sir Samuel Romilly, and others. . . Neither Charles II., nor James II., nor "William III. had ever dreamt either of claiming or asking for power to send aliens "out of the country, though they must have oftentimes longed to possess such power. "Therefore an Alien Act was contrary to the practice of our ancestors, contrary to "the spirit of our Constitution, contrary to the tenor of our laws prior to 1793, and "contrary to the recorded opinion of every high authority on this side of the House "since the year 1793." (*Hansard*, Parl. Debs., 3rd series, vol. 98, p. 566.)

Then in the course of the debate which is to be found in Vol. 34 of the year 1816, of *Hansard*, column 1065, I find the following:—

"Lord King wished to ask the learned lord on the woolsack whether the noble "viscount had stated, advisedly, that there existed in the prerogative a power to send "aliens, not alien enemies, out of the country; and whether that power had ever been "exercised since Magna Charta?

"The Lord Chancellor said that, whether the power of sending aliens out of "the country resided in the King and Parliament conjoined, or in the King alone, no "man could be more satisfied than he was of its wisdom and policy when sparingly "exercised. Adverting to the period of 1793, when he was Attorney-General, he "recollected the apprehension that was then excited, not of French arms but of French "principles. He thanked God that that apprehension was strongly felt in the country, "otherwise the consequences might have been such that it was impossible to contem- "plate without terror. It had been felt to be absolutely necessary, whether the Crown "had or had not the prerogative of sending aliens out of the country, to arm it with "the assistance of Parliament. With reference to the construction put by Lord Coke "on *Magna Charta*, as it related to this subject, he observed that, at the period to "which he had alluded, he had the honour of knowing many learned men, now in their "sepulchres, but whose names would long live, and he knew of none, whether they "opposed the measure then proposed or not, who denied that the King had the "power, without the sanction of Parliament, to prevent aliens from staying in the "country. But the establishment of this point had no reference to the present case, "in which the adoption of the Bill before the House was required by imperious circum- "stances. For what could the Royal power do alone? It was easy to say that by "that power an alien could be sent out of the country; but how was he to be got out? "He must be indicted. Then a Bill must be found. That he might traverse. The "cause might then be removed by *certiorari* to another court, and so on. With "respect to the cases which the illustrious duke had so ingeniously argued, all that "he could say was, that every case must be determined by the particular circumstances "which belonged to it. There was this single fact in answer to any question that "might be raised about difficult cases, namely, that with all possible difficulties on "the subject Government had successfully grappled since the year 1793. To him it "appeared most astonishing that any of their lordships should think that, after a war "of 25 years, the mere act of signing a treaty of peace was to produce so complete a "tranquillity as entirely and at once to calm all the agitation which the recent convul- "sions had occasioned. Of this he was persuaded, that there were not wanting "persons who, if an opportunity were afforded them, were perfectly ready to put into "operation those principles against which this country had been so long contending. "It was to guard against the machinations of such persons that he supported the Bill."

Then the report goes on:—

"Lord Holland complained that, with all the learned lord's legal, historical, "and constitutional knowledge, he had not been able to adduce a single instance in "which the prerogative on this subject had been attempted to be exercised. The "learned lord merely recollected that, when a similar Bill was discussing in the other "House of Parliament, some persons—lawyers—were of opinion that Lord Coke was

"erroneous in his explanation of that part of *Magna Charta* which referred to this "subject. Was the authority of these individuals, influenced by the fears of the time, "to be considered equivalent to the authority of such a man as Lord Coke? Such "opinions, or, indeed, any opinion whatever must be inadequate to sustain the position "of the learned lord as to the existence of a prerogative which had not been exercised "in a single instance for a period of 500 years, although so many occasions had "occurred within that period in which such a prerogative was most likely to have been "called into action, if it had really been recognised. It would be recollected what "struggles were made before the Reformation by those Catholics whose character was "so often and so unjustly abused to resist the *ultra montane* pretensions of the Pope, "when that Prince evinced so much ambition to appoint aliens to high ecclesiastical "offices in this country. Those pretensions were strongly opposed by the Catholic "Government of the day; but, instead of maintaining any contest with the Pope, the "Government might, if the alleged prerogative belonged to the Crown, at once have "immediately sent all those aliens out of the country. Again, was not this prerogative, "if it existed, most likely to have been called into action by Elizabeth, to guard "against the danger with which she was menaced by Phillip II., who was a sovereign "no doubt as sincere in his religion as the unrelenting tyrant by whom the Spanish "nation was at present afflicted. But a singular instance was mentioned in another "place by Charles II., where there could be no doubt that such a prerogative would "have been exercised had the Crown possessed it. He meant the instance in which "that monarch was so much annoyed by a French rival in the affections of a favorite "mistress, and on which occasion a French Minister had observed, that that truly "must be a horrible country in which the sovereign did not enjoy the power of "relieving himself from such an annoyance by sending the cause of it out of the "country. Then as to James II., was it at all probable that that sovereign would "have allowed so many of the Protestant subjects of his ally and friend, Louis XIV. "to come into this country after the revocation of the edict of Nantz, if he had had "the power of preventing them? Nay, was it not quite improbable that James, with "the religious prejudices and political views which he was known to entertain, would "have permitted such aliens to find an asylum in this country had the Crown been "invested with such a prerogative as was at present insisted upon; for surely James "II. could have found as many lawyers to maintain the prerogative of the Crown in "his day as were likely to be met with at the present or any other period? William "III., too, had many reasons to exercise such a prerogative in order to guard against "the machinations of Louis XIV. and of the agents of James."

That shows that the action of the Government of the day in introducing this Bill is distinctly challenged. The Lord Chancellor was asked if he could point to a single instance within 500 years where this prerogative had ever been exercised, and he could not. A more potent criticism on the non-existence of such a prerogative can scarcely be suggested.

Mr. Justice Holroyd.—Have you got the passage from *Magna Charta* in relation to the subject? I have a short summary of it here as summed up by Lord Cockburn.

Dr. Madden.—I have it in "Broom's Commentaries."

Mr. Justice Holroyd.—He says:—"The gross impositions and exactions "practised by King John on foreign merchants had however occasioned a provision "to be made in *Magna Charta* for their protection. 'All merchants'—which Lord "Coke shows to have meant merchant strangers in amity—'if they were not publicly "'prohibited before, were to have safe and sure conduct, (1) to depart out of England; "'(2) to come into England; (3) to tarry here; (4) to go in and through England, "'as well by land as by water; (5) to buy and to sell; (6) without any manner of "'evil tolls; (7) by the old rightful customs.'"

Dr. Madden.—I have sent for Broom's observations on that particular passage. The argument was raised that it related only to foreign merchants, and that therefore persons not being foreign merchants would not come within the meaning of *Magna Charta.* That stipulation in *Magna Charta* would seem to suggest that there had been some restriction placed on foreign merchants, and it was recognised in *Magna Charta* that they should be removed. At all events, since then there has been no well-defined instance, apart from the Alien Acts, of any person being expelled from England under such a prerogative. While I am waiting for "Broom," I may call attention to Professor Dicey's work on "The Law of the Constitution," pages 340,

341, and 342. He is here dealing with the question of Parliamentary sovereignty, and he goes on:—

"The supremacy of the law necessitates the exercise of Parliamentary sover-
"eignty * * * . The Crown cannot, except under Statute, expel from England
"any alien whatever, even though he were a murderer, who, after slaughtering a whole
"family at Boulogne, had on the very day crossed red-handed to Dover. The
"Executive, therefore, must ask for, and always obtain, aid from Parliament. * * *
"There are times of tumult or invasion, when, for the sake of legality itself, the rules
"of law must be broken. The course which the Government must then take is clear.
"The Ministry must break the law, and trust for protection to an Act of indemnity.
"A Statute of this kind is (I have pointed out) the last and supreme exercise of
"Parliamentary sovereignty. It legalizes illegality. It affords the practical solution
"of the problem which perplexed the statesmen of the 16th and 17th centuries: how
"to combine the maintenance of law and the authority of the Houses of Parliament
"with the free exercise of that kind of discretionary power or prerogative which in
"some shape or other must at critical junctures be wielded by the Executive Govern-
"ment of every civilized country."

Mr. Justice Wrenfordsley.—Has not the Queen a right to give an ambassador notice to leave the country?

Dr. Madden.—I think that is so according to the law of nations. Her Majesty can give him notice that if he stays he does so at his peril.

Mr. Justice Wrenfordsley.—You say she has that power according to the principles of international law?

Dr. Madden.—That is so, but it is part of the law of war. It is recognised that the King himself cannot come without licence into the country, and therefore his ambassador cannot come *pro rex*. For these reasons, if your Honors please, I draw the inference that this prerogative, which is alleged, has never existed in England at all, and that there is no real foundation for it—that the mere authority for suggesting that it did exist goes back to that passage in Puffendorf, who is not acknowledged to be any authority in English law. But even if it is a thing to be regarded as existing, it is referred to by such learned writers as Chitty as belonging to the prerogative of war and peace, and exercisable only with reference to the declaration of war. I refer to that merely in order that I may refer to it again when I come to deal with the powers of Ministers of this colony and of His Excellency the Governor here. Then I would also submit to the Court that if this prerogative at any time in the darker and more remote periods of our history did exist, definitely or indefinitely, the reference in Hallam—the fact that, when it was thought desirable to have some means of sending these aliens from the country, an Act of Parliament had to be passed—and the observations of these men, especially learned in the subject, and their inability to find any authority in existence for 500 years, show that it had become obsolete. I may also cite, and with no less respect, the decisions of the Supreme Court of New South Wales in the case of *ex parte* Leong Kum. There this matter was debated. At present the case is only to be found reported in the *Sydney Morning Herald* and the other newspapers of May 24, 1888. The case was in many respects similar to this. It was an application under the Habeas Corpus Act on behalf of a Chinese who had tendered his poll-tax, and who therefore said he was unlawfully in custody by being compelled to remain in the *Afghan*, the same ship as the plaintiff in this action was aboard. The argument was that this prerogative to exclude aliens existed, and that New South Wales was a Sovereign State and entitled to exercise this prerogative or otherwise something in the nature of an act of State. The judgment in that case, as reported, is as follows:—

"His Honor the Chief Justice then delivered judgment, stating that he did
"not consider it necessary to call on counsel to reply. He said: I intend to add very
"little to the judgment I delivered the other day, and I do not expect to satisfy the
"learned counsel who has argued the case at such great length and with such ability
"on two occasions; but with regard to the question of this colony having the power
"of a Sovereign State, I desire to add a few words. I stated on Thursday that, in my
"opinion, this colony had no such power, and after having paid every attention to the
"arguments just used, I am the more firmly convinced the opinion I then formed is
"correct. In 'Wheaton's International Law,' a book which has been alluded to,
"Sovereign States are referred to on page 28 in the following terms: 'Wherever,
"indeed, the absolute or unlimited monarchical form of government prevails in any

"State, the person of the Prince is necessarily identified with the State itself'—'*L'état* "*c'est moi.*' 'Hence the public jurists frequently use the terms Sovereign and State "as synonymous. So also the term Sovereign is sometimes used in a metaphorical "sense merely to denote a State, whether monarchical, or republican, or mixed. "Sovereignty is the supreme power by which any State is governed.' Again, on "page 43: 'A Sovereign State is generally defined to be any nation or people, what- "ever may be the form of its internal constitution, which governs itself independently "of foreign powers. This definition, unless taken with great qualifications, cannot be "admitted as entirely accurate. Some States are completely sovereign and indepen- "dent, acknowledging no superior but the Supreme Ruler and Governor of the "Universe. The Sovereignty of other States is limited, and qualified in various "degrees. By a Sovereign State we mean a community or a number of persons "permanently organized under a Sovereign Government of their own, and by a "Sovereign Government we mean a Government, however constituted, which exercises "the power of making and enforcing law within a community, and is not itself subject "to any superior Government. These two factors, one positive, the other negative— "the exercise of power, and the absence of superior control—compose the notion of "sovereignty, and are essential to it.'"

The Attorney-General.—Of course, I do not contend that here for one moment.

Dr. Madden.—That is a quotation from "Wheaton." Then His Honor goes on himself:—

"This, he believed, was applicable to the condition of the colonies dependent on "the Crown, and, if so, it was therefore clear that they were not Sovereign States. "Even if this particular power be vested in Sovereign States, this colony does not "possess the power, and it would be dangerous in the extreme if it did possess it. The "other day it had been urged very strongly that this Court had nothing to do with "the question as to what may arise between nations if one of them transgresses inter- "national law. The outcome of such conduct may be war, and with that this Court had "very properly nothing to do. But can it be successfully contended that, if the outcome "of such a course as the exclusion of foreign subjects of a friendly State may result in "war, the adoption of this course is one of the prerogatives or acts of State which the "Government or the Governor of the colony may exercise? In other words, although "it is admitted that the prerogative of declaring war is not vested in the Governor of "the colony, yet that he or the Government may do such acts as may necessarily either "bring about war, or a state of things under which the Sovereign country may have "to disavow the acts of its colonies, and may be forced possibly to make indemnity to "the subjects of the foreign State whose rights had been infringed. I think that these "considerations are sufficient to show that the rights which it has been contended the "Governor or Government may have power to exercise cannot exist in a colony such "as this is, depending on a superior Government. I, therefore, am of opinion that, "independent of all other considerations, although I think it is unnecessary for the "purpose of this judgment, this colony possesses no such power as that contended. "Passing by these matters of international law, let us consider the question of "domestic law, because this is a question purely of domestic law. The circum- "stances of the case are these. The applicant is the subject of a friendly foreign "power, and is on board an English ship in this harbour, which is, I believe, "attached to a wharf. He says: 'I am restrained in my liberty, and am not "permitted to leave the ship. The ship is to me a prison.' The answer made to "this is that the ship may go outside the harbour, and proceed where she likes. What "answer is that to his detention while the ship is in harbour? While she is here, "whether for an hour or for a month, he is during that time imprisoned on board the "ship, and admittedly imprisoned by the act of the respondent here complained against, "Mr. Powell, the Collector of Customs, who is called upon to show cause why this "person is kept in restraint on board ship."

The rest of the judgment deals with the question of *habeas corpus*, which I need not trouble the Court with. I have experienced considerable difficulty in obtaining copies of the *Sydney Morning Herald.* I have not got the issue that I desire, which will be the 18th of May. This newspaper contains the report of another judgment of the Supreme Court of New South Wales. It is as follows:—

"The Chief Justice said:—We do not require to hear you, Mr. Pilcher, upon "this matter. This is an application either at common law or under the Statute of 56 "George III., chapter 100, by a person named Lo Pak, for a writ of *habeas corpus*, or

"rather, I should say, to make the rule *nisi* already granted absolute for a writ of "*habeas corpus*. It appears from the affidavits filed that this person—a native of "China—was a resident of this colony for some years, and that some time last year, "under the 9th section of the 45 Vic., No. 11—the Influx of Chinese Restriction Act "—he obtained, on proving to the satisfaction of the Colonial Treasurer, or some "person appointed by him, that he was a resident within the colony at the time of the "passing of the Act—that is on the 6th December, 1881—he thereupon obtained from "the proper officer a certificate of exemption under the Act."

Under the New South Wales Act this Chinese was exempted from the poll-tax. That is not the case here.

"It appears that he took a passenger ticket by one of the steamers and left the "colony, and went to China, and he now returns with his certificate of exemption. "He is now on board a British ship in this port, and is, therefore, within the jurisdic- "tion of this Court. And he informs the Court that, having obtained that certificate "of exemption, his liberty is restrained on board that ship by Sub-Inspector Hyam, "who is the respondent here, and accordingly a rule was granted calling upon Sub- "Inspector Hyam to show cause why a writ of *habeas corpus* should not issue directing "him to bring up the body of Lo Pak to this Court. Sub-Inspector Hyam has filed "an affidavit, and in the third paragraph of that affidavit he shows cause why the "applicant is restrained, and it is in these terms:—'The police, in preventing the said "Lo Pak from landing, are acting through the Inspector-General of Police under the "authority and by the orders of the Government of the colony.'"

These words are very like the averment in the plea in this case.

"That is, in the shape this case has taken, equivalent to and now stands in the "place of a return to a writ of *habeas corpus*, supposing such a writ had been issued in "the first instance. As has already been pointed out, it was in my power, on the day "the writ was first moved for, to direct a writ of *habeas corpus* to issue in the first "instance, and then it would have been the duty of Inspector Hyam to have produced "in this Court this person Lo Pak, and to have made a return to that writ. However, "the course pursued is a more convenient course, and this third paragraph of Inspector "Hyam's affidavit we must take as the return to the writ. Now, the sole question for "the Court is—Is that a sufficient return? Is it sufficient for the person in charge of "this applicant to say without showing any other cause, 'I am detaining this person "in my custody, in prison on board this ship, acting through the Inspector-General of "Police on the authority of the Government of this colony?'"

Of course, that would be the proper course if the act were done under the prerogative of war, because war would be proclaimed by ordinary proclamation of the Sovereign. The report continues:—

"Mr. Butterworth.—May I say that it is admitted that the applicant is a "foreigner?

"His Honor.—I am perfectly well aware of that, and the interruption is not "necessary, and I trust will not be repeated. I repeat that the sole question for the "consideration of this Court is whether this third paragraph is a sufficient return, and "would be a sufficient return if endorsed on a writ of *habeas corpus*. I am distinctly "of opinion that it is not sufficient, and that no man's liberty would be safe in this "colony, whether he be a subject of the Queen, or whether he be the subject of any "other nation at peace with England; no man's liberty, I say, would be safe for one "moment if it was held that this was a sufficient return. Now, what is that return "equivalent to? It is equivalent to the old return which was given so far back as the "reign of Charles I., in 1627, when, in Sir Thomas Darnell's case, a return was given "to a writ that this person was held in custody by the special command of His "Majesty. Well, we all know as a matter of history what that return led to. We "all know that although that return was held by the then Chief Justice (Sir Nicholas "Hyde) to be, under the circumstances, a proper return, he narrowly escaped impeach- "ment for holding it to be a proper return, and we know what the result was. No "lawyer of this day would venture to say that the return to a writ of *habeas corpus* "that a person was held in custody by the special command of His Majesty was a "proper return before the Court. This return is almost exactly in the same words, "namely, that the applicant is held in custody by order of the Government of this "colony. There is no distinction between the two. In order that there should be a "good return, the Court must see that the person who is held in prison is legally in "prison; that he is in prison according to the laws of the country; and there must be

" some law produced to show that the person is in prison under that law. It has been " contended—and I come to this point at once—that an alien has no right to apply for " a writ of *habeas corpus*, and it is stated here—and the whole argument has proceeded " on that basis—that the applicant is an alien. I assume it to be a fact that he is an " alien, and has no letters of naturalization. His certificate of exemption shows that " he is an alien, and it is said that writs of *habeas corpus* were only for the benefit of " British subjects. Well, it is rather late in the day to follow that argument. There " are abundant authorities to show that no such argument could for one moment " prevail, nor could such a doctrine stand the test of reasoning. If this alien, the " subject of a friendly nation, is unable to obtain his release by means of a writ of " *habeas corpus* from illegal imprisonment within the jurisdiction of this Court, how " can we grant a release if some subject of Germany, or France, or Italy, or America " were to come here and ask for a writ? The argument as to one is equally good as " to the other. If some German subject should be in illegal custody, the proper " course would be to apply to this Court for a writ of *habeas corpus*. Would it be " any answer to him to say, 'You are an alien, and you must stay where you are'; in " other words, 'You must remain in slavery in a British possession because the Court " 'has no power to order your release.' That is not the law. Every person, whether " the subject of Her Majesty or an alien, who is within our jurisdiction, is entitled to " the protection of the law. He is amenable to the law. If he commits a crime, he " can be punished. If this applicant confined on board this particular vessel commits " an offence against the law, he would be immediately arrested by the proper " authorities in this colony, and tried in our Courts; and, if he were found guilty, he " would be sentenced, and the sentence would be carried into execution. Being thus " amenable to the law, he is also under the protection of the law, and the protection " which the law affords a person within the jurisdiction of the Court is best afforded " him by this writ of *habeas corpus*, by which, if he is illegally in custody, he can be " promptly released. But then it is argued that the Sovereign of every State has " the right, of his own mere motion, to prevent the influx of foreigners into that State, " and it is contended that the Executive Government of this colony have power " simply by an order given to officials on our frontier or seaboard to keep out all " foreigners, if they see fit to do so. In the first place, although it is not necessary for " the purposes of this decision, I am of opinion that this colony and the Government " of this colony possess no such power. It may be that the Sovereign of England may " have that power according to the dicta laid down by writers on international law, " but, so far as I can understand, it has not been a power that has ever been exercised " in England. On the contrary, even in times of war, in England, where it had been " necessary to exclude aliens from the realm, or to deal with aliens then present within " the realm, it has been considered necessary to pass a Statute for the express purpose " of enabling that to be done. I find that in 1803, when England was at war, an Act, " 43 George III., chapter 155, was passed. That was an Act which recited that, " 'whereas under the present circumstances, much danger may arise to the public " 'tranquillity from the resort and residence of aliens in this kingdom, unless due pro- " 'vision be made in respect thereof'; and then it recites that a former Act for a similar " object had expired, and provides that the Secretary of State by Sign Manual direct " that aliens shall leave the kingdom within a certain time, and if found within the " kingdom after that time to be dealt with under the Act and transported for life. And " a further section provided for the non-entry into the kingdom of any alien. Now, if " this power was inherent in the King of England to prevent aliens from landing, and " to order aliens resident in the kingdom to leave the realm, why was not that done " by a speedy proclamation under the Great Seal, by simply proclaiming that no aliens " should be permitted to land in the kingdom, and that those already resident should " depart? That course was not pursued; but the proper constitutional course was " pursued at the time, and that was the passing of an Act of Parliament for the purpose. " However that may be, as far as my opinion is concerned, I am distinctly of opinion " that, even supposing that the King or Queen of England had power by proclamation " to prevent aliens from entering the kingdom, and supposing a Statute to be unneces- " sary and a work of supererogation, yet that power so vested in the King of England " is a power personal to the King, and so it appears from the different text-writers " whose opinions have been quoted, and cannot be delegated either to the Governor of " this colony or the Government of this colony. I am therefore distinctly of opinion " that any such proclamation, if there be such—and it is not contended here that there

"is—is an illegal proclamation. Now, with respect to proclamations. We have heard "a great deal about the prerogative of the Crown, and the power of the Crown to make "proclamations, and that a proclamation when issued must be obeyed. That is not "so. Proclamations which are made, and which enunciate the law of the country, are "binding, but you cannot make any proclamation contrary to the law, the Statutes, "and the customs of the realm. That is distinctly laid down in 'Bacon's Abridgement,' "page 451, under the title 'Prerogative,' where the law upon the subject is, perhaps, "better gathered together than in any other text-book. It is a text-book of the "highest authority, and there the position is distinctly laid down that any proclama- "tion of the King contrary to the laws, Statutes, or customs of the realm is unlawful "and of no force whatever. For instance, a proclamation was made by Henry IV. that "whereas there had been an Act in force permitting foreigners to trade in England, he "proclaimed that the Statute should be in abeyance until the next meeting of Parlia- "ment. That proclamation was held to be worthless, as opposed to the Statute. It "was a proclamation which interfered with the liberty of the subject, and, therefore, "the writers on that subject must be taken with a very considerable amount of qualifi- "cation. (His Honor here quoted from the authority referred to, 12th Coke's Report, "page 74, on Proclamations.) I am, therefore, of opinion that the very learned and "lengthened arguments that we have heard to-day are altogether beside the question "which we have to decide."

I think that the rest of the judgment is exclusively applicable to the case of *habeas corpus*.

I have now dealt as far as I propose with the question as to whether the prerogative ever did exist; as to whether, supposing it ever did exist, it is not part of the prerogative of war and peace; and also whether, if it did ever exist, it has become obsolete. I now come to another aspect in which this case may have a possibility of support, and that is on the ground of an act of State, which appears to have a meaning in its technical sense different from the exercise of the Royal prerogative. An act of State appears to be best defined—in fact, the only definition of it I have found is in Mr. Justice Stephen's "History of the Criminal Law of England," Vol. II., p. 61. Under the subdivision of "Acts of State," he says:—"One other topic "connected with the extent of criminal law may be here discussed, though I must "repeat that, in discussing it, I state only what at present occurs to me, with the view "of aiding any judicial consideration of the subject which may hereafter take place, "but without expressing any final conclusion. The question to which I refer is "whether the criminal law applies to what have sometimes been described as acts of "State?

"In order to consider this question properly, it is necessary in the first place to "explain it. I understand, by an act of State, an act injurious to the person or to the "property of some person who is not at the time of that act a subject of Her Majesty; "which act is done by any representative of Her Majesty's authority, civil or military, "and is either previously sanctioned or subsequently ratified by Her Majesty. Such "acts are by no means very rare, and they may, and often do, involve destruction of "property and loss of life to a considerable extent.

"When an act of this sort is an act of open war, duly proclaimed, there can be "no doubt at all that it does not amount to a crime. However unjust a war might "be, and however cruelly it might be carried on, there can be no question that the "acts done in such a war by the orders of military and naval commanders do not fall "under the notice of the ordinary criminal law. If, for instance, the least favorable "account of the conduct of Napoleon, in ordering the Turkish prisoners to be put to "death at Jaffa, on March, 1799, be accepted as true, and if Napoleon had been an "English general, I do not think that either he or those who carried out his orders "could have been convicted of murder. The older definitions of murder expressly say "that it is the killing of a person 'within the King's peace,' but an open enemy is not "within the King's peace, and though a murder committed out of England may be "tried in England, I do not think that this alters the nature of the offence itself. If "England were invaded, and if, for military reasons, unarmed prisoners, after resist- "ance had ceased, were to be put to death by an English general, I do not think that "a court of law would inquire whether his conduct was proper or not. As soon as it "appeared that what was done was an act of war the matter would be at an end. It "is impossible to cite cases or explicit decisions in favour of so clear a proposition. "There have been almost innumerable wars in our history, and on some occasions

"great severities have been practised, but I think that no single instance of a prosecu-
"tion for any act done as a military measure can be mentioned. The prerogative of
"the Crown to declare war is undoubted, and the very essence of war is that it is a
"state of things in which each party does the other all the harm they possibly can.
"The so-called laws of war are mere practices usually observed between contending
"armies, but they impose, at most, moral, and not legal duties." And then he goes on to refer to the case of the capture of the Danish fleet at Copenhagen, and the fact that, during the American civil war, American vessels were detained in English ports to prevent fights. He proceeds: "Many other cases might be put, but these are
"enough to show the sense in which I use the expression 'act of State,' and the
"manner in which an act of State may involve consequences which, if wilfully brought
"about by a private person, would or might be criminal." Then he goes on to say:
"The leading case on this subject"—he is referring to acts of State as applied to aliens—"is Buron *v.* Denman. This was an action against Captain Denman, a captain
"in the navy, for burning certain barracoons on the West Coast of Africa, and
"releasing the slaves contained in them. His conduct in so doing was approved by
"a letter written by Mr. Stephen, the Under-Secretary of State for the Colonies, by
"the direction of Lord John Russell, then Secretary of State. It was held that the
"owner of slaves could recover no damages for his loss, as the effect of the ratification
"of Captain Denman's act was to convert what he had done into an act of State,
"for which no action would lie." Baron Parke, who tried the case, expressed grave doubts about it in giving judgment, but he said that he had conferred with other judges, who were clearly of opinion that it was an act of State.

My learned friend reminds me that there was no Order in Council shown, but the Secretary of State for Foreign Affairs had communicated, in an official letter, that the Government approved of it, and the Court held that Her Majesty in Council or the Government in England had adopted the act as one of State. I may point out to my friend that the Court held the letter of the Secretary of State to be *evidence* only of Her Majesty's adoption of the Act.

The Chief Justice.—On what principle ?

Dr. Madden.—On the ground that it was an act done against a foreign subject and one which the Government made its own. It was an act of great aggression, and Spain representing its subject could have demanded explanation from England.

Mr. Justice Williams.—This question arose in the case of Chapman *v.* Ireland, argued in this Court some years ago. Buron *v.* Denman, reported in 2 Exch. p. 167, was much discussed in the argument of that case.

Dr. Madden.—The Court will remember that, in the case of Chapman and Ireland, the captain of an English ship of war arrested Ireland, and took him from one Fijian island to another, in order, it was alleged, to protect him from the natives. Ireland brought an action for false imprisonment, questioning the captain's right to arrest him, but it was pleaded that the arrest of Ireland was an act of State.

Mr. Box.—And that case fell through, because Ireland was a British subject. There cannot be an act of State against a subject. That case of Chapman and Ireland was argued here, but Mr. Justice Fellowes pointed out that the principle of Buron v. Denman did not apply to a British subject.

Dr. Madden.—Quite so; but a foreign subject in foreign dominions is different from a British subject in British dominions. There is another case from India, in which the same point arose, and it is alluded to by Mr. Justice Stephen, in his work on the Criminal Law of England, after his reference to the case of Buron v. Denman. On page 64, Mr. Justice Stephen says:—

"The leading case on this subject is Buron v. Denman. This was an action
"against Captain Denman, a captain in the navy, for burning certain barracoons on
"the West Coast of Africa, and releasing the slaves contained in them. His conduct in
"so doing was approved by a letter written by Mr. Stephen, then Under-Secretary of
"State for the Colonies, by the direction of Lord John Russell, then Secretary of State.
"It was held that the owner of the slaves could recover no damages for his loss, as
"the effect of the ratification of Captain Denman's act was to convert what he had done
"into an act of State, for which no action would lie. It is surely impossible to
"suppose that if life had been lost in effecting this object, which might easily have
"happened, Captain Denman would have been liable to be hanged for that which was
"held not even to amount to an actionable wrong? The principle is that the acts of
"the Sovereign State are final, and can be called in question only by war, or by an

"appeal to the justice of the State itself. They cannot be examined into by the "courts of the State which does them.

"This principle has been asserted and acted upon in many later cases. One of "the most pointed is The Secretary of State for India *v.* Kamachee Boye Sahaba (13 "Moore's Privy Council cases, page 86). In this case the Rajah of Tanjore, having "died without issue male, the East India Company seized the Raj on the ground that "the dignity was extinct for want of a male heir, and that the property lapsed to the "British Government. The judicial committee of the Privy Council held, on a full "examination of the facts, that the property claimed by the Rajah's widow 'had been "seized by the British Government, acting as a Sovereign power, through its delegate "the East India Company, and that the act so done, with its consequences, was an "act of State, over which the Supreme Court of Madras had no jurisdiction.' * * * "'Even if a wrong had been done, it is a wrong for which no municipal court can "afford a remedy.'"

The Rajah was an independent Sovereign, and the Court distinctly held that the East India Company had plenary powers to represent the English Sovereignty, and was empowered to make war and peace, so that it was only necessary to show that the act of the Company was a mere act of aggression against a foreign State to prove that it was an act of State, because it was done by the Imperial Government, acting through its agent the East India Company.

Mr. Justice Holroyd.—But does not that lay down the general principle that an act of aggression on a foreigner, if done by the authority of the Government, cannot be questioned in the courts of the country, if the Government is guilty of the act complained of ?

Dr. Madden.—I think not. I don't think there is any authority which would justify the Sovereign without advisers, or the advisers without the Sovereign, committing an act of aggression upon a foreigner in British dominions in the name of an act of State. In all the cases with which I am acquainted, the act itself is done on the foreigner either in his own country, which is foreign to the State committing the act, or in some other foreign country.

Mr. Justice a'Beckett.—But if the act of trespass is clearly exempted from liability, wherever the act is committed, the wrong is no wrong.

Mr. Justice Williams.—And what about the maxim which says—"The King "can do no wrong ?"

Dr. Madden.—If the act is clearly unlawful, according to our law, the person responsible is the individual who does the act. He may settle with his superiors. As to the maxim "The King can do nothing wrong," its whole principle is that the King acts through his servant, and the person who commits the act is personally responsible; you may seize the hand that does the act, and if he join with others, as a Minister in a Government, you may seize all. If the law were otherwise, the most flagrant acts of injustice might be resorted to by the Government, and nobody would be liable. Before I proceed to draw my conclusions about this matter, however, and in order to avoid misapprehension, it will be well to seek a clear definition of what constitutes an act of State. Mr. Justice Stephens, in his work on the Criminal Law of England, vol. 2, at page 65, writes as follows:—

"In order to avoid misconception, it is necessary to observe that the doctrine "as to acts of State can apply only to acts which affect foreigners, and which are done "by the orders or with the ratification of the Sovereign. As between the Sovereign "and his subjects there can be no such thing as an act of State. Courts of law are "established for the express purpose of limiting public authority in its conduct towards "individuals. If one British subject puts another to death or destroys his property "by the express command of the King, that command is no protection to the person "who executes it unless it is in itself lawful, and it is the duty of the proper courts "of justice to determine whether it is lawful or not. On this ground the courts were "prepared to examine into the legality of the acts done, under Governor Eyre's "authority, in the suppression of the insurrection in Jamaica. The acts affected "British subjects only. But as between British subjects and foreigners, the orders of "the Crown justify what they command, so far as British courts of justice are "concerned. In regard to civil rights, this I have shown to be established by express "and solemn decisions; and it is impossible to suppose that a man should be a criminal "when he is not even a wrongdoer."

Therefore, it is put distinctly that if an act is unlawful within the territory, either as against a subject or as against an alien who is within the protection of our laws, the Court will at once inquire into the matter, and nothing that is there unlawfully done by a Government against an alien can be protected as an act of State. Mark the words:—

"As between the Sovereign and his subjects there can be no such thing as an "act of State. Courts of law are established for the express purpose of limiting public "authority in its conduct towards individuals. If one British subject puts another to "death or destroys his property by the express command of the King, that command "is no protection to the person who executes it unless it is in itself lawful, and it is "the duty of the proper courts of justice to determine whether it is lawful or not."

Now, the plaintiff in this case was on board a British ship, in the port of Hobson's Bay, which is within the territory of this colony; and it must be borne in mind that an alien on entering this country has, under the Aliens Statute, equal rights with all British subjects, with the exception of certain rights which are excluded, such as voting for candidates for election to Parliament.

The Chief Justice.—That Act was passed for the purpose of enabling aliens to hold real property in this colony.

Dr. Madden.—The Aliens Act, passed by the Parliament of this colony—Vol. I, page 38, Victorian Statutes—follows on the lines of the English Act, and provides not only that aliens may be permitted to come into the colony, but also that as aliens they may even hold property and exercise all other rights and enjoyments under our laws except voting for members of Parliament and members of Municipal Councils. It also gives them opportunities to become naturalized subjects. Section 3 enables aliens to hold real and personal property; section 4 legalizes former conveyances; section 5 prescribes conditions of naturalization; and section 6 that such naturalization will extend to the wife of the alien. I therefore submit, first of all, that, according to the definition of an act of State which I have just read to the Court, as between the Crown and an alien in this colony or in England—if an Alien Statute similar to ours exist there, as I believe it does; in fact, I don't doubt it—an act of State could not be resorted to to infringe the rights of an individual, whether he be an alien or subject, within the territory of this colony. But, at all events, whether it could or could not, I submit this proposition, that an act of State, as defined by Mr. Justice Stephen, must be an act done by some representative of the State, by the previous order or with the subsequent ratification of the Sovereign. I submit, therefore, that it must be the act of a Sovereign State, and that the ratification referred to is the ratification by Her Majesty the Sovereign, it may be, acting on the advice of her Ministers, being Ministers of the Sovereign State. Inasmuch as the whole thing rests on this foundation—that an act of State is a bold challenge to war—the ratification must, therefore, be the ratification of persons who can see it out, persons who have authority to declare war, or to hear diplomatic representations for the purpose of avoiding war, if the ratification is to have any efficacy. Consequently, it must be the act of a Sovereign State.

Mr. Justice Kerferd.—And do you contend that refusing to allow an alien to land is an offence against the comity of nations, and equivalent to a challenge to war?

Dr. Madden.—I should certainly say so. When a foreign Sovereign, who is at peace with our Sovereign, as is the Emperor of China, and willing to admit our subjects into his territory, finds that exclusively his subjects are prohibited from entering our country, I should think he would be entitled to regard it as a very obvious challenge to war, a very much more warrantable pretext for war than many of those which have actually brought about hostilities. That brings me to another proposition, to which I would invite the Court's attention, and it is this—whether the prerogative which has been claimed exists, or whether an act like the one complained of by the plaintiff can be resorted to as an act of State, so as to exclude the jurisdiction of the courts, either by the Governor of this colony or the Ministers of this colony advising the Governor or acting independently. I submit that clearly in neither aspect can the act be justified. It seems to me, if I may be allowed to use the expression, that the plea evades certain difficulties, which are sufficiently obvious notwithstanding the attempt to evade them. It is nowhere said in this plea that the Governor in Council, or the Governor by advice of his Ministers, has done the thing complained of, or that he has been any party to it at all. It says, in the most cautiou smanner, that the defendant had received instructions from the Commissioner

of Trade and Customs that there was an apprehension on the part of Her Majesty's Government here that a large influx of Chinese was imminent.

The Attorney-General.—I don't want my learned friend to be under any misapprehension. I don't rest my case at all on any action of the Governor. I don't say there was any Order in Council.

Dr. Madden.—I thought the Attorney-General, desiring to see this matter thrashed out on its real basis, would say as much, and I thank him for relieving me from the necessity of troubling the Court with my views on that aspect of the question. I now take it that Ministers, and Ministers only, ordered this thing, as an exercise of the prerogative or an act of State.

Mr. Justice Williams.—Ministers, minus the Governor.

Dr. Madden.—Yes; I take it that Ministers here alone are responsible for this act, and the plea says as much and only as much. As now cleared up by the Attorney-General's admission, the matter is plain enough—that responsible Ministers of the Crown in and for Victoria, without the consent of the Governor, or without consulting the Governor in the matter, have ordered this thing to be done. Is not that so?

The Attorney-General.—I wish to put the Court in full possession of the facts, and I repeat that I do not rely on any Order in Council. Our contention will be that this thing was done by order of Her Majesty, and by Her responsible advisers in and for Victoria. I don't say that the Governor himself was a party to this.

Mr. Justice Williams.—Is your case that it was done by the responsible advisers of Her Majesty in this colony, minus the Governor, or that it was done under the authority of an Order in Council?

The Attorney-General.—I say that there was no Order in Council. I admit that; it is a fact, and I wish the Court to be informed of it. My contention is that it was done by the Queen, through Her responsible Ministers in and for Victoria.

Dr. Madden.—Accepting that as the meaning of the plea—and it occurred to me that that was the intention of the plea, as conveyed by its language—we come at once to the position assumed by the defence, that the Ministers of the Crown in this colony, of themselves and without reference to or regard for the Governor of the colony as President of the Executive Council, have ordered this Act.

Mr. Justice Kerferd.—I followed the Attorney-General quite well, I thought, but I did not take that to be his position.

Dr. Madden.—The Attorney-General, who is anxious that there should be no misconception, and, in a very fit and proper manner, has met all the technicalities of the case, will probably correct me if I am wrong.

The Chief Justice.—The Attorney-General does not rely on any Order in Council, and I understood him to express the view that the Ministers of the Crown in and for Victoria can exercise the prerogative which he alleges is vested in the Crown of England, and not vested in the Governor of Victoria, and he makes this admission that the act complained of is not an official act to which the Governor has been a party.

Dr. Madden.—As I understand the matter, the Attorney-General proposes to argue that the Ministers of the Crown in and for Victoria represent Her Majesty, and may exercise Her Majesty's prerogative.

Mr. Justice Wrenfordsley.—As Her Majesty's responsible Ministers in and for Victoria.

Dr. Madden.—I understood my learned friend to say that responsible Ministers in and for this colony can do in this colony what the Imperial Executive Ministers can do in England.

Mr. Justice Williams.—Only as to matters affecting the colony in regard to our internal affairs.

Mr. Smyth.—Locally.

Mr. Justice Kerferd.—They could not declare war.

Dr. Madden.—Oh, no; I suppose that will scarcely be contended.

The Attorney-General.—I think I fully explained my position.

Dr. Madden.—Apparently not. The Court is evidently not of one mind as to the purport of the explanation. The Chief Justice seems to think that, instead of answering me on a question of fact, the Attorney-General merely says he intends to argue an abstract proposition.

The Chief Justice.—I am not in a position to state what the argument of the Attorney-General will be, but I understood him to say, in answer to your inquiry, that he did not intend to rely on any official act of the Governor.

Mr. Justice a'Beckett.—That he did not intend to rely on any act of the Governor at all, official or unofficial.

Dr. Madden.—The question is only one of fact. The wording of the plea is somewhat embarrassing, and I want to keep technicalities out of the question. As I understood the Attorney-General, the position he puts is this—that the Ministers of the Crown in and for this colony, agreeing together, and for purposes which seemed good and wise to them, ordered this act of which the plaintiff complains, or at any rate were parties to the act as Ministers of the Crown.

Mr. Justice Kerferd.—I am afraid there is some misunderstanding. It would be well to hear the explanation of the Attorney-General.

Dr. Madden.—I shall be most happy to do so, and shall be glad to be corrected if I am wrong. I think it is highly desirable that we should not be arguing from different premises.

The Attorney General.—I really thought I had said everything it was necessary for me to say, in order to explain my position. I have told my learned friend the fact that I do not rely upon any Order in Council. What more can I do ? My learned friend must allow me to put my argument as I think proper, when the time comes for me to state it. My learned friend has the pleadings, which set forth the defence, and the reply to the assertion that the Ministers of the Crown and the Government of this colony could not legally do this thing. That is my position.

Dr. Madden.—So far from my demanding to know how the Attorney-General proposes to put his arguments, I am indebted to him for what he has told us; but the difficulty was suggested by the Court, in consequence of the interpretation I put upon his explanation. However, I will proceed to treat the plea as I understand it; and I submit that it is not competent for Ministers in Victoria to exercise any prerogative of Her Majesty the Queen, except through the Governor of the colony, or at all events with his acquiesence. And I go further, and contend that Ministers cannot, even with the acquiesence of the Governor, exercise any prerogative other than lies within the limits of his Excellency's commission. I reiterate that every prerogative—as I understand the term, and gather its meaning from the authorities—every prerogative and every power to exercise every act of State are vested in the Sovereign State only. The question is simple enough when you have a Sovereign State without dependencies, but it is altogether different when, as in the case of England, you have a State which has also in its dominions certain dependencies or colonies with autonomous powers more or less limited. The exercise of the prerogative is the property of the Sovereign, with certain exceptions, and the right to exercise acts of State is likewise the right and property of the Sovereign, for the reason that acts of State are acts of aggression, determinable only by war or the payment of an indemnity to avert war, but not cognisable by any municipal court within the realm. There are certain prerogatives of the Crown which do not relate to the Government or State as such, but are personal to the Sovereign, such as the prerogatives by which the Crown succeeds, by forfeiture, to the goods of a felon, prerogatives affecting the estate of the Crown as contradistinguished from prerogatives of Government, like the rights to convene and to dissolve Parliament, to declare war, and appoint to titular distinctions.

Mr. Justice Wrenfordsley.—And escheat to the Crown.

Dr. Madden.—That I will come to in a moment; but there are certain prerogatives of the Crown which relate to acts of Government, there are others which enrich the estate of the Sovereign herself, such as escheat or forfeiture for misprision of felony, priority of debts to the Crown over debts to the subject in insolvency, and matters of that kind. These are matters which apply, by their very nature, all over the Queen's dominions, and exist for the protection of her revenue or her personal estate.

The Chief Justice.—Do I understand you to say that prerogatives which go to enrich the personalty of the Sovereign, as escheat to the Crown, apply all through the empire and its dependencies, for the enrichment of the personal estate of the Sovereign ?

Dr. Modden.—Yes; the theory on which they are enforceable is that the moneys belong to the Sovereign herself, or the right belongs to the Sovereign herself, and therefore they are enforceable, not by Government, but by the municipal courts in this or any other part of the empire.

The Chief Justice.—In that case, the money would go to the Sovereign and not to the Government of a dependency.

Dr. Madden.—It might go into the Sovereign's own personal property, or into the Treasury of the State with the acquiescence of the Sovereign.

Mr. Justice Wrenfordsley.—These distinctions have been observed, where manorial rights, for instance, were concerned. The Courts have been careful to limit them to the Exchequer, because they have had relation to the Sovereign herself, the Crown having a personal interest in the result.

Dr. Madden.—It will be found, on reference, that this view has been recognised in many instances by the House of Lords. The prerogative of the Sovereign to priority of proof of debts in insolvencies is claimed by the Attorney-General for the time being, suing as her attorney in the court here, as for instance, in the case of the Oriental Bank failure. The claim was made in England that the Crown debts had priority all over the Queen's dominions, and all the Courts throughout the empire enforced the claim.

The Chief Justice.—But in that case the debt was not to the Queen herself, and the prerogative was not of that personal character which operates to her personal benefit. That is a distinction you are now drawing between the prerogative which relates to Government and the prerogative which relates to the Queen herself.

Dr. Madden.—The distinction I am drawing I do not find in the books, but it commends itself to my mind as a very obvious one, and I mention it in order to relieve the discussion from any blinding-the-trail effects. The Queen's prerogative of priority to prove her debts exists in Hong Kong, in Victoria, in any part of the Queen's dominions, just as much as it exists in England. The same thing applies to forfeitures in respect of felonies—except where the felons are indebted to this or any other colony—and from the very nature of these things it must be so. The Queen, in respect of this prerogative, is present in all her dominions, and there is no reason why she should not have the right of priority to prove her debts in Victoria as well as in any other part of the empire. That class of prerogative must exist in the subject country, in the dependency, as well as in England. But it is a very different thing when we come to consider how far any dependency, even though autonomous to a certain degree, can exercise prerogatives which might bring about war, affect the Government, or seriously embarrass the administration of the empire. It is a very different thing to say that that prerogative exists here, and it would be very difficult to maintain that prerogatives of that latter class could exist in this colony.

Mr. Justice Kerferd.—Your view is, that the prerogative which may be exercised by Ministers in Victoria extends to the recovery of debts but not to keeping out aliens?

Dr. Madden.—That is clearly what I am contending for. If it would not greatly disturb your Honors' notes, I would like to recur to the question of an act of State, so as to get a definition of an act of State.

The Chief Justice.—I thought you said there was no other opinion you could find except Mr. Justice Stephens on that point.

Dr. Madden.—That is the fact. As far as I can ascertain, an act of State is something wholly distinct from prerogative, and I should say it was an act arising at the will of a Government of a Sovereign State which felt itself strong enough to do it.

The Chief Justice.—It is something wholly outside the limits of the law—something wholly unauthorized by law.

Dr. Madden.—A proceeding which is apart from the law. It is an illegal act, avowedly and admittedly, done in great emergency, and done because the State feels strong enough to do it. It is wholly independent of prerogative, which is a part of the law.

Mr. Justice Holroyd.—A thing that cannot be questioned?

Dr. Madden.—Because it is one which the Court cannot take cognizance of. It is not a breach of the laws administered by the Court. It is a breach of the rights of persons wholly external to its cognizance—subjects of foreign countries in foreign countries.

Mr. Justice Holroyd.—Not within the jurisdiction of the Court at all?

Dr. Madden.—Precisely. It is beyond the ken of the Court. It is really to get back to that that I want to cite the matters I am now going to refer to. I first of all refer to "2 Stephen's Commentaries," 5th edition, page 423:—"As to

"aliens. The legal notion of an alien has been already sufficiently defined. As to "his rights when brought into any relation to this country, they are now largely "assimilated to those of natural-born subjects; but there are certain distinctions, to "some of which it will be proper to advert shortly, though their importance, by the "effect of recent legislation, has become greatly diminished." He then sets out the inability of an alien to have held property, the inability to have voted for Parliament, and so on. Then he shows that, by Statute, these inabilities, one by one, have been removed, and that an alien who has come within the State submits himself to the laws of that State, and therefore, in a large degree, he is the same as a natural-born subject. Inasmuch as he is subject to the laws, he is entitled to their protection. And he cites the same Statutes passed in England that are embodied in our law. Here I would call attention to the well-known proposition of international law, which is embodied in the judgment in the case of Queen *v.* Anderson, "11 Cox's Criminal Cases," p. 204. The defendant in this case was a sailor on board a British ship, and he committed some offence in French territory. The Chief Justice, in giving judgment, said:—"There is no doubt that the place where the offence was committed was "within the territory of France, and that the prisoner was therefore subject to the "laws of France, which the local authorities of that realm might have enforced if so "minded; but, at the same time, in point of law, the offence was also committed within "British territory, for the prisoner was a seaman on board a merchant vessel, which, "as to her crew and master, must be taken to have been at the time under the protec-"tion of the British flag, and therefore also amenable to the provisions of the British "law. It is true that the prisoner was an American citizen, but he had with his own "consent embarked on board a British vessel as one of the crew. Although the "prisoner was subject to the American jurisprudence as an American citizen, and to "the law of France, as having committed an offence within the territory of France, "yet he must also be considered as subject to the jurisdiction of British law, which "extends to the protection of British vessels, though in ports belonging to another "country."

The principle is that the law follows the flag, and on board an English vessel, whether he be an alien or not, is on part of the British territory, and is subject to the protection of the British laws, and amenable to them. I cite that in order to raise this suggestion: Supposing the captain of Her Majesty's ship the *Nelson* had been in Hobson's Bay, and the captain chose to fire into the *Afghan*, and sink her, could it be said that it was an act of State? Under no circumstances would it be possible for the Queen to ratify that act as an act of State, for it would be an act committed against a British ship laden with persons who, though aliens, were virtually British subjects in a British port.

Mr. Justice Williams.—Supposing the captain of the *Nelson* went on board the *Afghan* and "collared" the Chinamen, and took them on board of his own ship, do you say that Her Majesty could not ratify the act?

Dr. Madden.—The principle is the same. Here is a British ship, which is part of the British territory, having on board Chinamen who are subjects of England, being subject to English laws. The captain of an English man-of-war takes one away and drags him on board his vessel. That would be an act of aggression against one of the Queen's subjects, or one in the position of a subject, he being subject to English laws, and therefore entitled to their protection, and it could not come within the definition of an act of State.

The Chief Justice.—Have you any authoritative definition of an act of State as you have now described?

Dr. Madden.—I have no definition of it.

The Chief Justice.—Merely this observation of Mr. Justice Stephen.

Dr. Madden.—I treat it as more than an expression of opinion. It is the statement of an eminent English jurist. No authority can be found, as far as I know, that can show that this definition is wrong. I submit that an act of State destroys all government unless it stands within those limits. If Her Majesty's Ministers can do what they like, so long as Her Majesty says it is all right, it is an end of all law, and therefore I take it Her Majesty is restrained by the limits of the law, and certainly cannot resort to acts of State against her own subjects. So far the judgment of Mr. Justice Stephen is unimpeachable. Then let us consider the case of a man in the position of a subject for the purposes of *habeas corpus*. If an alien is entitled to the same rights and privileges as an English subject, why is he not entitled to have his wrongs dealt

with according to the laws of the country? Why is he subject to extraordinary remedies which would not be applicable to an ordinary subject?

Mr. Justice Williams.—Supposing a captain of a British ship were to bring a cargo of pirates here, or French convicts, you would say that the Government of this country could not prevent them from landing?

Dr. Madden.—I think there would be a very efficacious way of dealing with them by calling both Houses of Parliament, and passing a special Bill in an hour.

Mr. Justice Williams.—Apart from that?

Dr. Madden.—Certainly not. I think the danger of the thing is met by my first observation. There is no trouble about it. Our law has obviated the necessity of all these things by providing for a reference to Parliament. Bills can be passed in less than an hour. In time of peace, at any rate, no such acts could be resorted to. It is suggested in "Dicey" that in time of tumult and war, when the safety of the community is above all law, the Government would be called upon, in the interests of the nation, to violate the law, and trust to being indemnified. It is not, however, a matter of right and strict law.

Mr. Justice Holroyd.—This is what Sir Alexander Cockburn says on the subject—"In respect of personal rights, the alien, so long as he remains on British soil, "is in the same position as the Queen's subjects." I find that in his little book on Nationality, page 149.

Dr. Madden.—That would fall in with the statement of Dicey, that in no case would the prerogative be allowed to prevail in England without an Act of Parliament. I will now proceed to deal with the question which assumes the existence of prerogative (whose existence I have endeavoured to negative), which assumes the possibility of the Sovereign of England resorting to such an act of State as is described here, supposing it could be an act of State. And to begin with, the first proposition on which this would depend is, could the power be exercised by the Minister of a Colony not having a total delegation of the Sovereign powers. It was in a measure conceded to the old East India Company——

Mr. Justice Wrenfordsley.—I think the position was this—that while the old company had the power of declaring peace or war, still certain prerogative powers were withheld.

Dr. Madden.—The question was raised in the case of the Rajah of Tanjore, in which the act of the East India Company was held to be an act of State, because the company had the full delegation of Sovereign authority for the purpose. I protect myself by asserting that the East India Company stood in a different position to the other colonies. I submit that the colonies have not got it. Victoria has not got it, because she is not a Sovereign State. For my purpose I shall now have to define a Sovereign State. Wheaton says:—"A Sovereign State is generally defined to be any "nation of people, whatever may be the form of its internal constitution, which governs "itself independently of foreign powers." (P. 58 of Wheaton's "Elements of Inter-"national Law," 2nd edition.) Now this is a country which does not govern itself independently, as it is dependent on England in a certain degree. Halleck, in his "International Law and Laws of War," p. 65, vol. 1, 1st edition, says—"A a colony, a "possession, or a dependency constitutes only a part of the State, it cannot in itself be "regarded in international law as a distinct political organization. Hence, any public "or private corporation, created by, and deriving its authority from a State, cannot of "itself constitute a separate and independent sovereignty. Thus, the East India "Company, although exercising the sovereign powers of peace and war, with respect "to the native princes and people, acted in subordination to the supreme power of the "British Empire, and was represented by the British Government in all its relations "with foreign sovereigns and States."

It is also stated, in the New South Wales case which I have already referred to, that New South Wales, which stands in precisely the same position as Victoria, is not a Sovereign State, and I quote it again for that purpose. To return to Professor Dicey's work on "The Law of Constitution," at page 95, he says:—

"Many English colonies, and notably Victoria (to which country our attention "had best, for the sake of clearness, be confined), possess representative Assemblies "which occupy a somewhat similar position.

"The Victorian Parliament exercises throughout the colony all the ordinary "powers of a Sovereign assembly such as the Parliament of Great Britain. It makes "and repeals laws, it puts Ministries in power and dismisses them from office, it

"controls the general policy of the Government, and generally makes its will felt in "the transaction of affairs, after the manner of the Parliament at Westminster. An "ordinary observer would, if he looked merely at the every day proceedings of the "Legislature which meets at Melbourne, have no reason to pronounce it a whit "less powerful within its sphere than the Parliament of Great Britain. No doubt the "assent of the Governor is needed in order to turn colonial Bills into laws; and "further investigation would show our inquirer that, for the validity of any colonial "Act there is required, in addition to the assent of the Governor, the sanction—either "express or implied—of the Crown. But these assents are constantly given, almost "as a matter of course, and may be compared (though not with absolute correctness) "to the Crown's so-called 'veto' or right of refusing assent to bills which have passed "through the Houses of Parliament.

"Yet, for all this, when the matter is further looked into, the Victorian Parlia- "ment (together with other colonial Legislatures) will be found to be a non-sovereign "legislative body, and bears decisive marks of legislative subordination. The action "of the Victorian Parliament is restrained by laws which it cannot change, and are "changeable only by the Imperial Parliament; and further, Victorian Acts, even "when assented to by the Crown, are liable to be treated by the courts of Victoria "and elsewhere throughout the British dominions as void or unconstitutional on the "ground of their coming into conflict with laws of the Imperial Parliament, which "the Victorian Legislature has no authority to touch."

"That this is so becomes apparent the moment we realize the exact relation "between colonial and imperial laws. The matter is worth some little examination, "both for its own sake and for the sake of the light it throws on the sovereignty of "Parliament.

"The charter of colonial legislative independence is 'an Act to remove doubts "as to the validity of colonial laws,' known as the 'Colonial Laws Act 1865.'

"This Statute seems (oddly enough) to have passed through Parliament without "discussion; but it permanently defines and greatly extends the authority of colonial "legislatures, and its main provisions are of such importance as to deserve verbal "citation."

Then he cites them, and goes on to give instances—"The action of Victorian "Parliament is restrained by laws which it cannot change, and are changeable only "by the Imperial Parliament." He there refers to the reservations made by the Constitution Act.

Mr. Justice Williams.—Matters which have to be specially reserved for Her Majesty.

Dr. Madden.—The Act which authorizes our Constitution Act also makes our right to legislation subject to certain reservations which I shall presently refer to. Amongst others, there are these special matters which are reserved for the Queen.

Mr. Justice Holroyd.—The Imperial Parliament, if it chose, could repeal our Constitution?

Dr. Madden.—It could, and treat us as a Crown colony. As a matter of law it is obviously possible. Really there is the best test of the fact that this is not a Sovereign State; that we are subject at a moment's notice to be dealt with by the Parliament which, for this purpose, may be considered belonging to another country. What I would next bring under the observation of the Court are the particular Statutes which bring about our Constitution. The Act 18 and 19 Victoria, chap. 55, is an English Act authorizing our Constitution Act. Section 3 of that Act runs thus:—"The provisions of "the said Act of the fourteenth year of Her Majesty, chapter fifty-nine, and of the Act of "the fifth and sixth years of Her Majesty, chapter seventy-six, 'For the Government of "New South Wales and Van Diemen's Land,' which relate to the giving and with- "holding of Her Majesty's assent to Bills, and the reservation of Bills for the signifi- "cation of Her Majesty's pleasure thereon, and the instructions to be conveyed to "Governor's for their guidance in relation to the matters aforesaid, and the dis- "allowance of Bills by Her Majesty, shall apply to Bills to be passed by the Legisla- "tive Council and Assembly constituted under the said reserved Bill and this Act, and "by any other legislative body or bodies which may at any time hereafter be sub- "mitted for the present Legislative Council and Assembly."

The Acts referred to are 13 and 14 Victoria, chapter 59. Section 12 refers to these same instructions, and sections 14, 33, and 36 are the sections which relate to the matter in the Governor's instructions, and also authorizes the Governor, with the

advice and consent of the Legislative Council, to make laws and to do certain other things. The 36th section says:—"And be it enacted that by the term 'Governor' of the "colonies mentioned in this Act, as used in this Act, shall be understood the persons "for the time being lawfully administering the Government of such colonies respec- "tively; and until Her Majesty shall issue a Commission appointing a Governor of "the colony of Victoria, the Superintendent of Port Phillip shall be deemed the "person administering the Government of the colony of Victoria."

That Act recognises the future existence of a Commission to the Governor who is to be the person administering the Government for the time being. Then the Act 5 and 6 Victoria, chapter 76, sections 31, 32, and 40 require that the Governor shall transmit to Her Majesty a copy of all Bills to which he shall have given his assent and if they are not disallowed by the Queen within two years then they shall become law. I mention that, in passing, because by a later Act that is done away with except in the case of a limited number of Bills. But the 40th section provides "And be it "declared and enacted that it shall be lawful for Her Majesty, with the advice of Her "Privy Council, or under Her Majesty's Signet and Sign Manual, or through one of "Her Principal Secretaries of State, from time to time to convey to the Governor of "the said colony of New South Wales such instructions as to Her Majesty shall seem "meet for the guidance of such Governor, for the exercise of powers hereby vested in "him of assenting to or dissenting from or for reserving for the signification of Her "Majesty's pleasure Bills to be passed by the said Council; and it shall be the duty "of such Governor to act in obedience to such instructions."

The next Act on the subject is 7 and 8 Victoria, chap. 74. These are the Acts that are referred to in the Act 18 and 19 Victoria, conferring our Constitution. The Governor's Commission, which is referred to and contemplated by these several Acts, will be found on page 132 of the 5th volume of the Imperial Volume of Statutes. "Whereas we did, by our Commission, under the Great Seal of our United Kingdom "of Great Britain and Ireland, bearing date at Westminster the twenty-third of June "one thousand eight hundred and sixty-three, in the twenty-seventh year of our reign, "constitute and appoint our trusty and well-beloved Sir Charles Henry Darling, "Knight Commander of our Most Honorable Order of the Bath, to be during our "pleasure our Governor and Commander-in-Chief in and over our colony of Vic- "toria," and so on. "And whereas it is expedient that an Executive Council "should be appointed to advise and assist you in the administration of the Government "of the said colony, now we do declare our pleasure to be that there shall be an "Executive Council for our said colony, and that the said Council shall consist of "such persons as you shall, by instruments to be passed under the public seal of our "said colony, in our name and on our behalf, from time to time, nominate and appoint "to be members of the said Council."

Clause IX. of the Draft of Letters Patent passed under the great seal of the United Kingdom constituting the office of Governor and Commander-in-Chief of the colony of Victoria and its dependencies said:—

"When any crime has been committed within the colony, or for which the "offender may be tried therein, the Governor may, as he shall see occasion, in our "name and on our behalf, grant a pardon to any accomplice in such crime who shall "give such information as shall lead to the conviction of the principal offender, or of "any one of such offenders if more than one; and further, may grant to any offender "convicted in any Court or before any Judge or other magistrate within the colony a "pardon, either free or subject to lawful conditions, or any remission of the sentence "passed on such offender, or any respite of the execution of such sentence for such "period as the Governor thinks fit; and further, may remit any fines, penalties, or "forfeitures due or accrued to us: Provided always that the Governor shall in no case, "except where the offence has been of a political nature, unaccompanied by any other "grave crime, make it a condition of any pardon or remission of sentence that the "offender shall absent himself or be removed from the colony."

Clause XI. said: "The Governor may exercise all powers lawfully belonging "to us in respect of the summoning, proroguing, or dissolving any legislative body "which now is or hereafter may be established within our said colony."

There we have the two prerogatives—the prerogative of mercy and the prerogative of summoning and dismissing Parliament—expressly conveyed to the Governor by his commission. I would refer to the commission for the purpose of showing that the Governor is appointed, and through it he has conveyed to him the prerogative of

mercy and of summoning and dismissing Parliament. The very essence of a prerogative in a Constitution such as ours is that it must be exercisable only by the Sovereign. If it be her prerogative, how can it be exercised by other people? It is hers as contra-distinguished from the law of the land. Her prerogative is *ex vi termini* capable of being exercised by her alone. The Lord Chancellor says, when challenged about this prerogative: "Whether the power of sending aliens out of the country resided in the "King and Parliament conjoined or in the King alone, no man could be more satisfied "than he was of its wisdom and policy when sparingly exercised." He there suggests that it must be either in the King and Parliament or in the King alone, but he nowhere suggests that it might be in Ministers alone acting independently of the King or the King's attorney for the time being.

Mr. Justice Kerferd.—That was before the present reign. It has been laid down during the present reign that the exercise of the prerogative can only be by advice.

Dr. Madden.—It has always been a subject of contention, but I do not think that has been laid down authoritatively. I have not been able to find an authority to show that the prerogative is exercisable otherwise than by the Sovereign, although the contention has been raised that it is only exercisable by advice.

The Chief Justice.—No Sovereign has ever admitted that.

Dr. Madden.—Many have stoutly maintained the contrary. The Crown itself may refuse advice, its remedy being to call another Government into power if it can get one to carry out its views. In the absence of authority there is a clean sheet, if any one chooses to argue the question. In the case that occurred recently before the Supreme Court in Sydney the Chief Justice says:—"Now if this power was inherent in the "King of England to prevent aliens from landing, and to order aliens resident in the "kingdom to leave the realm, why was not that done by a speedy proclamation under "the Great Seal, by simply proclaiming that no aliens should be permitted to land in "the kingdom, and that those already resident should depart? That course was not "pursued; but the proper constitutional course was pursued at the time, and that was "the passing of an Act of Parliament for the purpose. However that may be, as far "as my opinion is concerned, I am distinctly of opinion that even supposing the King "or Queen of England had power by proclamation to prevent aliens from entering the "kingdom, and supposing a Statute to be unnecessary and a work of supererogation, "yet that power so vested in the King of England is a power personal to the King, "and so it appears from the different text-writers whose opinions have been quoted, "and cannot be delegated either to the Governor of this colony, or the Government "of this colony."

Comyns, in his "Digest," also lays it down that the King only can make letters of safe conduct by which he takes into his keeping and protection, aliens, but that such prerogative is exercisable only by the King himself.

The Chief Justice.—The same may be said of all prerogatives of the Crown. All prerogatives of the Crown are exercised by the Crown.

Dr. Madden.—Comyns does not say so. When you go back to the instructions of the Governor, it will be found that there are only two of the prerogatives which he can exercise, namely, the prerogative of summoning and dismissing Parliament and the prerogative of mercy. Section 11 of the Governor's Instructions states:—

"Whenever any offender shall have been condemned to suffer death by the "sentence of any Court, the Governor shall call upon the Judge who presided at "the trial to make to him a written report of the case of such offender, and shall cause "such report to be taken into consideration at the first meeting thereafter which may "be conveniently held of the Executive Council, and he may cause the said Judge to "be specially summoned to attend at such meeting and to produce his notes thereat. "The Governor shall not pardon or reprieve any such offender unless it shall appear "to him expedient so to do upon receiving the advice of the said Executive Council "thereon; but in all such cases he is to decide either to extend or to withhold a "pardon or reprieve, according to his own deliberate judgment, whether the members "of the Executive Council concur therein or otherwise; entering, nevertheless, on the "minutes of the said Executive Council, a minute of his reasons at length, in case he "should decide any such question in opposition to the judgment of the majority of "the members thereof."

So that in the case of one of the two prerogatives which is delegated to him, he is ordered to exercise it himself. He may be in possession of the advice of his Ministers as to the exercise of the prerogative of calling and dismissing Parliament. That

is in its very nature a prerogative he is bound to exercise himself; and, very often, on the defeat of his advisers, he is called on to say whether he will dissolve Parliament or not. Sometimes he may do it without advice. Sometimes the Ministers may advise a dissolution and he may reject it, as has often been done here.

Mr. Justice Kerferd.—The constitutional idea is that the incoming Ministers are answerable for his conduct.

Dr. Madden.—But at first he acts independently of his Ministers.

Mr. Justice Wrenfordsley.—Are there not some things which a Governor may not do.

Dr. Madden.—There are.

Mr. Justice Wrenfordsley.—You may refer to things he cannot do to show the things he can do.

Dr. Madden.—The Governor, for instance, cannot assent to Bills of a certain class—such as those relating to the currency or those imposing differential duties, but must reserve them. I was referring to that for the purpose of showing that his commission was a power of attorney granted by the Crown to its representative, and the Governor could not go behind it. His commission was the sole foundation for him. In that document his power, instead of being left at large, was expressly limited as to what he may do. It is limited as to where he is bound by the advice of his Ministers. If he adhered to his commission, it might bring about a pretty quarrel between them; but as between himself and the Queen he need not accept the advice of the Executive Councillors in certain cases.

The Chief Justice.—On what legal foundation are these instructions based except the instructions for the reservation of certain Bills mentioned in the Constitution Statute?

Dr. Madden.—One may find that would be a difficult question to answer. The Queen gave the Governor a commission, and told him how to exercise it to a limited extent, and till it was settled otherwise by Parliament she could say to him that if he exceeded his authority she would remove him. The relation between the Crown and him were those of principal and agent. Except on that principle, the appointment had no *raison d'etre.* He was bound by his appointment and the limitations in it. The Governor had no inherent or implied power beyond it. And it of necessity excludes the advice of his Ministers in certain cases. If there was such a prerogative as was claimed by the defendant in this plea, there was no authority for it here. If the Governor cannot do the act complained of *a fortiori*, his Ministers cannot do it. They had no authority at all. Ministers cannot exercise that which is the prerogative of the Sovereign. It has not been conveyed to them by any law that I am aware of. A late case as to this point, referring to the power of the Governor, is Musgrave *v.* Pulido, 5 Appeal Cases, 105, relating to the seizure of a ship. There the Governor of Jamaica, Sir A. Musgrave, authorized the seizure of a Spanish ship, and being sued in the local Court for trespass, he pleaded that what he had done was an act of State. The head note was as follows:—"Trespass for seizing and detaining at "Kingston, in Jamaica, a schooner of which the plaintiff was charterer, and which "had, as alleged, put into the port of Kingston in distress for repairs.

"Plea, in substance, of privilege, and to the jurisdiction, that the defendant was "Captain-General and Governor-in-Chief of the Island of Jamaica, that the acts com-"plained of were done by him as Governor of the island and in the exercise of his "reasonable discretion as such, and as acts of State.

"The plea did not aver even generally that the seizure of the plaintiff's ship "was an act which the defendant was empowered to do as Governor, nor even that it "was an act of State.

"*Held*, that the judgment *respondeat ouster* was right and must be affirmed.

"The Governor of a colony (in ordinary cases) cannot be regarded as a Vice-"roy; nor can it be assumed that he possesses general Sovereign power. His autho-"rity is derived from his commission, and limited to the powers thereby expressly or "impliedly entrusted to him. It is within the province of Municipal Courts to deter-"mine whether any act of power done by a Governor is within the limits of his autho-"rity and therefore an act of State.

"*Quære*, how far a Governor, when acting within the limits of his authority, "but mistakenly, is protected."

The judgment of the Privy Council was as follows:—

"In an action of trespass brought against the appellant, Sir Anthony Mus-"grave, in the Supreme Court of Jamaica, for seizing and detaining at Kingston, in

"Jamaica, a schooner called the *Florence*, of which the plaintiff was charterer, and "which had, as alleged, put into the port of Kingston in distress and for repairs, the "appellant pleaded the following plea:—

"'The defendant, Sir Anthony Musgrave, by his attorney, comes and says that "he ought not to be compelled to answer in this action, because he saith that at the "time of the grievances alleged in the said declaration, and at the time of the com- "mencement of this action, he was and still is Captain-General and Governor-in-Chief "of the Island of Jamaica and its dependencies, and was, and still is, as such entitled to "the privileges and exemptions appertaining to such office and to the holder thereof, "and that the acts complained of in the said declaration were done by him as Gover- "nor of the said Island of Jamaica, and in the exercise of his reasonable discretion as "such, and as acts of State; and this the defendant is ready to verify, wherefore he prays "judgment if he ought to be compelled to answer in this action.' The plaintiff de- "murred to this plea, and the present appeal is from the judgment of the Supreme "Court, allowing the demurrer, and ordering the appellant to answer further to the "writ and declaration.

"The plea is in form a dilatory plea, and does not profess to contain a defence "in bar of the action. It was advisedly pleaded as a plea of privilege, with the object of "raising the question of the immunity of the appellant as Governor from being im- "pleaded and compelled to answer in the courts of the colony. That this was so is "plain, not only from the form of the plea, but from an arrangement come to between "the parties before the argument of the demurrer. In an interlocutory proceeding to "set aside a judgment of *non pros.* as irregularly obtained, an order was made by "consent 'that all pleas of the defendant, Sir Anthony Musgrave, except the plea of "privilege by attorney be struck out, together with replications and entry of judgment "of *non pros.*, with liberty to the plaintiff to demur, it being arranged that the de- "murrer be set down for hearing at the present term, and if a judgment *respondeat* "*ouster*, the defendant, Sir Anthony, have liberty to plead not guilty by statutes.' "The decision of the Supreme Court was accordingly given upon the plea, as a plea "of privilege, and altogether upon this aspect of it, the judgment being one of *respon-* "*deat ouster*.

"Upon the hearing of the present appeal, the Attorney-General, on the part "of the appellant, whilst not giving up the plea, in the shape in which it was "pleaded, insisted that if it disclosed a good defence in substance to the action, as he "contended it did, its form and the arrangement of the parties might be disregarded, "and a general judgment given for the defendant; and, though under protest from the "respondent's counsel, the discussion at their Lordships' bar was allowed to take the "wider scope which the Attorney-General's contention introduced into the case.

"If the plea is to be regarded as a plea of privilege only, and as claiming "immunity to the Governor from liability to be sued in the courts of the colony, "their Lordships think that it cannot, in that aspect of it, be sustained.

"The dictum attributed to Lord Mansfield, in Fabrigas *v.* Mostyn, that 'the "Governor of a colony is in the nature of a Viceroy, and therefore locally, during his "government, no civil or criminal action will lie against him, the reason is, because "upon process he would be subject to imprisonment,' was dissented from and "declared to be without legal foundation in the judgment of the Lords of the Judicial "Committee, delivered by Lord Brougham in the case of Hill *v.* Bigge. In that "appeal their Lordships were of opinion that the plea of the Lieutenant-Governor of "the Island of Trinidad to an action brought against him in the civil court of the "island, claiming that whilst Lieutenant-Governor he was not liable to be sued in that "court, could not be sustained. The action was for a private debt contracted "by the defendant in England before he became Governor, but the principle affirmed "by the judgment is that the Governor of a colony, under commission, usually issued "by the Crown, cannot claim, as a personal privilege, exemption from being sued in "the courts of the colony. The claim to such exemption is thus met:—'If it be said "that the Governor of a colony is *quasi* Sovereign, the answer is, that he does not "even represent the Sovereign generally, having only the functions delegated to him "by the terms of his commission, and being only the officer to execute the specific "powers with which that commission clothes him.'

"The defendant has sought to strengthen his claim of privilege by averring in "his plea that the acts complained of were done by him 'as Governor,' and as 'acts "of State.' Their Lordships propose hereafter to consider the particular averments

"of this plea. It is enough here to say that it appears to them that if the Governor "cannot claim exemption from being sued in the courts of the colony in which he "holds that office as a personal privilege, simply from his being Governor, and is "obliged to go further, his plea must then show by proper and sufficient averments "that the acts complained of were acts of State policy within the limits of his com- "mission, and were done by him as the servant of the Crown, so as to be, as they are "sometimes shortly termed, acts of State. A plea, however, disclosing these facts, "would raise more than a question of personal exemption from being sued, and would "afford an answer to the action, not only in the courts of the colony, but in all courts; "and therefore it would seem to be a consequence of the decision in Hill *v.* Bigge "that the question of personal privilege cannot practically arise, being merged in the "larger one, whether the facts pleaded show that the acts complained of were really "such acts of State as are not cognizable by any municipal court.

"In the case of the Nabob of Carnatic *v.* The East India Company, Lord "Thurlow said that a plea pleaded in form to the jurisdiction of the court, but which "denied the jurisdiction of all courts over the matter, was absurd; and that such a "plea, if it meant anything, was a plea in bar.

"In their Lordships' view, therefore, this plea, if it can be supported, must be "sustained on the ground mainly relied upon by the Attorney-General, viz., that it "discloses in substance a defence to the action.

"Before adverting to the sufficiency of the averments in this plea, it will be "convenient to refer to some decisions in which the position of Governors of colonies "has been considered. In the leading case of Fabrigas *v.* Mostyn the action was "brought against Mr. Mostyn, the Governor of Minorca, for imprisoning the plaintiff, "and removing him by force from that island. The Governor's special plea of justifi- "cation alleged that he was invested with all the powers, civil and military, belonging "to the Government of the island, that the plaintiff was guilty of a riot, and was "endeavouring to raise a mutiny among the inhabitants, in breach of the peace, and "that, in order to preserve the peace and government of the island, he was forced to "banish the plaintiff from it. It then averred that the acts complained of were "necessary for this object, and were done without undue violence. Upon the trial, "the Governor failed to prove this plea, and the plaintiff had a verdict. When the "case came before the Court of Queen's Bench, upon a bill of exceptions to the ruling "of the Judge, Lord Mansfield said his great difficulty had been, after two arguments, "to be able clearly to comprehend what the question was that was meant seriously to "be argued. It seems, however, that the liability of the Governor to be sued was "raised and very fully discussed, one ground of objection being that he could not be "sued in England for an act done in a country beyond the seas, and upon this question "Lord Mansfield declared that the action would, to use his own phrase, 'most emphati- "cally' lie against the Governor. His judgment proceeds to show, in a passage "bearing materially on the point now under discussion, in what way a defence to such "an action might be made. He says, 'If he has acted right according to the author- "ity with which he is invested, he may lay it before the Court by way of plea, and "the Court will exercise their judgment whether it is a sufficient justification or not. "In this case, if the justification had been proved, the Court might have considered it "a sufficient answer; and if the nature of the case would have allowed of it, might "have adjudged that the raising a mutiny was a good ground for such a proceeding.'

"In the case of Cameron *v.* Kyte which came before this Board on an appeal "from the colony of Berbice, the question was, whether the Governor had authority "to reduce a commission of 5 per cent. upon all sales in the colony, granted to an "officer called the Vendue Master by The Dutch West India Company before the "capitulation of the colony to the British Crown. It was urged that the Governor "was the King's representative, exercising the general authority of the Crown, and, "as such, had power to make the disputed reduction. It was, however, decided that "the Governor did not hold the position or possess the authority sought to be attri- "buted to him, and that the act in question was beyond his powers. In the judgment "of this Committee, delivered by Baron Parke, it is said:—

"There being, therefore, no express authority from the Crown, the right to "make such an order must, if it exist at all, be implied from the nature of the office "of Governor. If a Governor had, by virtue of that appointment, the whole "sovereignty of the colony delegated to him as Viceroy, and represented the King in "the government of that colony, there would be good reason to contend that an act of

"Sovereignty done by him would be valid and obligatory upon the subject living within "his government, provided the act would be valid if done by the Sovereign himself, "though such act might not be in conformity with the instructions which the Governor "had received for the regulation of his own conduct. The breach of those instructions "might well be contended on this supposition to be matter resting between the "Sovereign and his deputy, rendering the latter liable to censure or punishment, but "not affecting the validity of the act done. But if the Governor be an officer merely "with a limited authority from the Crown, his assumption of an act of Sovereign "power, out of the limits of the authority so given to him, would be purely void, and "the courts of the colony over which he presided could not give it any legal effect. "We think the office of Governor is of the latter description, for no authority or "dictum has been cited before us to show that a Governor can be considered as having "delegation of the whole Royal power in any colony, as between him and the subject, "when it is not expressly given by his commission. And we are not aware that any "commission to colonial Governors conveys such an extensive authority."

Again, it is said:—"All that we decide is that the simple act of the Governor "alone, unauthorized by his commission, and not proved to be expressly or impliedly "authorized by any instructions is not equivalent to such an act done by the Crown "itself.

"In the well-known case of the action brought by Mr. Phillips against Mr. "Eyre, the former Governor of Jamaica, for acts done by him, whilst he was Governor, "in suppressing an insurrection in that colony, the question raised was, whether the "Colonial Act of Indemnity was an answer to an action brought in England. That "such an act was thought to be necessary, and that it was alone relied on as a defence "to the action, raised a strong presumption that it had been thought that the action "might, but for this act, have been maintained. It is to be observed, however, that "the facts of the rebellion and its suppression were averred in the plea by way of "introduction to the Act of Indemnity, and Mr. Justice Willes, in delivering the "judgment of the Exchequer Chamber, after saying that the Court had discussed the "validity of the defence upon the only question argued by counsel, viz., the effect of "the Colonial Act, adds, 'but we are not to be understood as thereby intimating that "the plea might not be sustained upon more general grounds as showing that the acts "complained of were incident to the enforcement of martial law. It is to be noticed "that the nature of those acts, and the occasion upon which they were committed, "were shown by distinct averments in the plea.'

"It is apparent from these authorities that the Governor of a colony (in ordinary "cases) cannot be regarded as a Viceroy, nor can it be assumed that he possesses general "Sovereign power. His authority is derived from his commission, and limited to the "powers thereby expressly or impliedly entrusted to him. Let it be granted that, for "acts of power done by a Governor under and within the limits of his commission, he "is protected, because, in doing them, he is the servant of the Crown, and is exercis-"ing its Sovereign authority; the like protection cannot be extended to acts which are "wholly beyond the authority confided to him. Such acts, though the Governor may "assume to do them as Governor, cannot be considered as done on behalf of the "Crown, nor to be, in any proper sense, acts of State. When questions of this kind "arise, it must necessarily be within the province of municipal courts to determine "the true character of the acts done by a Governor, though it may be that, when it is "established that the particular act in question is really an act of State policy, done "under the authority of the Crown, the defence is complete, and the courts can take "no further cognizance of it. It is unnecessary, on this demurrer, to consider how "far a Governor, when acting within the limits of his authority, but mistakenly, is "protected.

"Two cases from Ireland were cited by the defendant's counsel, in which the "Irish courts stayed proceedings in actions brought against the Lord Lieutenant of "Ireland. In these cases the Lord Lieutenant appears to have been regarded as a "Viceroy. In both, the facts were brought before the Court; and, in both, it appeared "that the acts complained of were political acts done by the Lord Lieutenant in his "official capacity, and were assumed to be within the limits of the authority delegated "to him by the Crown. The courts appear to have thought that, under these circum-"stances, no action would lie against the Lord Lieutenant in Ireland, and, upon the "facts brought to their notice, it may well be that no action would have lain against "him anywhere. (Tandy *v.* Earl of Moreland.) (Luby *v.* Lord Wodehouse.)

"Several cases were cited, during the argument, of actions brought against the "East India Company and the Secretary of State for India, in which questions have "arisen whether the acts of the Indian Government were or were not acts of Sove- "reignty or State, and so beyond the cognizance of the municipal courts. The East "India Company, though exercising (under limits) delegated Sovereign power, was "subject to the jurisdiction of the municipal courts in India, and it will be found "from the decisions that many acts of the Indian Government, though in some sense "they may be designated 'acts of State,' have been declared to be within the cogni- "zance of those courts. Thus, in the Rajah of Tanjore's case, the question to be "decided was thus stated by Lord Kingsdown in giving the judgment of the com "mittee:—'What is the real character of the act done in this case? Was it a seizure, "by arbitrary power, on behalf of the Crown of Great Britain, of the dominion and "property of a neighbouring State, an act not affecting to justify itself on grounds of "municipal law; or was it in whole or in part a possession taken by the Crown under "colour of legal title of the property of the late Rajah, in trust for those who by law "might be entitled to it? If it were the latter, the defence set up, of course, has no "foundation.' This committee, in deciding the questions thus raised, held that the "seizure was of the former character, and therefore not cognizable by a municipal "court. The answer of the East India Company in that case did not rest on the "simple assertion that the seizure was an act of State, but set out the circum- "stances under which the Rajah's property was taken; after referring to the "treaties made with the Rajah, it averred that, in entering into these treaties, and in "treating the Sovereignty and territories of Tanjore as lapsed to the East India Com- "pany in trust for the Crown, the Company acted in their public political capacity, "and in exercise of the powers (referring at length to them) committed to them in "trust for the Crown of Great Britain, and that all the acts set forth in the answer "were acts and matters of State."

"In the case of Forester and others *v.* Secretary of State for India, in which "the judgment of this committee was delivered on the 11th of May, 1872, a defence "of the same nature as that in the last-mentioned case was set up; but the decision "there was on this point against the Secretary of State. In this suit also the answer "set out the facts which were relied on the to show that the action of the Government "complained of was a political act of State.

"As far as their Lordships are aware, it will be found that in all the suits "brought against the Government of India, whether in this country or in India, the "pleas and answers of the Government have shown, with more or less particularity, "the nature and character of the acts complained of and the grounds on which, as "being political acts of the Sovereign power, they were not cognizable by the courts. "(See the Nabob of Carnatic *v.* East India Company; Ex-Rajah of Coorg *v.* East "India Company; Rajah Salig Ram *v.* Secretary of State for India, in which judg- "ment was given by this Committee on the 27th of August, 1872.)

"None of these cases help the present plea. On the contrary, it appears from "them not only that the facts were laid before the courts, but that the courts enter- "tained jurisdiction to inquire into the nature of the acts complained of, and it was "only when it was established that they bore the character of political acts of State, "that it was decided they could not take further cognizance of them. It is to be "observed that the Sovereign authority conferred upon the East India Company "appears in Acts of Parliament, and therefore, without being pleaded, the courts "would have judicial notice of it.

"Coming to the present plea, we find that, after stating that the defendant was "Captain-General and Governor-in-Chief of the Island of Jamaica, the only averments "in it are, that the acts complained of were done by him as Governor of the island, "and in the exercise of his reasonable discretion as such, and as acts of State. There "is no attempt to show the occasion on which the seizure of the plaintiff's ship was "made, nor the grounds on which that seizure, which is not in itself of the nature of "an act of State, became and was such an act. The plea does not aver, even generally, "that the seizure was an act which the defendant was empowered to do as Governor, "nor even that it was an act of State. It would have been contended at the trial, if "issue had been taken, that it would satisfy the averments of this plea to prove that "the defendant assumed to make the seizure as Governor, and assumed to do it as an "act of State, without showing that the act itself was an act of State properly so "called, and was within the limits of his authority. It was said that the plea should be

" construed as requiring, by implication, proof of these matters ; but having regard to " its nature and form as a plea of privilege, this cannot properly be held to be its " meaning. Their Lordships cannot but think it was designedly pleaded in its present " shape. It was a preliminary plea, intended to raise the question whether the " Governor, if acting *de facto* as such, and doing an act that he assumed and deemed " to be an act of State, could be called on to show in the courts of the colony that the " seizure complained of was really an act of State, of the nature and class of those " which, as Governor acting on behalf of the Crown, he had authority to do. The " object of the plea plainly was to stop the Court from entering upon such an inquiry; " but upon the construction now sought to be given to it, this object would, from the " first, have been frustrated, if issue had been taken, for the Court must then have " gone into the very inquiry which it was the manifest purpose of the plea to avert. " It appears to their Lordships that the plaintiff could not have safely taken issue on it. " He would have been met at the trial by the objection that it was a plea of privilege, " pleaded as a preliminary plea to the jurisdiction, and neither was, nor was intended " to be, an answer to an action. It was contended that, under " The Supreme Court " Procedure Law 1872" of the colony, which provides that defects in form shall be " disregarded, and that on demurrer the Court shall give judgment according to the " very right of the cause, the judgment should now be given for the defendant; but " their Lordships think, for the reasons above given, that upon this ambiguous and " defective plea a proper and final judgment on the right of the cause cannot be " pronounced.

" In the result their Lordships must humbly advise Her Majesty to affirm " the judgment of the Court below, and with costs."

In the case of the *Nabob of the Carnatic*, it was held that a Governor had not a delegation of the whole royal authority, unless it was given to him by commission. A Governor cannot be regarded as a Viceroy. His authority is derived from his commission, and is limited to the powers entrusted to him.

Mr. Justice Williams.—Is that applicable to the case of a colony which possesses a Constitution of its own under a Constitution Act?

Dr. Madden.—Yes.

Mr. Justice Williams.—The question is what is the position of the Government of this colony and the Governor of this colony under our Constitution Act. The very essence of this question is what are our rights under the Constitution Act, not what are the powers of the Governor under his commission.

Dr. Madden.—Yes. In the subject under discussion, you must take the Constitution Act and the commission together.

Mr. Justice Williams.—Take a hypothetical case. Supposing by virtue of the constitution certain powers were given to this colony which the Governor with the advice of his responsible Ministers might do, and a commission with less extensive powers was issued to him, which would prevail?

Dr. Madden.—The Statute, if it and the commission were in conflict. But that does not affect the position. I don't know whether Jamaica had a Constitution.

The Chief Justice.—Yes. Jamaica had a Constitution and an ancient one. It was not a Constitution that involved responsible Government. But there was a statutory Constitution for legislative purposes for more than 100 years.

Dr. Madden.—Here there is a Constitution Statute which gives us a Constitution. But that, for the purposes of this argument, does not touch the authority of the case of Musgrave *v.* Pulido. As between the Governor and the Crown, the Governor was bound within the four corners of his commission. If there was an Act of Parliament inconsistent with the commission, of course he would be bound by the Act. But if there is no Act, then he is Her Majesty's attorney, limited by her commission to him, which binds him and all the subjects.

Mr. Justice Wrenfordsley.—Something was said in the case cited as to the power of the local Legislature to pass an Act of indemnity.

Dr. Madden.—No doubt an Act of indemnity was passed.

Mr. Justice Kerferd.—I understood you to say that Her Majesty could only personally authorize the act to be done, and that the Governor could not act for the Sovereign.

Dr. Madden.—No, by the Sovereign or by the duly constituted agent.

Mr. Justice Williams.—To render that applicable to this colony you must show that the Governor's instructions contained in his commission are not inconsistent

with the Constitution Act. You admit that if they are inconsistent, the Statute must prevail.

Dr. Madden.—I do not know that I can yield that. I reserve myself the right to say nothing about it.

Mr. Justice Kerferd.—Must you not also show that the Constitution Statute does not confer upon the colony full and absolute power?

Dr. Madden.—It is plain it does not. I refer to the Constitution Act, and say—where is it? The commission gives power to exercise two prerogatives with advice or against it. It says nothing about an act of State, nor is there anything in the Constitution Act which says that the prerogatives of the Crown generally can be exercised here.

Mr. Justice Holroyd.—It does not matter what authority the Governor has. The other side say that Ministers have, if they think it necessary for the public safety and welfare, the right to arrest any foreigner they may find in Collins-street and send him back.

The Attorney-General.—No, we don't say that.

Dr. Madden.—Where did Ministers get the authority? If they never had it, where did they get it now? It was vested in the Queen, and never passed from her by Act of Parliament. The only authority was the commission issued by the Queen to the Governor. But Ministers say that by the authority to the Governor and by the statute *they* can order the arrest. There was nothing of that sort in the Constitution Statute. It gave no such authority to either Governor or Ministers. Within certain limits the Governor acts by the advice of his Ministers, and what he does then is called an Order in Council. In fact, most of these Orders in Council are made at the dictation of Ministers. When that limit is outstepped, and when what is done is called an act of State, it must be shown that it was done by delegation of some authority and by some authorized process. There was none such here. The Constitution Act does not make the Governor a Viceroy. In a Crown colony a Governor has often to act on emergency—he may have to act on his own independent judgment. He is a limited representative, but only to the extent of the authority given to him.

Mr. Justice Wrenfordsley.—Would the words "all things necessary and proper" lead to the exclusion of aliens?

Dr. Madden.—The Governor of this colony, knowing the relations of this colony to China and to the Empire at large, and the complications that might ensue from some act of this colony, was bound to act within his commission. He is not here for mere ornament, as some people suppose. He represents the Crown, which also possesses great authority. He exercises great functions, and is not of nominal authority. His Sovereign has issued a commission to him, and he owes his duty to her, just as Ministers owe a duty to this colony (speaking apart from the allegiance to the Crown). If his Ministers were to say to him that they would have no Chinese here for a number of reasons, and the Governor were to say, "I have a power of refusing assent to "your proposal, but I won't exercise it," the result might be the destruction of the Empire whose representative he was. If he refused to aid them, and the Ministers wished to act apart from him, they must show where their authority came from. They don't say they got any implied authority from him, and they cannot act without him.

Well, that case of Musgrave *v.* Pulido brings down to the latest date these other cases, which I will content myself with citing to the Court, because their substance has been already read to the Court from that case. The other cases to which I allude are Hill *v.* Bigge, 3 Moore's Privy Council cases, page 465, and Cameron *v.* Kyte, in 3 Knapp's Privy Council Cases, page 332. I will now read to the Court the opinion of an able writer on the subject of Constitutional Government, in order to show that the concession of responsible government to a British colony does not take away from Imperial authority the exercise of the prerogatives necessary to maintain the integrity of the Empire. Mr. Todd, Librarian of the Parliament of Canada, in his work on "Parliamentary Government in the British Colonies," writes, on page 34, as follows:—

"Throughout the British Empire—even in colonies where self-government "has been conceded to the fullest extent compatible with the maintenance of Imperial "supremacy—there is a reservation of the paramount authority of Parliament, and of "the right of every British subject to appeal to that tribunal. But while the ultimate "control, alike over colonial and Imperial administration, is vested by the Constitution "in the Imperial Parliament, which is at all times ready to listen to complaints of an

"undue exercise of power on the part of any Minister of the Crown, that supreme "authority may be constitutionally invoked only in extreme cases, and enforced only "when it is indispensably necessary to maintain the integrity of the Empire.

"Moreover, certain prerogatives of the Crown are suitably reserved in every "colony to the direct and immediate expression of the Royal pleasure thereon. The "powers so reserved differ, according to the position and circumstances of the particular "colony, but they invariably include the abstract right of dealing with all colonial "legislation, and of disallowing such Acts as may be deemed objectionable, or in direct "opposition to Imperial policy. Sometimes colonial laws, which for defect in form or "substance might otherwise need to be disallowed, are remitted to the colony wherein "they were enacted, accompanied by a despatch from the Secretary of State for the "Colonies, suggesting their modification or repeal. The judicial prerogative of the "Crown or the right of determining, in the last resort, all controversies between "subjects in every part of the Empire, has been universally reserved, as being one of "the most stable safeguards and most beneficial acts of Sovereign power. The "administration of the prerogatives of mercy and of honour is either reserved to the "Crown or is made the subject of special and limited delegation. Finally, all questions "which involve the relations of British dependencies, and consequently of the United "Kingdom itself, with foreign States—the formation of treaties and alliances; the "naturalization of aliens; the declaration of war or peace, and, by consequence, all "regulations affecting the disposition or control of Imperial military forces—are, "invariably, and for obvious reasons, reserved for the direction and control of the "parent State."

That extract clearly shows that the particular prerogative relied on in the present case has always been classed as part of the prerogative of war and peace, and can only be exercised, therefore, as I contend, by the Imperial authority. Mr. Todd proceeds:—

"The Governor of every British colony, as representing the authority of the "Crown therein, is appropriately entrusted with the exercise of all lawful powers of "control over all public officers, whether civil or military, within the limits of his "government; and he is ordinarily nominated as Captain-General, Commander-in-"Chief, and Vice-Admiral therein. But, though he may be styled Commander-in-"Chief, he is not thereby invested, without a special appointment from the Sovereign, "with the command of the regular forces within the colony. In military matters, he "must act in concert with the officer in command of the forces, who, in the event of "the colony being invaded or assailed by a foreign enemy, and becoming the scene of "active military operations assumes the entire military control of the troops."

Again, on page 37, the same writer observes:—

"In colonies wherein responsible government is established, the administration "of public affairs is conducted, as elsewhere, through the agency of a Governor and an "Executive Council. But, while the outward organization remains unchanged, effect is "usually given to the system of Ministerial responsibility, when it is introduced into any "colony, by means of special instructions authorizing the same, which are transmitted "to the Governor by Her Majesty's Colonial Secretary."

Again, on page 39, Mr. Todd proceeds:—

"It is undoubtedly incumbent upon a constitutional governor to co-operate "honorably, though in no partisan spirit, with his Ministers for the time being, and to "accept their advice on all public matters, unless he should see sufficient cause to "justify him in refusing to concur in their recommendations. On the other hand, "every objection raised by the Governor to a policy or proceeding submitted for his "approval should be considered by his Ministers with the deference and respect due "to his office. In the free interchange of opinion between those who are equally "concerned in the endeavour to promote the public good, it is reasonable to suppose "that a unity of sentiment would ultimately prevail.

"But if it should prove otherwise it must always be remembered that the "Governor is not bound to comply with the advice of his Ministers. In the event of a "recommendation being submitted to him that involved a breach of the law, or that "was contrary to express instructions received from the Crown, he would be obliged "to refuse to sanction it. For no violation of the law could be excused on the plea "that it was advised by others; the Governor must be held personally answerable for "the same to the Imperial authority, or to a court of competent jurisdiction taking "cognisance thereof; unless, indeed, the case should have been one of such urgent

"and imperative necessity as would warrant a departure from the laws of the land "and would justify a subsequent application to Parliament for an Act of indemnity.

"In the ordinary exercise of his constitutional discretion, a Governor is "unquestionably competent to reject the advice of his Ministers, whenever that advice "should seem to him to be adverse to the public welfare or of an injurious tendency. "In such a contingency, if no compromise be possible, either the resignation or the "dismissal of Ministers must ensue. The Governor must then seek for other advisers. "If he succeeds in obtaining a new Ministry, who are willing to become responsible for "his act which led to the retirement of their predecessors, and if the new Administra- "tion is sustained by the popular Chamber, there is no further difficulty. But if the "local Assembly refuse to give their confidence to the incoming Ministry, and if a "dissolution of Parliament (should that take place) fails to give them adequate support, "the Governor must either recede from the position he had taken or retire from office."

So that the thing works itself right in the manner described.

The Chief Justice.—Do you cite that as a legal authority, or merely as an interesting discussion on facts as they presented themselves to the mind of the writer?

Dr. Madden.—In discussing the case before the Court we are all treading on a path which is unknown to most of us, and, therefore, we must go on in the light of those who have thrown light on that path; although I at once admit that anything which has not the stamp of judicial authority cannot be accepted as authoritative in a court of law. What I have quoted professes to be nothing more than the views of a man who has devoted himself with great interest to the study of the subject, and who has enjoyed eminent opportunities of getting at the materials necessary to form a sound judgment on the matter. It gives us guidance; but no one is bound by the writer's conclusions, except so far as the facts and arguments appeal to one's own judgment and logical power.

Mr. Justice Kerferd.—The Sovereign of England has claimed the right to exercise very large powers independent of the advisers of the Crown.

Dr. Madden.—According to the English theory of constitutional government, the Sovereign may exercise the prerogative contrary to the advice of the responsible Ministers of the Crown, and in some cases the Sovereign has insisted on doing that, but unless the country is ultimately with the Sovereign in regard to the matter, the Sovereign would have to yield.

Mr. Justice Williams.—The prerogative of the Crown is surely exercised upon responsible advice, whether by the Crown or, in a colony enjoying responsible government, by an agent of the Crown.

Dr. Madden.—Precisely, but in this case responsible Ministers did not give advice to the Governor, who is the agent of the Queen in this colony, nor was the act done by the Governor under responsible advice. Ministers did not choose to consider him at all, but put him overboard, and acted for the Crown themselves, inverting the order of things, and giving to the Governor no opportunity to operate in the transaction at all. I have now said all that occurs to me at the present time on this subject; but before I sit down I propose to fall back on what I commenced with, viz., the interpretation of our own Statute, because in Sydney the Supreme Court held that the terms of the Chinese Immigrants Act of New South Wales, which Act is substantially the same as ours, are mandatory upon the Collector of Customs, that if a Chinese comes here on board a British vessel and tenders the sum of £10 required by section 3, it becomes mandatory upon the Collector of Customs to make the entry prescribed by that section, and to admit the Chinese immigrant. The Chief Justice of New South Wales, in delivering judgment, on Wednesday, May 23rd, said :—

"The terms of the Act are mandatory, for the 4th clause states that before "any Chinese arriving here shall be permitted to land, and before the master of the "vessel shall make any entry at the Customs House, the master *shall* pay to the "Collector of Customs the sum of £10 for each Chinaman. So that, before a captain "shall be permitted to discharge a single ton of cargo, he has to pay this money, and "the Chinaman in respect of whom the money has been paid shall receive from the "Collector of Customs a certificate. It thus becomes the duty of the master to pay "this sum of money to the Collector, and it becomes the duty of the Collector to "receive it, and to issue a certificate to the Chinaman stating that he has received it. "That certificate is surely a passport to the Chinaman to go ashore, and that the "money has been received for permission to enter the colony."

Thereupon the Chinese immigrant is at liberty to walk into the country. And our Act, for all practical purposes, is the same as the Chinese Immigrants Act of New South Wales. By reason of that legislation, the plaintiff in this case claims that he had a right to come into this colony, that he came here with such rights as may be claimed by all aliens belonging to foreign nations which are in friendship with our own, and that, therefore, he had a right to come into the country under the common law. This £10 poll-tax is not a penalty, but confers a right on payment thereof to come into the colony. The plaintiff was willing to pay the £10, and thereby bring himself within the Statute; but the effect of the action of Ministers was to repeal the right given to him under the Statute, and to show a determination that a Chinese shall not come into the colony even though he is prepared to pay the £10. I submit that, for these reasons, the defence is bad, and that the plaintiff should have judgment.

The Attorney-General.—Will your Honors hear only one counsel on each side?

The Chief Justice.—If either side prefers to be heard by more than one counsel, the Court will be prepared to hear more than one.

WEDNESDAY, JULY 11, 1888.

Dr. Madden.—I would like to refer to a passage which Mr. Hodges has drawn my attention to. Forsyth on "Constitutional Law," dealing with the question of extradition, at page 369, says:—

"The constitutional doctrine in this country is that the Crown may make treaties "with foreign States for the extradition of criminals, but these treaties can only be "carried into effect by Act of Parliament, for the Executive has no power without "statutory authority to seize an alien here and deliver him to a foreign power. In a "debate in the House of Lords, on February 14th, 1842, on the case of the 'Creole,' "Lord Brougham said:—"'What right existed under the municipal law of this country "to seize and deliver up criminals taking refuge there? What right had the Govern-"ment to detain, still less to deliver them up? Whatever right one nation had against "another nation, even by treaty, which would give the strongest right, there was by "the municipal law of the nation no power to execute the obligation of the treaty.' "Lord Denman said he believed that all Westminster Hall, including the judicial bench, "were unanimous in holding the opinion that in this country there was no right of "delivering up, indeed no means of securing persons accused of crimes committed in "foreign countries. The other Law Lords entirely concurred in this opinion (*Hansard's* "*Parliamentary Debates*, vol. LX., pp. 317 to 327), and the law is the same in the "United States."

To the like effect appears a passage at page 181:—"But the Crown has no "power by its prerogative alone to send any one, whether he be a subject or an alien, "compulsorily out of the realm. In a debate, however, in the House of Lords, in June, "1816, on the Alien Bill, which was introduced at the restoration of peace, Lord Ellen-"borough, C.J., contended that, at common law, the Crown has the right by the Royal "prerogative to send all aliens out of the kingdom, and, to prove this, he cited the "petition of the merchants of London, in the reign of Edward the 1st, praying that "Monarch to do so (34 *Parliamentary Debates*, 1069). But this is certainly not the "law of England."

This concluded Dr. Madden's address.

The Attorney-General then addressed the Court for the defendants. He said: May it please your Honors, I shall follow the example of my learned friend, Dr. Madden, and submit certain propositions to the Court which I shall endeavour to maintain by precedent and by authority, and I have no doubt that the Court will show me the same favour as they did to Dr. Madden, by allowing me to follow out my argument in my own way and as I think best. Before stating my propositions, I would wish to direct the Court's attention to the particular question raised here on the pleadings. It

has been stated by Dr. Madden, but I wish to call the attention of the Court to it again. The action is substantially for preventing the plaintiff from landing, he being a foreigner. The defence on which our arguments are based is as follows:—Paragraph 4 first sets out that the plaintiff came in the *Afghan*, a ship of 1,439 tons, which had 268 Chinese on board when she was only entitled to carry fourteen. This is introductory to the substantial part of the defence. It is a statement that that ship came here in violation of the law, and in support of it I would refer your Honors to the "Chinese Act 1881." It is an amendment of the Act of 1865, and section 2 says:—"If "any vessel having on board a greater number of immigrants (within the meaning of the Act No. 259) than in the proportion of one such immigrant to every hundred "tons of the tonnage of such vessel shall arrive at any time in any port in Victoria, the "owner master or charterer of such vessel shall be liable on conviction to a penalty "of one hundred pounds for each immigrant so carried in excess of the foregoing limi-"tation." So that we start with this,—that the plaintiff came here in violation of the law; he was one of a party of persons who "arrived" in our port defying the law. The statement of defence then goes on to say:—"And the defendant further says that he "had received instructions previous to the arrival of the said ship from the Com-"missioner of Trade and Customs, as and being the responsible Minister of the Crown "for the Colony of Victoria charged and entrusted with the administration of the laws "of the said colony relating to the Customs and immigration, that there was an appre-"hension on the part of Her Majesty's Government for the said colony that a large "influx of Chinese into the said colony was imminent, and that in the opinion of the "said Minister of the said Government such influx would be a danger and menace to "the said colony, *and to the public peace thereof*, and to Her Majesty's subjects "residing therein, and would be in a high degree detrimental to their interests; and "that in the opinion of the said Minister and Her Majesty's said Government it was "for the advantage of the said subjects so residing in the said colony that such influx "should be prevented, and no further Chinese other than such as are British subjects "should be allowed to enter the said colony; and that the said Minister and Her "Majesty's Government had determined to refuse to permit any Chinese other than "such as were British subjects to land or enter the said colony, and such instructions "opinions, and determination had been before the committing of the said grievance by "the said Minister and Government communicated to the defendant. Wherefore the "defendant, in obedience to such instructions and determination as such officer of Her "Majesty's Customs as hereinbefore mentioned, by command of our Lady the Queen, "refused to permit the plaintiff to land in the said colony of Victoria, and hindered "and prevented him from so landing, and wholly declined and refused to receive the "said sum of £10 mentioned in the fourth paragraph of the statement of claim. And "the defendant further says that his said acts in so wholly refusing to permit the "said plaintiff to land in Victoria, and in so hindering and preventing him from "landing, and in refusing to receive the said sum of £10 as aforesaid, were by him "subsequently reported and communicated to Her Majesty's said responsible Min-"isters, and were by him and by Her Majesty's said Government ratified and "approved of as being acts of State policy."

That is a statement that the Chinese were prevented from landing in defence of the public peace of the country. The last paragraph of the statement raises the question of an act of State, but that to a great extent rests on what goes before, namely, that this foreigner and his 267 friends were prohibited from landing by the Government of Victoria in defence of the public peace. The answer to that, on which the issue arises, is this:—"The plaintiff will object that paragraph 4 is no defence, as even Her "Majesty's said Minister or said Government could not legally prevent the plaintiff "from landing." So the issue before the Court is whether the Government of this country can in no case and for no purpose prevent foreigners from landing here. Have foreigners a lawful right to land here against the will of the Government and whatever public reasons the Government may have to prohibit them from landing? My learned friend says they have; I say they have not. Certainly, if the position taken up by my learned friend is legally correct, it would lead to very serious practical consequences. It would deprive three-fourths of the British empire which enjoys responsible Government of a right which I shall clearly show the Court belongs to every nation—that of excluding foreigners. Dr. Madden argued at considerable length, and stated many cases with regard to expelling aliens and dealing with aliens in the country, but the particular issue before the Court is whether for public reasons the

Government here may prohibit from entering a foreigner who may be believed to be dangerous. I say, if my friend's contention is right, it would lead to very serious practical consequences. As has been asked, can you prevent French convicts from landing? My friend says no, you must get an Act of Parliament, no matter what may be the danger to the country. If French convicts were sent to Victoria and the Government prevented them from landing, according to my learned friend, the Government would be doing an unlawful act, and every one of these convicts would have a right of action in our Courts.

Mr. Justice Williams.—I put that question to Dr. Madden, and his answer was that the Government could not prevent French convicts from landing except by Act of Parliament.

The Attorney-General.—The point is: Can the Government do it lawfully as an act of the Executive? Parliament may or may not be sitting.

The Chief Justice.—Dr. Madden admitted that it was the duty of the Government to violate the law on extreme occasions.

Dr. Madden.—Trusting that Bills of Indemnity would be passed afterwards. In cases of tumult and invasion, the Government may resort to any illegality.

The Attorney-General.—No doubt an Act of Parliament can do anything. But the point I want to draw attention to is this—if such a case were to arise, would it be *unlawful* for the Government to prohibit the landing of the convicts? The question is whether it would be lawful for the Government to say you cannot land. I say it would be lawful. My friend says it would be unlawful.

Mr. Justice Holroyd.—Do you draw no distinction between entering the waters of the colony and landing?

The Attorney-General.—Oh, certainly, but I say we are entitled to prevent them landing. That is the question on the pleadings.

Mr. Justice Holroyd.—The question is whether you had a right to prevent them landing.

The Attorney-General.—Certainly, and I am now only asking the Court to consider what would be the result if we have no such right. The action of the Government here in stopping such men from landing would be a breach of the law, according to my learned friend. To put another illustration. Many might be suggested. Suppose the Government of this country had notice from the Imperial Government that war was about to be declared between England and Russia, and a week afterwards a shipload of Russians arrived and proposed to land and settle at the Heads, where our batteries are; the question is whether it would be lawful or unlawful for the Government to prevent them from landing. My learned friend says that it would be unlawful. I say that is not so, and I shall submit to the Court some propositions which I shall endeavour to maintain. In the first place, I shall submit that every nation has a sovereign right to prevent aliens or foreigners entering its dominions; I shall, secondly, submit that this sovereign right of nations is, under the English Constitution, vested in the Queen; and I shall, thirdly, maintain that that sovereign right or prerogative of the Queen is exercised in and for Victoria under advice of Her Majesty's Ministers for Victoria. Of course, I strictly confine my argument to matters local to Victoria. I say that, whenever that prerogative is exercised in matters strictly local to Victoria, it is exercised in and through Her Majesty's Government of Victoria. Then there is the fourth view of the case, that the Act complained of was an act of State policy. It is mixed up in the previous propositions, but it is not altogether the same, and I shall deal with it afterwards. Now the first point which I have to establish is that every nation has an undoubted right to prohibit foreigners entering its territory or to expel them. I do not mean the power to do it (for a nation, if it is strong enough, can do anything), but I say the lawful right, according to the principles of international law. That is a right vested in every Sovereign State somewhere—in some organ of its Government. There is plenty of authority on that point. I do not think my friend will dispute it. In Kent's "Commentaries of American Law," vol. 1, p. 37, it is laid down:—"Every nation is bound "in time of peace to grant a passage for lawful purposes over lands, rivers, and seas to "the people of other States whenever it can be permitted without inconvenience; and "burthensome conditions ought not to be annexed to the transit of persons and property. "If, however, any Government deems the introduction of foreigners or their merchandise injurious to the interests of their own people, they are at liberty to withhold the "indulgence. The entry of foreigners and their effects is not an absolute right, but "only one of imperfect obligation, and it is subject to the discretion of the Government

"which tolerates it." In Phillimore's "International Law," vol. 4, p. 2, there is an extract from "Rutherford's Institute of Natural Law," which is to this effect:—"Civil laws "when they causelessly and unreasonably exclude foreigners, either from coming into "the territories at all, or from trading there, are inhospitable; but these inhospitable "civil laws are not otherwise contrary to the laws of nations than as this law, like the "general law of nature, enjoins the duties of humanity and benevolence. Every nation "has by the law of nations, as every individual has by the law of nature, a right to "judge for itself how far its intercourse, either of the commercial or of the friendly "sort, is likely to be detrimental to itself; so that to cut off either or both sorts of inter- "course will be no act of injustice, though it will be wrong if it is done causelessly. A "nation has a moral power to withhold its benevolence, and they from whom it is "withheld unreasonably, though they are not treated friendly, are not injured." That is a clear statement of what is law, as apart from a moral benevolent obligation. I will cite one or two other authorities. In Phillimore's "International Law," vol. 1, section 220, p. 260, there is this passage:—

"It is a received maxim of international law that the Government or a State "may prohibit the entrance of strangers into a country, and may therefore regulate the "conditions under which they shall be allowed to remain in it, or may require or "compel their departure from it."

Vattel, in the "Law of Nations," book 2, chap. 7, page 169, says:—

"The Sovereign may forbid the entrance of his territory either to foreigners in "general, or in particular cases, or to certain persons, or for certain particular purposes, "according as he may think it advantageous to the State."

These are all the authorities I shall trouble your Honors with, and I think I may assume that, according to international law, there is a right with every nation to forbid foreigners to enter—that, in fact, the old principle of English law that "an Englishman's "house is his castle," applies in national law to the citizen's country. Our country is not a no-man's land, where one has just as good a right to come as another. Further, this national right is exercised in every part of the world. The passport system in Europe is an exercise of this right. Only lately we have learned, through the public press, that Germany has prohibited Frenchmen from going into Alsace and Lorraine, unless under certain conditions. The United States have been expelling and sending back English paupers. We are aware that in China the rule has long been maintained that no Englishman shall go beyond the bounds set forth in the treaty, and any Englishman going beyond is subject to three months' imprisonment. I would remark here that my learned friend, Dr. Madden, yesterday ascribed this prerogative to the peace and war prerogative; but, with great respect to him, I would say that this is not so. The prerogative of the Sovereign of England to prohibit foreigners entering does not arise from the peace and war prerogative. It rests on the national right of which I have been speaking. Every nation has the right to prohibit foreigners coming into the country, and in the English Constitution that right is vested in the Queen. It is true that several text-book writers do include this prerogative as a matter of topographical arrangement in the prerogative of peace and war, because in war it is most frequently exercised; but the foundation of the prerogative is the right of every country to keep its empire to itself, and I say that, according to the internal law of England, it is the prerogative right of the Sovereign. I shall now endeavour to prove that. I say that it is vested in every nation, and that in the English Constitution it is a prerogative of the Sovereign. My learned friend cited two authorities, which, however, he treated rather lightly. First, there was that passage from Chitty, on "Prerogatives," which clearly states it is a prerogative of the Crown. Then there is the authority of Blackstone. In vol. 1 of the edition of 1844, page 259, of "Blackstone's Commentaries," it is stated:—

"Upon exactly the same reason stands the prerogative of granting safe-con "ducts, without which, by the law of nations, no member of one society has a right to "intrude into another, and, therefore, Puffendorff very justly resolves that it is left in "the power of all States to take such measures about the admission of strangers as "they think convenient; those being even excepted who are driven on to the coast by "necessity, or by any cause that deserves pity or compassion. Great tenderness is "shown by our laws not only to foreigners in distress (as will appear when we come "to speak of shipwrecks), but with regard also to the admission of strangers who come "spontaneously. For so long as their nation continues at peace with ours, and they

" themselves behave peaceably, they are under the King's protection; though liable to " be sent home whenever the King sees occasion."

Now my learned friend alluded to Lord Eldon's opinion, and I intend to refer to it too. My learned friend seemed to treat Lord Eldon's opinion in rather an off-hand manner, but I think he will be the first to admit that we could not get a higher authority on any branch of the law, and I rely strongly on his remarks as showing that the prerogative existed and as explaining the meaning of the Alien Acts, which I shall come to deal with afterwards. He was supporting the Alien Bill, and he argued that machinery was wanted in order that the prerogative might be exercised of sending aliens out of the country. Lord Eldon said:—" This Alien Act which I am support-" ing, I support because, although there is a prerogative, I want machinery to carry it " out."

Mr. Justice Holroyd.—Do you draw any distinction between landing and entering? As a matter of fact, this Chinaman on board the *Afghan* was in Hobson's Bay, and was within Victorian territory.

The Attorney-General.—No; there may be a distinction between sending an alien out when he is settled in the country and forbidding him from coming into the country at all.

Mr. Justice Holroyd.—What I mean is this: These Chinamen on board the ship were really in the colony through being in port. You draw no distinction between landing and entering.

The Attorney-General.—They are breaking the law in entering at all.

Mr. Justice Holroyd.—But I am saying the plaintiff has come in.

The Attorney-General.—He has come in against the law.

Mr. Justice Williams.—Does not entering, in the passages you have referred to from international authorities, really mean landing?

The Chief Justice.—I think in international law there is a distinction drawn for some purposes between landing on the soil of a country and entering its waters.

Mr. Justice Kerferd.—The Chinese Immigration Act draws this distinction. Section 2 says " shall arrive at any time in any port," and section 4 " shall attempt to " enter this colony."

Mr. Justice Holroyd.—Of course, in putting the question, I was assuming for the nonce the coming into port to be lawful. Of course, if the coming in is unlawful, it is another matter altogether. Assuming that it is lawful, I want to know whether you draw any distinction between entering and landing? Through the vessel coming into Hobson's Bay she is inside Victorian territory. If she was legally there—which I am not venturing to express an opinion on—it seems to me that the contention as to prerogative would apply equally to the expulsion of aliens as to preventing them from coming in.

The Attorney-General.—I am going to cite authorities to show that the Government could turn them out, but there may be a difference between forbidding them to enter and afterwards expelling them.

Mr. Justice Kerferd.—Look at the third section of the Chinese Act. It says—" before any immigrant arriving from ports beyond Victoria shall be permitted to land " from any vessel——"

The Attorney-General.—We submit that the whole thing is in violation of the law. The moment the vessel came into port the law was broken.

Mr. Justice Holroyd.—That is a different point. I was assuming that that difficulty had been got over.

The Attorney-General.—I am proceeding to show authority for the contention that, according to the English law, the Sovereign has the right of expelling, and, of course, the greater includes the less. Lord Eldon is reported to have said :—

" Whether the power of sending aliens out of the country resided in the " King and Parliament conjoined, or in the King alone, no man could be more " satisfied than he was of its wisdom and policy when sparingly exercised. Ad-" verting to the period of 1793, when he was Attorney-General, he recollected the " apprehension that was then excited, not of French arms, but of French principles. " He thanked God that that apprehension was strongly felt in the country, otherwise " the consequence, might have been such that it was impossible to contemplate without " terror. It had been felt to be absolutely necessary, whether the Crown had or had " not the prerogative of sending aliens out of the country, to arm it with the assistance

"of Parliament. With reference to the construction put by Lord Coke on *Magna* "*Charta* as it related to this subject, he observed that at the period to which he had "alluded he had the honour of knowing many learned men now in their sepulchres, "but whose names would long live, and he knew of none, whether they opposed the "measure then proposed or not, who denied that the King had the power, without the "sanction of Parliament, to prevent aliens from staying in the country. But the "establishment of this point had no reference to the present case, in which the adop- "tion of the Bill before the House was required by imperious circumstances for what "could the Royal power do alone. It was easy to say that by that power an alien "could be sent out of the country. But how was he to be got out? He must be "indicted, then a bill must be found. That he might traverse, the cause might then "be removed by *certiorari* to another Court," and so on.

I submit that Lord Eldon there supports the Alien Bill simply on the ground that it provides machinery for giving effect to the prerogative which he maintains already existed in the Sovereign. But Lord Ellenborough's opinion is emphatic. At page 1070 of volume 34 of the *Imperial Hansard*, he is reported to have said :—

"Lord *Ellenborough* declared his decided opinion that the Crown possessed the "prerogative of sending aliens out of the country, and maintained that such prero- "gative belonged of right not only to the Monarch of this country but to the "Sovereign of every country. In support of this opinion, he quoted the authority of "Vattel. As to the construction of *Magna Charta*, it would be recollected that upon "the subject of merchant strangers, the citizens of London presented a petition to "Edward I., asserting the prerogative of the Sovereign to send such aliens out of "the country, and that the King concurred in that opinion. Such, then, was the im- "pression almost immediately after *Magna Charta* was enacted; and yet the present "Bill was pronounced tyrannical and inconsistent with the Constitution of the country. "But he, on the contrary, maintained that the present was comparatively a lenient "measure, imperiously called for by the existing circumstances of the world."

Thus Lord Ellenborough declares the prerogative to rest in the Sovereign. My friend quoted Forsyth to show that that opinion of Lord Ellenborough's was not law; but I am not aware of any authority for this opinion of Forsyth, and I think that, taking the whole passage, it is clear that this learned writer has fallen into error on this subject. He says :—"But the Crown has no power by its prerogative alone "to send any one, *whether he be a subject or an alien*, compulsorily out of the realm. "In a debate, however, in the House of Lords, in June, 1816, on the Alien Bill, which "was introduced at the restoration of peace, Lord Ellenborough, C.J., contended that "at common law the Crown has the right, by the Royal prerogative, to send all aliens "out of the kingdom; and, to prove this, he cited a petition of merchants of London "in the reign of Edward I., praying that Monarch to do so. (34 *Parl. Debates*, 1069.) "But this is certainly not the law of England." There is no authority for that state- ment, and, with the greatest respect to Forsyth, I must say that he has fallen into manifest confusion in regard to the law on this subject, because he begins his para- graph by saying—"But the Crown has no power, by its prerogative alone, to send "any one, *whether he be a subject or an alien*, compulsorily out of the realm." Now the law is totally different with regard to a subject and an alien. There is no analogy whatever between them. In this same volume of "Cases and Opinions on Constitu- "tional Law," by Forsyth, at page 35 there is an opinion given by Sir Edward Northey, who was Attorney-General in the year 1705, and who is referred to in Campbell's "Lives "of the Chancellors," vol. 5, "Life of Lord Cowper" as a very eminent lawyer. His opinion given to the Government of the day is to this effect:—

"To the Right Hon. the Lords Commissioners for Trade and Plantations.

"May it please your Lordships—In obedience to your Lordships' commands, "signified to me by Mr. Popple, junior, your Secretary, I have considered of the an- "nexed extract of a letter from Col. Seymour, Governor of Maryland, relating to the "Jesuits and Papists there; and the extract also sent me of the grant of the province "of Maryland to Lord Baltimore, relating to the ecclesiastical power, and the questions "proposed thereon, whether the laws of England against Romish priests are in force "in the plantations, and whether Her Majesty may not direct Jesuits or Romish priests "to be turned out of Maryland ?" Then he deals with the first question as to whether these laws are in force against Romish priests, and goes on to the last point as to whether Her Majesty can turn them out:—"As to the question whether Her Majesty "may not direct Jesuits or Romish priests to be turned out of Maryland, I am of

"opinion, if the Jesuits or priests be aliens, not made denizens or naturalized, Her "Majesty may by law compel them to depart from Maryland; if they be Her Majesty's "natural-born subjects, they cannot be banished from Her Majesty's dominions, but "may be proceeded against on the last before-mentioned law." So, if they were aliens, they could be turned out by the Queen's command; but if they were Queen's subjects they must be dealt with according to law. My learned friend, Dr. Madden, yesterday referred to "Comyns' Digest" vol. 7, page 45, but the observation there is founded upon a passage in "7 Coke" to this effect—"But the subject of a King in "amity may come without licence or safe conduct." Calvin's case in "Coke's Reports" fully bears this out. Of course, I do not dispute Calvin's case nor this statement in Comyns, that undoubtedly aliens may come,—until they are prohibited. The point is whether there is a power vested in the King to prohibit them.

The Chief Justice.—Dr. Madden quoted that for the purpose of giving additional weight to his argument that the prerogative was confined to cases of war.

The Attorney-General.—I would like some authority to show that it is confined to cases of war. As a matter of fact, it has been exercised in times of peace.

Dr. Madden.—Mr. Comyns in his book distinctly puts it so.

The Attorney-General.—It is put by Comyns under a certain head.

Dr. Madden.—And he draws a distinction between persons in amity and enmity.

The Attorney-General.—They may come until they are told not to come. In fact it relates back to what I have been endeavouring to submit to the Bench, that there is a right in every nation to prevent foreigners coming in, and I say that Dr. Madden's argument with regard to the right of the English Government and the English Sovereign being confined to times of war is destitute of foundation. According to international law, it belongs to every nation at all times. Nothing can be more clear. I submit that is national law according to all the authorities. If my friend can show that under the English municipal law it is limited to times of war, I would like to see the authority. My learned friend pointed out that the prerogative had not been exercised for a long time, and the Alien Acts were referred to by him as showing the authority under which foreigners were expelled from England from time to time. I rely on the Alien Acts too. I say that they show why the King's prerogative was not more frequently exercised. They were simply to provide machinery for the exercise of a prerogative which they, on their faces, admitted to exist in the Sovereign, and they support my argument as showing the prerogative existed. As Lord Eldon says, "What is the use of talking about the prerogative without some summary means of "dealing with aliens? Therefore, we will pass Alien Acts and provide machinery for the "prerogative which exists." These Acts show that they recognised the existence of the prerogative. I would first mention the 33rd of George III., chapter 4. That Act recites that an unusual number of aliens had arrived in England, and that danger might arise to the public tranquillity from the resort of these aliens, unless due provision was made therefor, and then it goes on to enact a long series of conditions and restrictions affecting aliens, showing that the Act was to provide machinery for dealing with them. The first is that the master of a vessel arriving with aliens is to give the officer of Customs, at the port of arrival, a written declaration specifying the names of the aliens. Then it provides the penalty on him. It makes certain exemptions; it prohibits arms being imported; it compels aliens to reside in certain places; it provides for passports being given to aliens and penalties for offences against the Act; so that the whole of that Act is based upon a power in the Crown that existed for keeping out aliens, and provides machinery for dealing with them when they came into the country. This appears also, I should have stated, by the earlier Act—the Act of the 5th and 6th of George III., chapter 86. Its preamble is in these words:—"Whereas it is expedient that provisions should be "made for establishing regulations respecting aliens arriving in this kingdom or "resident therein in certain cases: Be it enacted by the King's Most Excellent Majesty, "by and with the advice and consent of the Lords Spiritual and Temporal and Com-"mons in this present Parliament assembled and by the authority of the same, That "when and so often as His Majesty his heirs and successors shall, by his or their "Proclamation, or by his or their Order in Council, or Order under his or their Sign "Manual, or the Lord Lieutenant or other Chief Governor or Governors and the "Privy Council of that part of this realm or United Kingdom of *Great Britain* and "*Ireland* called *Ireland* shall by Proclamation or by Order of Council direct that any "alien or aliens who may be within this realm, or who may hereafter arrive therein, "shall depart this realm within a time limited in any such Proclamation or Order

"respectively, and any such alien shall knowingly and wilfully refuse or neglect to pay "due obedience to such Proclamation or Order respectively, or shall be found in this "realm or any part thereof contrary to such Proclamation or Order, as the case may "be, it shall be lawful for any of His Majesty's Principal Secretaries of State, or the "Lord Lieutenant or other Chief Governor or Governors of *Ireland*, or his or their Chief "Secretary, or for any justice of the peace, or for any mayor, chief magistrate, of any city "or place to cause every such alien to be arrested and to be committed to the common "gaol of the country or place where he or she shall be so arrested, there to remain without "bail or mainprize until he or she shall be taken in charge for the purpose of being sent "out of the realm under the authority hereinafter given for that purpose." That Act evidently recognises the prerogative being in the Crown. It says that whenever His Majesty makes an order on aliens to depart, they shall depart, and if they do not, it provides machinery for dealing with them. I submit it clearly recognises the existence of the prerogative. The Act of 1848 is on much the same lines providing machinery. As far as I am aware, all the Alien Acts go on the same lines for providing machinery for carrying out a prerogative which they recognise exists in the Crown. In referring to the previous Act—the Act of the 33rd of George III.—I wish to call particular attention to sections 7 and 18, which I submit recognise the law as laid down by Lord Ellenborough. Section 7 says:—"And be it further enacted by the authority afore-"said, that when and so often as His Majesty his heirs and successors shall think it "necessary for the safety or tranquillity of the kingdom by his or their Proclamation "or Order in Council to direct that aliens of any description therein contained (not "being alien merchants within the true intent and meaning of this Act) shall not be "landed in this kingdom, or shall not be landed except at such places and under such "regulations as shall be in such Proclamation or Order expressed, then and in every "such case the master or commander of every ship or vessel or boat having any such "aliens on board shall not suffer any such alien or aliens to land within any part of "this kingdom contrary to such Proclamation or Order in Council unless by the "express permission of His Majesty signified under the hand of one of His Majesty's "Principal Secretaries of State; and every such master or commander wilfully "neglecting to conform to any of the directions or regulations contained in such "Proclamation or Order shall forfeit fifty pounds for every alien so landed, to be "recovered before one or more of His Majesty's justices of the peace, one moiety "thereof to be to the informer or informers and the other moiety to the poor of the "parish where such offence shall be committed; and such ship or vessel from on board "of which any such alien or aliens shall so land, and every other vessel or boat used "in landing any such alien or aliens, shall and may be seized by any officer or officers "of the Customs or Excise, and the same shall respectively be forfeited together with "all tackle apparel ammunition and furniture thereunto respectively belonging."

Under that section the master offending against the Proclamation was to be liable to a penalty of £50 for every alien so landed, and his boat was liable to seizure and forfeiture. But in section 18, which is dealing with another matter, namely directing aliens in the country to reside in a certain place, the language is quite different, because there is no prerogative in the Sovereign to direct an alien to live in a certain place. In section 18 the words were:—

"*It shall and may be lawful* for His Majesty his heirs and successors by his "or their Proclamation or Order in Council or Order under the Royal Sign Manual to "order and direct any alien or aliens who shall have arrived within this kingdom since "January 1, 1792, or who shall arrive therein during the continuance of this Act, other "than alien merchants and the domestic servants of any of His Majesty's natural-"born subjects, or of such as shall have had letters patent of denization or been natural-"ized by Act of Parliament, actually and *bonâ fide* employed in the service of their "respective masters, to dwell and reside respectively in such district or districts as "aforesaid as His Majesty his heirs or successors shall think necessary for the public "security."

And the section went on to provide that every offender would be liable on conviction to a month's imprisonment. Thus, section 7 recognised the prerogative of the Sovereign to exclude aliens from landing, and its language was different from that in section 18, because once an alien was in the country the Sovereign had no right to direct where he should reside. The power was, therefore, given by the Statute to order the alien to live in a particular place. Section 7 only provided machinery to carry out more expeditiously a power that had previously existed. It is analogous to

our own legislation on the subject. The Chinese Immigrants Act of 1865 (No. 259) gives specially to the Governor in Council power to make regulations for compelling these Chinese immigrants to reside in any part of the colony the Governor in Council may think proper. It is simply following the Act of George III. It assumes the prerogative right in the Sovereign to exclude aliens; but if the Chinese are in the country they cannot be ordered to reside in a certain place without legislation by Parliament.

Mr. Justice Kerferd.—Were the Chinese camps formed under that section?

The Attorney-General.—I am not aware whether they were or not; but certainly under it the Governor in Council could at any time make an Order in Council removing all the Chinese in Little Bourke-street from there to Wangaratta. All the Alien Acts were on the same principle. They provide machinery for regulating the prerogative which exists—the Sovereign prerogative of preventing foreigners entering the country—but providing more efficacious means for enforcing the prerogative. As Lord Eldon said, what is the use of having a prerogative if costly machinery is necessary to enforce it? They also explain the disuse of the prerogative, that my learned friend relied so much upon, because the prerogative was exercised and exercised effectually under those Acts.

The Chief Justice.—Does disuse of the prerogative, assuming it had existed, deprive the Sovereign of it?

The Attorney-General.—No. Time does not run against the Sovereign.

The Chief Justice.—Can disuse be considered as an abandonment by implication?

The Attorney-General.—No disuse can take away the prerogative. I need scarcely argue that. As I am reminded, there was an interesting example of the prerogative being used after very long disuse in England. There has been a gold mine lately opened in Wales, and the Crown has claimed the gold, although such a right had not been claimed for centuries, if at all. Another instance of the exercise of a long disused prerogative occurred in reference to the abolition of purchase in the army. It was proposed to abolish purchase by an Act of Parliament, but the Bill did not pass in one of the Houses. As the Bill had not passed, resort was had to the Royal prerogative, and purchase was abolished by Royal warrant. No doubt the Crown has exercised this prerogative regarding aliens with the co-operation of Parliament and also without the co-operation of Parliament. The explanation of the provision in *Magna Charta* relating to dealing with alien merchants was that King John had so abused his prerogative by worrying strangers and sending them out of the country that it was considered necessary to make some stipulation for them. Sir Alex. Cockburn, in his book on "Nationality," at page 139, said:—

"The jealousy of foreigners appears to have dated from the earliest times. It "is stated by Lord Coke that by the ancient kings, among whom King Alfred was "one, it was forbidden that any alien merchant should make his haunt in England, "except at the four fairs, or sojourn in the land above forty days. Till upwards of "two centuries after the Conquest it appears that strangers were not permitted to "reside here, even on account of trade, beyond a limited time, except by special "warrant. They were considered only as sojourners coming to a fair or market, and "were obliged to employ their landlords as brokers to buy and sell their commodities, "and one stranger was often arrested for the debt or punished for the misdemeanor "of another. Anderson, in his 'History of Commerce,' states that as late as 1276 it "was a general rule in England that the aggregate body of every particular nation "of foreigners residing here was obliged to answer for the misdemeanors of every "individual belonging to it. The gross impositions and exactions practised by King "John on foreign merchants had, however, occasioned a provision to be made in *Magna* "*Charta* for their protection. 'All merchants'—which Lord Coke shows to have "meant merchant strangers in amity—'if they were not publicly prohibited before, "were to have safe and sure conduct (1) to depart out of England, (2) to come to "England, (3) to tarry there, and so forth.'"

Mr. Justice Holroyd.—It does not say "foreign merchants," it says "merchants."

The Attorney-General.—It refers to those coming in from the outside. The Parliament interfered in consequence of the gross abuse by the Crown of the merchants; and it was considered by Parliament to be policy to show them more consideration. I rely then on the Alien Acts as showing that the prerogative existed, and the Parliament only provided machinery for enforcing it. There were a number of instances where

the prerogative existed but where the Crown had asked Parliament to co-operate with it in providing machinery for effectually enforcing the prerogative. I have already referred to the abolition of purchase in the army. The Crown had the prerogative to abolish purchase, but yet it asked Parliament to legislate. But there are other instances, such as the Gunpowder Act, 27 Geo. II., c 16, which provided machinery for enforcing the undoubted rights of the Sovereign in regard to gunpowder just in the same way as the Aliens Acts did with regard to aliens.

The Chief Justice.—As to the abolition of purchase, there was a Bill introduced.

The Attorney-General.—A Bill was introduced but was not passed, and then the Sovereign intervened and did it herself. If the prerogative exists, unless it is expressly taken away, no Acts of Parliament providing machinery for it can affect it. He might here further refer to the *Times* Law Reports for the week ending May 16, 1888, page 533, showing the right of any country to expel a foreigner. In the case of *Re* Wardale, on an application for a writ of *habeas corpus* to discharge a prisoner whose extradition was demanded by the United States, the Solicitor-General, who appeared with the Attorney-General to oppose the application, "pointed out that by the law of the "United States the judgment of the Supreme Court would be binding upon all Courts "in the United States upon the points decided, as it related to federal law and the "construction of a treaty, and he also pointed out that, according to the American "cases, it was not a question of jurisdiction, which could be raised by the prisoner as "a defence." And Lord Coleridge interjected—"He has no absolute right of asylum, "as the dissentient judge seemed to suppose. Any country may expel a foreigner." I should have cited that before. I will now briefly refer the Court to some cases in which this prerogative has been used by the Crown. Dr. Madden had cited from "May's Constitutional History" a passage in which it was stated that it had not been exercised since the time of Elizabeth. That was not quite correct, because it will be found that it has been exercised in other cases since that time. It was certainly exercised in several cases before that time. Madox, in his "History of the Exchequer," chapter VII., section 8, quotes a charter from King John allowing the Jews to reside in England. In 1290, Edward I. expelled the Jews by proclamation. He refers to Lingard's History, vol. 3, chapter 254. With regard to that expulsion of the Jews by proclamation, I have searched, but I have not been able to find any Statute or Act passed on the subject. If there were none, then it was a clear case of expelling by prerogative.

Dr. Madden.—It was on the same principle that King John extracted teeth from one Jew till he disgorged the sum the King required.

The Attorney-General.—There is also a case in recent times (1837) of *Re* Adam (1 "Moore's Privy Council Cases" 460), where Mr. Adam was expelled from the island of Mauritius by the Governor and Council. He was deported and carried out of the island. In the marginal note to the report in 1 "Moore," it is stated that it was held that the status of a party resident in the Mauritius must be determined by the laws of England, but the rights and liabilities incidental to such status must be determined by the law of the colony. By the 13th article of the *Code Civil* (which prevailed in the Mauritius previous to the surrender to the British Crown), the domicile of an alien can only be obtained *par l'autorisation du gouvernement*, which, according to the law and practice in France, is an express and formal authority of the Government and not merely a tacit or permissive acquiescence for the residence of an alien friend in the island. Where therefore an alien friend had by an order of the Governor and Colonial Council been deported and directed to quit the island within a month, it was held by the Judicial Committee of the Privy Council, to whom the case was referred by the Crown, that such order was consistent with the law of France and strictly legal, notwithstanding that it appeared that the party so deported had enjoyed the privileges and exercised the rights of a person duly domiciled in the island. Of course, there is the distinction that Mauritius, having been originally a French possession, the French law on the subject regulated it; but the law existing, the act was done by the Executive.

The Chief Justice.—That was done by the Governor in Council.

The Attorney-General.—Yes. And my contention is that, if there is this right by the law of England, it is equally clear that the Governor here can deport as the Governor in Council did there. That is an instance of deporting in recent times (1837).

Mr. Justice Wrenfordsley.—That is a colony by conquest. This is a colony by occupation.

The Attorney-General.—I cited the case to show that if the perogative existed under the English law to deport a foreigner or to prevent a foreigner from landing, just as it was exercised in Mauritius by the Governor in Council, so it could be exercised here by the Government. That is a case that occurred in recent times. The deportation was an executive act, and not one done by the Legislature. It was based on French law; but if it could be exercised there it can be exercised here if the law of England vests this prerogative in the Executive. There is also a recent case of expulsion from Jersey. There is no formal report of it, but an account of it would be found in the *Times* of the 17th October, 5th November, and 26th November, 1855. A number of French refugees had settled in the island, and they established a newspaper which published outrageous libels. The Executive, without consulting the Legislative body of the island, expelled them out of the island bodily. There was some question raised as to whether the Legislative body should not have been consulted beforehand, which was never decided. But the case remains as an example of an Executive under our Constitution sending foreigners out of a country.

These are the authorities I rely on as showing that there is the prerogative in the Sovereign, and that it has been exercised more than once, and I rely on the Alien Acts as recognising the prerogative. Further, upon principle, I contend that this prerogative must be vested in the Sovereign, having regard to his position in the English Constitution and the executive powers placed in the Sovereign. In the United States, sovereign power is divided between the President and the Senate and the Courts. But in England the whole executive power of the nation rests in the Sovereign. The Sovereign makes war and proclaims peace, cedes territory, sends ambassadors and receives them, makes all treaties, commands the army, and is the fountain of justice for the whole country. It is the Sovereign in whose name the writ of *ne exeat regno* is issued, prohibiting a subject leaving the country, and it would be strange if he has a prerogative right to prevent a subject leaving the realm but must ask authority from Parliament to expel foreigners or prevent them coming into the country. It is a right which in every nation must rest somewhere. Under our Constitution it rests with the Sovereign.

Mr. Justice Holroyd.—Except where controlled by Act of Parliament.

The Attorney-General.—Yes; but I am reminding the Court that every executive act is done through the Sovereign. It would be strange if this undoubted right of every nation to protect itself against foreigners were not vested in the Executive. It would be extraordinary if this one required legislation. If Parliament were to be consulted on the exercise of that prerogative, its exercise would be useless. Parliament may not be sitting, and, if it was sitting, there must always be some little time in getting a Bill through. The Crown must act on an emergency. Supposing there was a probability of war, and 1,000 Frenchmen proposed to land at Portsmouth, can it be contended that the Crown would not be entitled to refuse them admittance? Is it necessary that there should be an Act of Parliament to exclude them, to make it lawful to exclude them? If it were, then the prerogative was not worth having. The British empire would be in a different position in the exercise of the national prerogative of excluding foreigners to every other nation in the world. It is all very well to talk of a Bill of Indemnity. Dicey talks of a Bill of Indemnity; but that is a most unsatisfactory kind of argument to say that, in a case of emergency, the Crown must act unlawfully in the hope of a Bill of Indemnity. It is altogether different in the case of subjects, to whom Dicey refers, and that of foreigners. By our law no wrong can be done to a subject without his having a remedy for it. An Act of Indemnity is required in cases where subjects are concerned; but not where the Crown deals with aliens. On the question of prerogative, I may also refer to "De Lolme on the English Constitution" (published in 1853 by Macgregor), page 63, in which, giving a description of the powers of the King of England, he says:—

"The King is, with regard to foreign nations, the representative and depository "of all the power and collective majesty of the nation. He sends and receives "ambassadors, he contracts alliances, and has the prerogative of declaring war and "of making peace on whatever conditions he thinks proper."

Lord Brougham, in his work on the British Constitution, described the position of the King in much the same words.

If this prerogative then exists and is vested in the Sovereign, the next question is whether our Chinese Statutes interfere with that prerogative. I am speaking now of Her Majesty's prerogative. I shall deal afterwards with the Government of Victoria. Has the prerogative been limited in Victoria by the two Chinese Acts that we have passed? My learned friend (Dr. Madden) said something about the two Statutes constituting an invitation to the Chinese to come here. But the point is whether there is anything in the Statutes by which the prerogative of Her Majesty is taken away. I say clearly there is not. First, on the obvious principle that the prerogative of the Crown is not affected unless it is expressly named in the Act The prerogative of the Crown cannot be taken away by implication. "Chitty on Prerogative" and "Maxwell on Statutes" explain this well-known principle.

The Chief Justice.—The plaintiff in this case says that on tendering the amount of the poll-tax he has a statutory right, in his particular case, which prevented the exercise of the prerogative.

The Attorney-General.—I submit that cannot be done unless it is expressed in the Act. Assuming that there is a prerogative to prevent him landing, and the Act says that the Chinese shall pay £10 on landing—that does not take away the right under the prerogative. At most it is only implication. It gives the plaintiff no rights —theAct is in restriction of his rights.

The Chief Justice.—The Crown is a party to an Act of Parliament. Assuming that there is no illegality in the mode in which the plaintiff was brought into Victoria, might it not be contended that the Crown had, with the other branches of Parliament, contracted to admit a friendly alien upon payment of a poll-tax?

The Attorney-General.—Clearly there is no contract with the alien.

The Chief Justice.—Might it not be put as an invitation to Chinese to emigrate to Victoria?

The Attorney-General.—No; and, even if she had, she could say at any time that for the future she would not be bound by it.

The Chief Justice.—Suppose she made a treaty with China that any Chinese, on paying a certain sum, should be received, would that not be a parting with the exercise of the prerogative, or would it be a moral contract to which no effect need be given? The Crown is one of the parties to the contract by the Statute.

The Attorney-General.—It may be immoral or wrong, but it would be strictly legal.

The Chief Justice.—If the Sovereign is one of the parties?

The Attorney-General.—It would not destroy the prerogative if she chose to go back. I assert the prerogative. But I say there is no such contract under the Statute. The prerogative must be got rid of by some means—either by giving it up expressly or by an Act of Parliament. A foreigner cannot come here and sue an officer of the Crown for acting under it.

The Chief Justice.—A foreigner is suing the Crown for not permitting him to land. The Crown adopts the act of the officer. That is the act of the Crown which is made the subject of an action for damages. The Crown, by sanctioning a Statute, holds out an invitation to this and other foreigners to land here on payment of a sum of money. You say the Crown would still have power to exercise the prerogative of excluding them, notwithstanding that they were willing to pay the poll-tax.

The Attorney-General.—Yes, I do, and for this reason. No one shows how or where the prerogative is killed or destroyed. It is not in the Act of Parliament. That Act only puts an additional restriction on them. The Act of 1881 makes it penal for any ship to come into Victoria with more than the statutory number. Section 3 provides that before any immigrant shall be permitted to land he must pay a sum of £10. The section runs thus:—

"Before any immigrant arriving from parts beyond Victoria shall be permitted "to land from any vessel at any port or place in Victoria, and before making any "entry at the Customs, the master of the vessel by which such immigrant shall so "arrive shall pay to the Collector or other principal officer of Customs the sum of £10 "for every such immigrant, and no entry shall be deemed to have any legal effect until "such payment shall have been made, and such immigrant for whom such sum has "been paid shall receive from the said Collector or other principal officer a certificate "to that effect. If any master shall neglect to pay any such sum, or shall land or "permit to land or suffer to land or to escape from such vessel at any port or place in "Victoria any immigrant before such sum shall have been paid by such master or his

"agent, or before such list shall have been delivered, such master shall be liable for "every such offence to a penalty of £50 for each immigrant so landed or permitted or "suffered to land or to escape, and in addition to such penalty shall also pay the sum "hereby required to be paid for each such immigrant."

If the master is liable to a penalty for every immigrant who attempts to enter Victoria, and if there is an exemption in favour of a certain class of Chinese, I submit this is a plain restriction on their entering. It does not place them in any better position than other nationalities on which no restriction is placed. This Act is unusually restrictive. And the words "before any immigrant shall be permitted to land he shall pay £10" does not take away the prerogative if it exists.

Mr. Justice Wrenfordsley.—Is not the exercise of the prerogative interfered with by making the provision that the immigrant may come in?

The Attorney-General.—He shall not be allowed to come in unless in certain cases mentioned. He is placed under disabilities as to coming in. There is no contract or agreement that he shall come in. There is no contract to let him in. And if there is, how does it take away the prerogative? I cannot see how an Act placing certain disabilities on Chinese can be said to give them greater rights than are possessed by other foreigners.

Mr. Justice Kerferd.—If war were declared with China, should we require to repeal the Chinese Immigration Acts to prevent Chinese coming into the colony?

The Attorney-General.—Certainly not. As Chitty says, the prerogative of the Queen cannot be affected except it is expressly taken away by Act of Parliament. And if this prerogative exists and is not abolished, taken away, or affected in any way by these Acts, I would submit that the very nature of the prerogative is such that it is active all over the Queen's empire. That stands to reason and common sense, and can be supported by references to authorities. Further, I submit that the prerogative must be as vital in Melbourne as it is in London, or else it would be notoriously useless, and would defeat its own object. Assuming there is this prerogative in the Sovereign, it must be vital everywhere. It cannot be said to be a prerogative which is only active in the United Kingdom or in any particular place; it must extend all over the empire, because the very nature of the thing, of necessity, is to prevent foreigners coming into the Queen's dominions. The important question then arises—how is that prerogative to be exercised here in the colony of Victoria? I would here lay down a position which I do not think will be disputed—or that I shall find it necessary to cite authorities in support of—that the Queen, personally, apart from advisers, cannot exercise any prerogative. I think that is undoubted law. All the prerogative powers of the State are vested in the Queen, but they must be exercised through proper agents, and the Sovereign by herself alone cannot do a single public act. There must be someone through whom it is done, or who is responsible for it. Just as is the case with regard to the positions which your Honors hold in administering justice. The Sovereign is technically the fountain of justice, and she is supposed to be present in her Courts. But, practically, she cannot herself sit and adjudicate upon a single case. In very early days she used to do so. I do not know that any Sovereign has expressly given the right up; but if the Sovereign were to adjudicate personally, it would be undoubtedly contrary to law. The Sovereign can only administer justice through her Judges. And just in the same way I take it to be perfectly clear law that the Sovereign can only exercise her other prerogatives through some responsible agent. She cannot do anything herself alone. That is undoubted law; but I will just refer to Todd's work on "Parliamentary Government in England"; he quotes some authorities on the question. At page 169 of vol. I., he writes:—

"As a pledge and security for the rightful exercise of every act of Royal "authority, it is required by the Constitution that the Ministers of State for the time "being shall be held responsible to Parliament and to the law of the land for all public "acts of the Crown. This responsibility, moreover, is not merely for affairs of State "which have been transacted by Ministers in the name and on the behalf of the Crown, "or by the King himself upon the advice of Ministers, but it extends to measures that "might possibly be known to have emanated directly from the Sovereign. If, then, "the Sovereign command an unlawful act to be done, the offence of the instrument is "not, thereby, indemnified; for though the King is not personally subject to the "coercive power of the law, yet in many cases his commands are under its directive "power, which makes the act itself invalid, if it be unlawful, and so renders the "instrument of its execution obnoxious to punishment."

And on page 175 he puts it further. He refers to the great conflict which took place in the Imperial Parliament in the year 1807, "when the King dismissed "his Ministers because they refused to sign a pledge which he had no right to "exact of them," and he says :—

"On this occasion we find it distinctly enunciated as incontrovertible maxims "(1) 'That the King has no power, by the Constitution, to do any public act of "government, either in his executive or legislative capacity, but through the medium "of some Minister, who is held responsible for the act; (2) That the personal "actions of the King, not being acts of government, are not under the cognizance of "law.'"

That shortly states the law on the subject, and, as further illustrating it, I would here refer to the work of the late Dr. Hearn on "The Government of England." I have the more satisfaction in making reference to the writings of Dr. Hearn, because not only was he a man of the most undoubted learning and research, and a constitutional lawyer whose authority is known throughout the world, but he was known to have held by no means extreme views on this question—I mean to say that he cannot be suspected of any unsafe or unsound views. Dr. Hearn was a very strict constitutional lawyer; and, therefore, when I cite his description of a constitutional Sovereign, I think I am on safe ground. In his work on "The Government of "England," second edition, page 118, Dr. Hearn says :—

"The foundation on which the doctrines of our modern constitutional system "rest is very simple. It consists in the extension to the discretionary powers of the "Crown of that rule of its official expression which controls the exercise of its legal "powers. It supposes that in the former as well as in the latter case the King will "act officially through and by the advice of some acknowledged servant or counsellor. "This principle has a double application. The first relates to the proceedings of the "Royal advisers; the second to their choice. In every act of State the King is guided "by the advice of his counsellors; and in their removal he is guided by the advice of "his Parliament. Thus, while no confusion arises between their respective functions, "the harmony between the Executive and the Legislature is complete, and remains so."

Further on, at page 124, he proceeds as follows :—

"It has been a subject of no small surprise and remark that our modern system "of government is not expressed, and seems incapable of being expressed, in a legal "form. The Cabinet is a body unknown to the law. When it was desired that "responsible government, as it is called, should be introduced into the colonies, it was "found that the nearest approach to a written description of it was obtained by a "very trifling change in the Governor's instructions. The reason of this strange fact "is now apparent. Our present political system deals with the discretionary powers "of the Crown. But where powers are discretionary, their exercise cannot, by the "very terms, be controlled. Where there is legal obligation, there is no room for dis-"cretion. But unless the monarchical form of government were changed, a course "which neither now nor at any previous time the country could be induced to adopt, "a large discretion must rest with the Crown. Thus, since this condition must be "accepted as an ultimate fact in our political system, and since all direct control is, "from the very nature of the case, impossible, nothing remains but to provide such "indirect influences as may best tend to secure the satisfactory use of that discretion."

And on page 126 he says :—

"The transaction of public business by the King personally, or by any other "agency than that of his Ministers for the time being, is, in this sense, unconstitu-"tional."

On page 162—and this is the last quotation I will trouble the Court with—he writes :—

"It is now definitely settled that the Royal prerogatives are exercised in "conformity with the advice of Ministers; that no Ministry can satisfactorily serve "the Crown unless it also possess the confidence of Parliament; that if the King "continue his confidence in his servants, although no such confidence be felt by the "House of Commons, the proper mode of terminating the difference is by an imme-"diate dissolution of that House; and that the Ministry must abide by the results of "the general election."

I do not think there will be any doubt about that exposition of the law—that the Sovereign herself can do nothing personally; and if this prerogative power to exclude aliens exists, and is vital everywhere throughout the empire, then, as it

cannot be exercised by the Sovereign personally, it must be exercised under advice of one set of Ministers or another—of Her Majesty's advisers for Imperial affairs, or of Her Majesty's advisers in and for Victoria. Now, if it cannot be exercised in this colony under the advice of local Ministers, then, I submit, it cannot be exercised at all either here or over two-thirds of the British empire which enjoys responsible government. For where responsible government has been granted in local matters, there, I submit, it would be unlawful for the Imperial Ministers to advise in those local matters. And England would be deprived of the right of exercising this great national power of preventing foreigners coming into the empire over the greater portion of her dominions. The position, then, I mean to maintain will be, shortly, this, and I will endeavour to support it, as well as I can, by argument. I shall maintain that it will be contrary to law for Her Majesty's Imperial advisers to advise her with regard to the exercise of this prerogative in Victoria. Of course, I strictly confine it to local affairs. The lawful right to advise Her Majesty with regard to the internal affairs of Victoria is given by law to Her Majesty's Ministers in and for Victoria, and, therefore, to Her Majesty's Government in Victoria is given the lawful right of dealing with this particular prerogative, the exercise of which is admitted on the pleadings to have been in defence of the internal peace of Victoria. Now I submit that the Court—before I go more into particulars—will take judicial notice of the fact that what is termed responsible government is established here by law. I shall show the terms in which it is established afterwards; but I wish to premise that it will be the duty of the Court to take judicial notice of the fact that responsible government exists and is working here every day. We see it all around us. For example, the appointment of Executive Councillors. The Queen's advisers here advise that a certain person be appointed Executive Councillor, and the appointment is made in the Queen's name. The Queen sends her greetings to this particular individual; the commission runs, that, confiding in his loyalty and so forth, she appoints him to be one of her Executive Councillors. I will refer the Court to the well-known case of Buron *v.* Denman, 2 Exchequer, to show that Baron Parke and the other Judges took judicial note of the position of Lord Palmerston as Her Majesty's Secretary of State, although there was not the slightest proof given of who Lord Palmerston was, what his position was, how he came to speak on behalf of the Sovereign, or how the Crown assented to the act of Captain Denman. In the case of Buron *v.* Denman, the Court will remember, Commander Denman destroyed certain property of a foreign slave dealer, and Lord Palmerston directed the Under Secretary to write a letter saying that he quite approved of what Captain Denman had done. This letter, with others to the same effect, was read in Court, and the defence was pleaded that it was done by command of Her Majesty the Queen, and that it was an act of State. Objection was taken. It was asked—"How can this be said to be an "act of the Queen or an act done by command of the Queen, seeing that Her Majesty "knew nothing about it?" But Baron Parke and the other Judges took notice of the constitutional relations existing between Lord Palmerston and the Sovereign; and, in the same way, I submit that this Court will take judicial notice of the fact that we have what is called responsible government in operation in Victoria.

Mr. Justice Holroyd.—Was it assumed in the case of Buron *v.* Denman that the Queen did know of the action of Captain Denman?

The Attorney-General.—No; on the contrary, it was said she did not know.

Mr. Justice Holroyd.—But was it shown that the Queen assented to the action of Captain Denman?

The Attorney-General.—Not at all. It was argued that she knew nothing about it; but her Minister knew, and her Minister ordered the Under Secretary to write a letter approving of the action of Captain Denman, thereby making it an act of State. The responsible Minister of the Queen was held to speak for the Queen, and so long as a Minister is allowed to remain in office he is held to speak for the Queen and act for the Queen, no matter whether she knows of it or not.

Mr. Justice Holroyd.—But has not Her present Majesty protested, and successfully protested against that assumption in the case of a Minister who sent off despatches on his own account without consulting Her Majesty or obtaining her consent?

Mr. Justice Wrenfordsley.—That was in the case of the memorable letter to Lord John Russell, in which the Queen stated that all despatches must be submitted to her prior to being forwarded to their destination.

Mr. Justice Holroyd.—Surely the Queen can insist on having a knowledge of what is done?

The Attorney-General.—There is not the slightest doubt about that, and nothing could be more proper. At the same time it would be utterly impossible for the Queen to know of all the acts of State done throughout her vast empire.

Mr. Justice Holroyd.—Certainly not all.

Mr. Justice Williams.—In the case of Buron *v.* Denman it was taken for granted that the Queen had no personal knowledge of what had taken place, but it was assumed that Lord Palmerston's knowledge was Her Majesty's knowledge.

The Attorney-General.—Precisely; and that is exactly what we say should be done, and what we ask the Court to do in the present case. The Sovereign possesses the undoubted prerogative of at any time dismissing her Ministers. If the Sovereign does not dismiss them, the Ministers' acts are her acts—like the case of principal and agent—and the Government here has not been dismissed on account of what they have done in this Chinese difficulty. As I said a moment ago, it is just like the ordinary case of principal and agent. The Queen has certain Ministers to act for her. She has certain instruments for expressing her political will, and just as Her Majesty's Judges are appointed to express her judicial will, so are responsible Ministers appointed to express her political will. If these Ministers act in the Queen's name, and she does not dismiss them, then she is bound by what they have done, just as the principal is bound by the act of his agent. It would not do for Her Majesty to say that she did not know of it. Her personal information is not in question at all; it is simply her constitutional information; and as long as the Queen does not dismiss her Ministers, they are her accredited agents, and their acts are hers. At any time she could herself, personally, or through her agent here, the Governor, dismiss her local advisers.

Dr. Madden.—That was decided absolutely the other way in Cameron *v.* Kyte.

The Attorney-General.—My learned friend has totally misapprehended the marginal note to that case. The case is reported on page 332, Knapp, vol. III., and the marginal note reads as follows:—

"The Governor of a colony has not, by virtue of his appointment, the sovereign "authority delegated to him, and an act done by him on his own authority, unauthor- "ized either by his commission or expressedly or impliedly by any instructions, is not "equivalent to such an act being done by the Crown itself, and is consequently not "valid."

Dr. Madden.—Read the last paragraph of the marginal note.

The Attorney-General.—Very well; the last paragraph reads as follows:—

"The non-objection on the part of the Crown to a notification or proclamation "issued by a Governor of one of its ceded colonies does not imply that the Governor "had authority in the subject of the proclamation, nor will its non-interference render "the proclamation valid on the ground of acquiescence."

I don't dispute that for a moment. It does not touch the question in the slightest degree, and for this reason: The Governor is an agent with limited instructions, but responsible Ministers of the Crown stand for the Crown in all political matters. That is the difference. I do not pretend for a moment that if His Excellency alone had done this act of which the plaintiff complains, it could have bound the Crown. But I will again refer the Court to the case of Buron *v.* Denman, 2 Exchequer, page 186. It was contended in that case, on behalf of the appellant Buron, that the Queen knew nothing about the act of Captain Denman, and that there had been no ratification. On the question of ratification, counsel for the appellant put the case to the Court as follows:—

"There has been no ratification. It does not appear that the letters of the "Secretaries of State were written by authority under the Great Seal, which is neces- "sary to render the Crown responsible for an act like the present, which gives a "*casus belli* to the Queen of Spain. Indeed it does not appear that the matter was "in any way submitted to the Queen. The Court will not presume a ratification, the "effect of which would be to make the Crown responsible for a violation of the law "of nations towards a friendly power."

Baron Parke consulted his colleagues, and decided that the letter of Lord Palmerston was ample proof of ratification by Her Majesty. But I refer to that only

on the point of the Court taking judicial notice. On page 189, Baron Parke said:—

"It is argued on the part of the plaintiff that the Crown can only speak by an "authentic instrument under the Great Seal. We are clearly of opinion that, as the "original act would have been an act of the Crown if communicated by a written or "parol direction from the Board of Admiralty, so this ratification, communicated in "the way it has been, is equally good."

Mr. Justice Wrenfordsley.—The Board of Admiralty is appointed by commission from the Queen. Almost everyday you may see it announced that Her Majesty has been pleased to appoint such and such a person to discharge the duties of High Admiral.

The Attorney-General.—Responsible Ministers of the Crown are also appointed by commission. They are all servants of the Sovereign; there is no doubt about that. But coming back to the point I started with just now, that the Court will take judicial notice that we have here, in fact, responsible government in all local affairs, with, as I contend, the use of all prerogatives necessary for safe, every-day government here. I was referring to the case of Buron *v.* Denman to show that the Court took judicial notice of what was going on about them. Baron Parke and the other Judges took judicial notice of Lord Palmerston's official position, although you could not find in any Act of Parliament or in any law book any description of Lord Palmerston's duties. So, I ask the Court to take judicial notice, in this case, that we have established here responsible government in and for Victoria.

Mr. Justice Kerferd.—Was not the same question raised in Churchward *v.* The Queen?

The Attorney-General.—I think it was.

Mr. Justice Holroyd.—In what part of the case of Buron *v.* Denman does it appear to be assumed that because the act of Captain Denman was known to Ministers it was also known to the Sovereign?

The Attorney-General.—I do not think it was assumed that the act was known to the Crown; I think it was assumed that the Queen knew nothing at all about it.

Mr. Justice Holroyd.—Of course, in point of fact; but what I desire to know is in what part of the case is it shown that the act was treated as if it were known to the Sovereign?

The Attorney-General.—Baron Parke is reported to have said (page 189)—

"You have to take it as the direction of the Court, that if the Crown, with knowledge of what has been done, ratified the defendant's act by the Secretaries of State or the Lords of the Admiralty, this action cannot be maintained."

Mr. Justice Holroyd.—I noted that, and also the further ruling that it was not necessary for the ratification by the Crown to be under the Great Seal; but what I cannot exactly find is that part in which the knowledge of Ministers is treated as the knowledge of the Sovereign.

The Attorney-General.—That is shown by the decision of the Court, because there was no other knowledge shown throughout the case than the knowledge of Ministers. In the argument it was objected that the Queen did not know of the act, and the answer was that she need not know. And on the ordinary principle of principal and agent, if a Minister of the Crown acts for the Sovereign, his knowledge is her knowledge.

Mr. Justice Williams.—It is some years since I have examined the case, but to the best of my recollection it was decided that whether the Queen knew of the act *de facto* or not she was bound by the act of her Ministers.

The Attorney-General.—I should most certainly say that is correct law. As long as the Queen retains a Minister in office, his knowledge is her knowledge and his act is her act. If she dissent from anything he does, she can dismiss him. I was going to deal with the question of responsible government existing in Victoria, and I stated that your Honors would take judicial notice of it when one of my learned friends reminded me that I might have given an illustration with regard to the position I submitted to the Court on a previous point, namely—that the Sovereign can do no act without advice. There was a striking illustration of that in the case of Sir Robert Peel, when William IV. dismissed the Whig Ministry himself, as he had a perfect right to do, and sent for Sir Robert Peel, who was in Italy at the time, to form a new one. Sir Robert said the dismissal of the Crown was a great mistake, but as he was

the adviser of the King, he acknowledged that he was responsible for the dismissal.

The Chief Justice.—It has been laid down that although the King may be without advisers when he appoints a new Government, he is bound to find advisers who will justify his acts for dismissing the previous Government, and who will be responsible for his acts, so that the obligation of the King to have support always exists.

The Attorney-General.—I might mention, as this is a matter on which I cannot cite any absolute law authority, because there is no law stating what the constitutional position of the King's advisers is, that Mr. Gladstone, in an article he wrote in the *North American Review*, and which is published in "Gladstone's Gleanings," vol. I., page 234, puts the constitutional position very cleary. He says:—

"The reader then will clearly see that there is no distinction more vital to the "practice of the British Constitution, or to a right judgment upon it, than the distinction "between the Sovereign and the Crown. The Crown has large prerogatives, endless "functions essential to the daily actions and even the life of the State. To place them in "the hands of persons who should be mere tools in a Royal will would expose those "powers to constant unsupported collision with the living forces of the nation, and to "a certain and irremediable crash. They are, therefore, entrusted to men who must "be prepared to answer for the use they make of them. This ring of responsible "Ministerial agency forms a fence around the person of the Sovereign which has thus "far proved impregnable to all assaults."

I was going on to the point of our having responsible government here. I premise that the Court will take judicial notice of it, and I now shall refer to the Constitution Act. I am referring to the Imperial Act, of which our Act is a schedule. Our Act is described as "An Act to establish a Constitution in and for the Colony "of Victoria." The first section of it reads :—"There shall be established in Vic-"toria instead of the Legislative Council now subsisting, one Legislative Council and "one Legislative Assembly to be severally constituted in manner hereinafter pro-"vided, and Her Majesty shall have power by and with the advice and consent "of the said Council and Assembly to make laws in and for Victoria in all cases "whatsoever." Now that short section defines, I submit, the true legal position of the Government here. If Her Majesty by the advice of Her Council and Assembly can make laws, I submit that carries with it the execution and administration of the laws ; in fact, that responsible government which I say the Court will take judicial notice of. The Court will see the way it is put into law. Her Majesty shall have power by and with the advice of her Council and Assembly to make laws in Victoria in all cases. Two subsequent sections of the Act show that the Act recognises responsible Ministers, but I wish to premise that it recognises the Sovereign of England here governing with Legislative bodies constituted for Victoria. Further on in this Act we find reference to responsible Ministers and to officers retiring on political grounds. Section 37 says—"The appointments to public offices under the Government of Victoria here-"after to become vacant or to be created, whether such offices be salaried or not, "shall be vested in the Governor with the advice of the Executive Council, with the "exception of the appointments of the officers liable to retire from office on political "grounds, which appointments shall be vested in the Governor alone." That is an indication of responsible government, a clear recognition by the Imperial Parliament of our having responsible government in and for Victoria dealing with Victorian matters. Of course, no one pretends that we are anything but a part of the British empire. I read of some contention in New South Wales as to our claiming Sovereign rights, but nothing of the kind ever entered into the head of any sensible man. We only say that, being a small part of the empire, we have given us by law responsible government by the Sovereign and her local Ministers in and for Victoria. In the same way, in section 50, a certain sum of money "not more than £5,250, shall be "payable in the whole by way of pension or retiring allowance to persons holding "any of the offices mentioned in the sixth part of the said Schedule D at the time of "this Act coming into operation who on political grounds may retire or be released "from any such office." In Schedule D the officers are mentioned. In the same way, in section 51, it mentions further provision for pensions to officers who on "political "grounds may retire or be released from any such office." I would also refer the Court to the Act 91, which is commonly known as "The Officials in Parliament Act," and which was reserved for the Royal assent. Section 2 is to this effect :—"Notwith-"standing the provisions hereinbefore contained, it shall be lawful for the Governor

"from time to time to appoint any number of officers so that the entire number shall "not at any one time exceed ten who shall be capable of being elected members of "either of the said Houses of Parliament and of sitting and voting therein, provided "always that such officers *shall be responsible Ministers of the Crown* and members "of the Executive Council, and four at least of such officers shall be members of the "said Council or Assembly." There is a statutory statement such as they have not got in England that there shall be responsible Ministers of the Crown. [3rd vol. Victorian Statutes, new edition, page 2387, under the title "Parliament."] I have referred to the original Act, because it was reserved for the Royal assent. The Royal assent was announced here by proclamation. It could not apply to any Ministries in England, but here there is a legal statement that there shall be responsible Ministers of the Crown for Victoria—not Ministers of His Excellency, the representative of the Queen, but Ministers of the Crown. Now, in addition to that, I propose to refer to two despatches dealing with our political condition The first I refer to is the despatch of Lord John Russell in forwarding the Constitution Act for this country. It is dated the 20th July, 1855, and it is printed in the volume of Imperial Acts issued in 1864—the Imperial volume of our Acts. The following passage appears in it:— "In rigorous adherence to the same principle, no alteration has been made in any of the "provisions which are simply of a local character. It has been the conviction of Par- "liament that the Legislature must itself be trusted for all the details of local repre- "sentation and internal administration." The whole of the internal administration of the country is given over to the country here. It goes on—"But those portions of the "provincial enactment which controlled and regulated the future power of the Crown "as to the reserving and disallowance of Colonial Acts, and as to the instructions to "be given to Governors respecting them, have been omitted by Parliament. These "portions were plainly not of a local character, but regarded the connection of the "colony with the body of the empire." A further paragraph says:—"With respect to "all other Bills, I have no instructions to convey subject only to the general rule that "Her Majesty's Government fully recognise the expediency of leaving local questions "to be dealt with by the local Legislature, although they are not prepared to admit "the practicability of the scheme advised by the Legislature of Victoria for classifying "such questions." The concluding paragraph of the despatch is as follows:—"I "will now conclude with the expression of my earnest hope that this grant of self- "government in more ample measure than has as yet been established in any colony "of Great Britain may fulfil in its results the anticipations of all friends of liberty and "good government, both within and without the colony of Victoria; that colony has "been selected by Providence to pass through the most extraordinary social and eco- "nomical crisis which has occurred in the history of the dependencies of this empire, and "to exhibit on the most gigantic scale the power of development possessed by a new "community. It has shown at the same time, not only by ordinary manifestations of "loyalty, but by the deep sympathy which it has practically evinced in common with "the other Australian colonies with the fortunes of the mother country in her present "struggle, how strong beyond mere political union are the ties which attach the distant "branches of the ancient stem of the empire. It remains for it to prove, as under the "blessings of the same Providence it will prove, that the exercise of the fullest political "rights will at once contribute to promote the continuance of that extraordinary "internal progress and the maintenance of that powerful feeling of British union and "British consanguinity."

So that here the responsible Imperial Minister declares the effect of this Bill to be to give complete control of all internal and local matters. Another despatch I will refer to with reference to the particular question here. The defence is, the Court will remember, that the foreigner was refused admittance on the ground of preserving the public peace. It is the despatch from the Duke of Newcastle, dated the 26th June, 1863, the question being the removal of the Imperial troops from Victoria. The despatch begins:—

"Sir,—You are doubtless aware that the attention of Parliament has been "frequently directed to the question how far the colonies and dependencies of Great "Britain should be required to contribute to their own military defence. A matter of "so great and increasing importance has, of course, equally engaged the consideration "of Her Majesty's Government, and I find myself at length in a position to com- "municate to you the decision at which they have arrived in regard to the Australian "colonies. It is in these colonies (among which for the present purpose I do not

"include New Zealand) that the question arises in its simplest form. To Western "Australia it is not intended to send any regular troops. The force in Tasmania, "where the effects of the old system of transportation are not yet worn out, will be "maintained for the present at the expense of the Home Government; and in the "remaining colonies of New South Wales, Victoria, South Australia, and Queensland "there are no exceptional circumstances to prevent the free application on the part of "the Home Government of those principles which arise from, or are correlative to, *the "grant of responsible* government. *That form of government being unequivocally "established*, it is, I imagine, admitted on all hands that the Imperial Government has "no further responsibility for maintaining the internal tranquillity of the country."

There is a statement that responsible government is unequivocally established in its fullest sense, and that the Imperial Government has nothing further to do with the internal tranquillity of the country. The defence here is that the exclusion of the foreigner was carried out to preserve the public peace. That is not denied. The answer is that there is no legal power to do it. The Imperial Government cannot attend to the internal tranquillity of the country, and we would be in a bad way if no one could do it. The despatch is bound up in the Parliamentary Papers for 1867. Dr. Madden referred to section 3 of the Imperial Statute which embodied our Constitution Act, and I refer to it too, for I rely on it just as much as he does. I think it has a most important bearing on the question. The section, your Honors will recollect, embodies the provisions of the previous Act, the 5th and 6th of the Queen, chap. 76, relating to Her Majesty's giving or withholding the assent to Bills, and the provisions which direct the Governor as to how he is to deal with Bills submitted to him by the Legislature. The Imperial Government, in granting responsible government to this country, have been careful to make one exception, which is contained in section 3 of the Imperial Act, and which, embodying the old Act of the 5th and 6th of the Queen, requires the Governor to deal in a certain way with Bills presented to him. The section reads:—"The provisions of the said Act of the 14th year of Her Majesty, "chap. 59, and of the Act of the 5th and 6th years of Her Majesty, chap. 76, 'for the "government of New South Wales and Van Diemen's Land,' which relate to the "giving and withholding of Her Majesty's assent to Bills, and the reservation of Bills "for the signification of Her Majesty's pleasure thereon, and the instructions to be "conveyed to Governors for their guidance in relation to the matters aforesaid, and "the disallowance of Bills by Her Majesty, shall apply to Bills to be passed by the "Legislative Council and Assembly constituted under the said reserved Bill and this "Act, and by any other legislative body or bodies which may at any time hereafter be "substituted for the present Legislative Council and Assembly."

Now I quite agree with my friend that, by the Imperial Act, there is a distinct limitation of local self-government. It is declared that Bills passed by the local Parliament shall become law only under certain conditions. These are described in the previous Acts, 5 and 6 Victoria. That is a most distinct limitation of self-government. Owing to this section, any Bill passed by us may practically be rejected by the Imperial Minister who advises the Sovereign.

Mr. Justice Kerferd.—In the same way the Constitution which we have may be taken away.

The Attorney-General.—There is not the slightest doubt of it.

Mr. Justice Wrenfordsley.—There is a reversionary interest to the Crown.

The Attorney-General.—There is a clear limitation of responsible government.

Mr. Justice Williams.—Does that provision relate to every Bill that is passed?

The Attorney-General.—Every Bill.

Mr. Justice Williams.—The Governor may reserve any Bill for the Queen's assent.

The Attorney-General.—He may. But even if he assents to a Bill, when it goes home, the Imperial Government can disallow it within two years. But I say that if there is any further limitation, my learned friend ought to show it. I am not aware of it. There is none there on the face of the law. Here is an express limitation of our power of self-government by law. If others are intended, they ought to be mentioned as well as this limitation; but I seek in vain for any other. Therefore, I submit that, unless my learned friend can point out some other section limiting responsible government in this country, it is unlimited in local powers outside of the limitation mentioned. If without any provision to that effect our local self-government

may be limited and denied in this point and that point, then we have nothing certain to go on at all. The power to save the public peace by keeping out dangerous aliens may be denied to-day and something else to-morrow.

Mr. Justice Williams.—Then you say, Mr. Attorney, I suppose, that Her Majesty's responsible advisers in Victoria can exercise the prerogative of mercy to the same extent as Her Majesty's responsible advisers in England?

The Attorney-General.—Most undoubtedly. If not, we would be in this position—that our fellow subjects could be executed in this country, and no one would be responsible for it. Surely that would not be self-government?

The Chief Justice.—Do you contend that in all cases relating to the internal affairs of Victoria responsible Ministers have the right to advise the Crown subject to the statutory exception?

The Attorney-General.—I do, your Honor.

The Chief Justice.—That certainly seems to go beyond what is known to be ordinary practice, at all events. Take the case of the prerogative with regard to titles of honor. That is a prerogative which, of course, affects Victoria internally, but the allotment of honors to citizens of Victoria is a very important prerogative of the Crown. If that prerogative is conveyed by the Constitution Statute, you would expect that it would have been exercised by the responsible Ministers of Victoria, but it never has.

The Attorney-General.—Well, your Honor, men do not on all occasions exercise all their rights. For example, I am aware that in several colonies which have Constitutions like our own, Ministers have said they do not want to interfere with the prerogative of mercy.

Mr. Justice Holroyd.—If English Ministers have been in the habit of advising the Sovereign with reference to conferring titles upon residents in Victoria, that is inconsistent with the argument which you have drawn from certain passages in the despatches.

The Attorney-General.—It would show that the Ministers are not consistent, and it may be that in the matter of the few baronetcies that are given public attention is not much directed to it. But it would be a different thing if you were talking about the lives of our fellow citizens. But there is further this point, that, in conferring these honors, though the recipient may be resident in Victoria, they are conferred for the whole of the Queen's dominions. A man living in Melbourne, if made a baronet, becomes a baronet for the whole of the empire.

The Chief Justice.—Responsible government exists in Victoria, and is exercised in regard to internal matters. Whether the right of the Crown to those powers and prerogatives operating externally to Victoria has been transmitted to the Governor must be judged from the four corners of his commission.

The Attorney-General.—If that is right, it would be putting the commission above the law. If the Constitution Act gives certain powers to the local Government, a commission which is the act of the Sovereign alone would be invalid *pro tanto*, in so far as it limited those powers.

The Chief Justice.—How is the prerogative in Victoria limited by the Constitution Act? Your clause relates to the making of laws. It provides that two Houses shall be empowered to make laws. Neither that section nor any other section appears to define what prerogatives and powers are vested in the representative of the Crown in Victoria himself or acting under the advice of the responsible Ministers of the Crown in Victoria.

The Attorney-General.—I admit that, and I say that nothing can be found in any law completely describing the powers and working of constitutional government here. I have premised that the Court will take notice that it exists in fact here—that in fact Ministers here have to carry on government, advising His Excellency, and are bound to take all proper executive steps to so carry on government and preserve the public peace. Nor can any description of the real powers of responsible government in England be found in any Act or law book.

The Chief Justice.—The English Legislature, in creating the system of responsible government in Victoria, creates along with it everything necessary to give it effect. The ordinary maxim of law is that where Parliament passes an Act it gives everything necessary to give effect to it. If that maxim applied, then it might still be that the powers and prerogatives vested in the representative of the Crown by the Constitution Act would be such prerogatives and powers as are necessary that the

Queen's representative should have for the internal affairs of Victoria and no more. It might possibly exclude those prerogatives which in fact are never exercised, and which are not commonly supposed to belong to the representative of the Crown.

The Attorney-General.—The prerogative to exclude foreigners?

The Chief Justice.—No; generally. Responsible government having been created by Statute, you say that all the powers and prerogatives in Victoria that can be exercised here have been transferred to him.

The Attorney-General.—Does your Honor mean the Governor or the Government?

The Chief Justice.—The Governor.

The Attorney-General.—No, I do not say that.

The Chief Justice.—Perhaps that is treating the Governor only as representing the Sovereign. But you do not give any exact representation of what is the prerogative vested in the Government by the Constitution Act.

The Attorney-General.—I say all powers not excepted by the Act and that are necessary for the safe conduct of the local Government. It makes one very important exception, but leaves us all that is necessary for self-government.

The Chief Justice.—That is opposed to the common practice and belief in this country and in England.

The Attorney-General.—There is only one thing excepted, and whatever is necessary for good government is necessarily conveyed with and by the Act that hands over the government to local responsible Ministers.

The Chief Justice.—Is there anything given in express terms except the power to make laws for Victoria?

The Attorney-General.—Responsible Ministers.

The Chief Justice.—That is a large area, which may include all the powers of the Crown or only some of them

The Attorney-General.—It includes, I repeat, all that is necessary to enable the responsible Ministers to do their duty of advising His Excellency effectively upon all matters of local government, and I say that it lies upon my learned friend to show how it is limited. The Act gives us responsible government. How is it limited?

The Chief Justice.—It is clear that since the Constitution Act was passed it has never been questioned in a Court of Justice or in Parliament that the Act has created in Victoria responsible government. But the question remains behind that, what are the limits of responsible government created by Statute?

The Attorney-General.—At any rate the Constitution Act gives us power to deal with all local matters as an effective Government ought, and it lies upon my friend to show how it is limited. I cannot see how it can be expressed more fully than by Parliament saying there shall be this Legislature and with it responsible Ministers. It was passed by the Imperial Parliament, which knows what responsible government is. The Governor was to have Ministers who were responsible for all that was done. The Queen must have some responsible advisers for every act. And when the English Parliament says we are to have responsible government, it must be for all things except what is limited by the Statute. Neither in England nor here is there any Statute or law book that confers or states in express words the real meaning and working of what we call responsible government. When the words responsible Ministers are used in an Act of the Imperial Parliament or sanctioned by the Imperial Parliament with a full knowledge of what they mean, it can mean nothing else than responsible for all local government. In the case of the Lord Bishop of Natal (3 "Moore's Privy Council Cases," New Series, p. 115), the question was raised whether the Crown could appoint a Metropolitan Bishop after responsible government was granted to a colony. Lord Westbury, in the course of his judgment, said—

"With respect to the first question, we apprehend it to be clear, upon principle, "that after the establishment of an independent Legislature in the settlements of the "Cape of Good Hope and Natal, there was no power in the Crown by virtue of its "prerogative, for these letters patent were not granted under the provisions of any "Statute to establish a metropolitan see or province, or create an ecclesiastical cor- "poration whose status, rights, and authority the colony could be required to recognise. "After a colony or settlement has received legislative institutions, the Crown (subject "to the special provisions of any Act of Parliament) stands in the same relation to "that colony or settlement as it does to the United Kingdom."

That is exactly my argument here.

Mr. Justice Kerferd.—That there are many parliaments but only one Crown.

The Attorney-General.—Yes, the Crown is everywhere.

Mr. Justice a'Beckett.—You treat the prerogative as a power to prevent foreigners landing in the country. One use of that prerogative would undoubtedly be in the case of an expected war. You say that it cannot be exercised by two sets of advisers, that one must exclude the other. Your argument amounts to this, that the advisers of the Crown in England could not exercise the prerogative in reference to Victoria to exclude foreigners landing in Victoria. In other words, that, having reason to expect a war, they could not direct the captain of a British man-of-war to prevent foreigners from coming here. The argument as to inconvenience will thus equally apply one way or the other. You do not say that the advisers here can give advice supplementary to that of the advisers in England, but you say that the powers of the advisers in England are gone. That was an improbable state of circumstances; but can you divide the prerogative in that way ?

The Attorney-General.—It is not a practical difficulty.

Mr. Justice Kerferd.—It is not a division of the prerogative, but a division of the persons advising upon it.

Mr. Justice a'Beckett.—It may be necessary to keep foreigners out of Victoria in the event of an anticipated war. If an English ship were sent out by Her Majesty's Ministers in England to prevent foreigners landing here, would that be committing an illegal act ?

The Attorney-General.—There may be cases on the border land of concurrent jurisdiction ; but further, unity of action for the empire could be maintained by the Governor, who could dismiss his Ministers if they were disloyal.

Mr. Justice a'Beckett.—Can you divide the prerogative to many different parts of the empire ?

The Attorney-General.—My argument is that you do not divide it. It is one and indivisible.

Mr. Justice a'Beckett.—If it can only be exercised in one place by A and in another by B, there are two prerogatives. There may be adverse interests in each adviser.

The Attorney-General.—I cannot see it. The empire is one and the prerogative one. Then there are a number of dependencies with local self-government and the use of all the rights of the Crown necessary therefor.

Mr. Justice a'Beckett.—Why should you not have power to make peace and war?

The Attorney-General.—Because that is not local to Victoria. That is a matter for the empire. But this act was done in the Queen's name for the tranquillity of Melbourne. The English Ministers cannot say whether it was necessary or not.

Mr. Justice Holroyd.—Surely it is not a matter wholly local to Victoria. War being anticipated, if a large body of men belonging to the enemy were allowed to land here, it would not be a local matter, but one concerning all Australia.

The Attorney-General.—It is a local matter with Imperial consequences. As I have already said, the local Government may remove all the Chinese in Little Bourke-street to Wangaratta.

Dr. Madden.—There is an Act of Parliament for that.

The Attorney-General.—If it were done, it might produce a war, yet it was strictly a local matter. If it was not, then we are out of Court.

Mr. Justice Williams.—I am not sure that there is not a distinction between cases of that description and cases of this description. If there is anticipation of war, it may be that in that case the persons to exercise the prerogative would be Her Majesty's responsible advisers in England. I can see a distinction between that case and this. The one is clearly a question not solely relating to local and internal affairs. This may relate to local and internal affairs only.

The Attorney-General.—I also put this view, that it comes, after all, to be a question of fact in each case. If, on looking at the facts, it is found it is an Imperial matter, *cadit questio.* But there may be cases that are purely local in which the prerogative may be exercised, and there are others that are on the border line between Imperial and local. In this case the pleadings show that it is purely local.

The Chief Justice.—The distinction between affairs internal and the affairs of the empire is rather excluded by our Statute. Is advising the Crown as to the making of war a matter on which these questions meet on the border line? The Crown cannot

be advised by the two sets of advisers. For the purpose of exercising the great bulk of the prerogative, would it not be a simpler mode of adjustment to show what powers of the prerogative are required to be administered in Victoria for the benefit of Victoria if the powers necessary for their administration of affairs in Victoria are handed over to Ministers in Victoria, while all those prerogatives and powers which relate to Imperial as distinct from local affairs are left to the Imperial advisers?

The Attorney-General.—We do not contend otherwise.

The Chief Justice.—The power of making war and peace cannot be given to a dependency.

The Attorney-General.—We do not contend that it is.

The Chief Justice.—You put it at one time a little further than necessity required. You included a proposition that is certainly novel, that the exercise of a prerogative in Victoria which was not necessary for Victorian affairs came within the purview of responsible government.

The Attorney-General.—That view was started on me. I thought that we were merely dealing with Victoria. A title granted to a Victorian here runs over the whole empire, and that is the reason why Imperial advisers should advise upon it.

Mr. Smyth.—A title runs over the whole of the Queen's dominions.

The Chief Justice.—The exercise of that prerogative of conferring titles may take place in and for Victoria, and it may have a very marked influence upon the welfare of the community in one direction or another.

The Attorney-General.—I submit that it could not take place in and for Victoria only, because titles conferred by Her Majesty extend over the whole empire. To illustrate my contention: Supposing the Imperial Ministers, if the law allowed local titles, advised Her Majesty to make so-and-so a baronet in Victoria only, I say that would be contrary to the Constitution. But the Queen, on the advice of her responsible Ministers in England, might make a man a baronet for the whole empire, including, of course, Australia. That might stand on a different footing. But I may remind the Court that certain titles are granted for Victoria only, and they are granted under the advice of responsible Ministers here.

Mr. Justice Holroyd.—Then, according to your argument, Ministers in and for Victoria could create a man a baronet in and for Victoria only?

The Attorney-General.—Oh, no; I do not say that Ministers here could create a man a baronet in and for Victoria only.

Mr. Justice Holroyd.—But Ministers here could recommend that.

The Attorney-General.—We could recommend anything we like; but there is no lawful power to create a man a baronet in and for Victoria only. As I was saying, the title of "Honorable" is conferred by virtue of being an Executive Councillor in and for Victoria, and that is done upon the advice of the Queen's responsible adviser for this colony, although done in the name of the Queen. The Queen sends her commission to the person appointed, and it is countersigned by the Minister here.

The Chief Justice.—Do you contend that there cannot be any diminishing, either by Royal commission or Royal prerogative, of the powers created by the Constitution Act?

The Attorney-General.—Certainly, your Honor, because, on the one side, you have the law, and on the other the mere act of the Sovereign, which cannot at any time override the law. If we are to have responsible government here, the Sovereign cannot, by any act of her own, limit the law which gives us constitutional government.

Mr. Justice Holroyd.—But if responsible Ministers here may exercise the Queen's prerogative in one matter, why not in another? Why should Her Majesty be restrained from banishing foreigners from all parts of her empire?

The Attorney-General.—Undoubtedly she has that prerogative, and can banish every foreigner from any part or all parts of her empire.

Mr. Justice Holroyd.—But, supposing the Queen has that authority, why should it be taken away from her as regards the colony of Victoria, merely because responsible government has been established in Victoria? If you can divide the prerogative in that case, why not in others?

The Attorney-General.—With the greatest respect, I submit that the prerogative is not divided. It is one and indivisible, and extends over the whole empire; but the law has provided that in certain places the prerogative shall be exercised in a certain way.

Mr. Justice Holroyd.—But if the creation of this Constitution in Victoria provides that the prerogative shall be exercised in one way as regards one part of it, why does not the creation of the Constitution have the same effect as regards another part of the prerogative?

The Attorney-General.—Is your Honor talking of the question of titles?

Mr. Justice Holroyd.—Yes.

The Attorney-General.—According to the English law, the Sovereign, when she creates titles, creates them for the whole empire. She must do so. She cannot create titles having an existence only in one part of the empire and not in another. As far as I am aware, there is no power to make a man duke, and to say that he shall be a duke only in one part of the empire. Therefore this prerogative is general for the whole empire, and cannot be specially applied to parts of the empire like this prerogative of keeping out foreigners, dangerous to a certain part of the empire.

The Chief Justice.—Does not the title of Executive Councillor come from the Sovereign in her character as the fount of honour, and yet is it a fact that the title of "Honorable" can only be held by an Executive Councillor in Victoria?

The Attorney-General.—But the epithet of "Honorable" is not a title, your Honor, like a baronetage; it is merely used as a matter of respect.

The Chief Justice.—So are all other titles given as a matter of respect.

The Attorney-General.—I mean that it is not a legal appellation. There is no mention of it in the law; at least, I am not aware of any.

Mr. Justice Wrenfordsley.—It is a title by courtesy.

The Attorney-General.—Yes; just like the title of "Reverend." There is no right to it; but it has come into use in this way: Executive Councillors are appointed, and a custom has grown up of calling them "Honorable." I am not aware that there is any title to the epithet. I recollect seeing in "Todd's British Government in the Colonies" a statement to the effect that the Imperial Government say that this title of "Honorable" was not retainable outside the colony in which it was given; so that the whole thing may be summed up in this: that the word "Honorable" is not a real title at all, but merely a matter of courtesy. What his Honor Mr. Justice Holroyd alludes to is a real title coming from the Sovereign, and such a title is a title all over the empire. I am not aware of any limitation.

The Chief Justice.—As I understand you, you claim for responsible Ministers in and for Victoria the right to exercise all the prerogatives of the Crown which can be exercised in Victoria, and which are necessary for the administration of affairs in Victoria? These are the prerogatives and powers inherent in Her Majesty or created by Statute and vested for all time in the existing representative of the Crown.

The Attorney-General.—I do put it that way. But I want to keep to the pleadings, otherwise we shall be led into wayfaring discussions. We plead that the act complained of by the plaintiff in this case was an act done in defence of the public peace of Victoria by the Government of Victoria. The point is as to whether responsible Ministers in and for Victoria can do that. I am not now arguing otherwise than as to strictly local matters. I am not contending that responsible Ministers for Victoria can exercise the Queen's prerogative other than as regards local matters. I submit that, in granting responsible government to Victoria, the Imperial authority granted us, at the same time, all that was necessary for the good and safe government of the colony, and, among the rest, the right of responsible Ministers to do whatever may be necessary for the public safety in Victoria. And if this is lawfully given to Ministers here, then Ministers at home could not lawfully advise the Queen as to any local matter. So that if we cannot advise as to the exercise of the prerogative for this local purpose, they certainly could not, and so the prerogative, so necessary for public safety, could not be exercised at all in any of the self-governing dependencies of England. The Queen could not exercise it without some advice. In this very case, for example, I submit that Imperial Ministers could not have lawfully advised Her Majesty. I say that if the Queen herself had been here, attended by Lord Salisbury, she could not have, of herself alone, prohibited these Chinese from landing, nor could Lord Salisbury have lawfully advised her.

The Chief Justice.—That view was very clearly expressed by the author of "Constitutional Law," in regard to the grant of responsible government to Canada. Lord John Russell, in a despatch which he wrote to the representative of the Queen in Canada in 1839, forbad him to send forward any more applications for the grant of responsible government to Canada, and set forth the reasons why it was

impossible even to consider the grant of responsible government, because the Crown could not be advised by both local and Imperial advisers.

The Attorney-General.—I should most certainly contend that the Queen could not be advised by her Imperial Ministers in regard to a matter affecting the internal government of this colony, and I could not put it stronger than I did when I said that if the Queen herself had been here when these Chinese came, and Lord Salisbury with her, she could not have lawfully written to the Collector of Customs ordering him to prohibit the landing of the Chinese, and neither could Lord Salisbury.

The Chief Justice.—Unless she dismissed her Ministers in and for Victoria.

The Attorney-General.—Of course. The law has said that local matters shall be dealt with by local Ministers. And I wish the Court to be perfectly clear about this being a local matter. That has not been disputed by my learned friend, and it is certainly essential to my argument that this is strictly a local matter, although it involves Imperial consequences.

Mr. Justice Williams.—Although it may involve Imperial consequences?

The Attorney-General.—Quite so. It stands on the same footing as the Chinese Immigrants Acts, which involve Imperial consequences, because they provide that, except on certain conditions, Chinese immigrants shall not enter the colony. That involves the same principle; there is only a difference of degree.

Dr. Madden.—There is this important difference, that in the one case you restrict the entry of Chinese by an Act of Parliament, whereas in the other case—which is this case—you prohibit their entry by act of State.

The Attorney-General.—I submit that there is not the slightest difference in principle, because if the prevention of an influx of Chinese into Victoria is not a local matter, we can neither pass an Act of Parliament nor do an act of State with regard to it. That the restriction of Chinese immigration into Victoria is a local matter is shown by the fact that the Imperial Government advised the Queen to assent to our Act of Parliament prohibiting the incoming of Chinese unless each immigrant pays £10—we might make it £1,000. If it were not a local matter, that Act of Parliament would be void. But I need not elaborate the argument. The Imperial Aliens Act, 33 and 34 Victoria, chap. 14, section 16, provides that:—

"All laws, Statutes, and ordinances which may be duly made by the Legislature "of any British possession for imparting to any person the privileges or any of the "privileges of naturalization, to be enjoyed by such person within the limits of such "possession, shall within such limits have the authority of law, but shall be subject to "be confirmed or disallowed by Her Majesty in the same manner and subject to the "same rules in and subject to which Her Majesty has power to confirm or disallow "any other laws, Statutes, or ordinances in that possession."

So that it is left to us to deal with aliens as we think proper; and, in pursuance of that authority, we passed the Aliens Act 256, in the year 1865, dealing with aliens in the way we thought proper, which may differ from that in other parts of the empire.

Mr. Justice Kerferd.—A Chinese may take out letters of naturalization in this colony, but although he thereby becomes a British subject in Victoria, he is not a British subject in South Australia or in New South Wales?

The Attorney-General.—No, his naturalization is strictly limited to this colony.

The Chief Justice.—The Attorney-General said the Aliens Act was passed in 1865. Was there not an Aliens Act passed before that?

The Attorney-General.—There was, your Honor. That Act of 1865 repealed the earlier law. It has been said that the action of the Victorian Government with regard to the plaintiff and other Chinese immigrants who have been refused admission into this colony might lead to war; and, of course, it possibly might; but that does not prove that the matter is not a local matter. Many a local thing may lead to war. We had here some years ago an instance in point, in the case of the *Shenandoah*. The *Shenandoah* was an American ship. She came here and was treated in a certain way, and that treatment was taken up as a *casus belli* by the Government of the United States, and had to be settled by arbitration. As a matter of fact, the Queen's prerogative may be used anywhere in the empire in such a way as to bring about war. The lieutenant of a British war sloop in Chinese waters may do an act which will involve the empire in war, unless the Queen satisfy the Emperor of China by payment of an indemnity or otherwise. That would be a local act involving Imperial consequences.

The Chief Justice.—The Governors of the Australian colonies are created Commanders-in-Chief and Vice-Admirals, and given a certain power of control over both the naval and military forces of Great Britain in Australia ; but if a British man-of-war came into Victorian waters, or a body of British troops was landed here, for the purpose of defending the colony, responsible Ministers in and for Victoria would have nothing whatever to do with advising the Governor in his capacity of Commander-in-Chief or Vice-Admiral. The Governor in that capacity would not be under the control of his responsible advisers, and the disposition of the Imperial naval and military forces would be entirely outside the sphere of responsible government. That is a matter in which the prerogative of the Crown may be exercised in Victoria without reference to responsible Ministers in and for Victoria; but, of course, it might be argued that although exercised in and for Victoria, that exercise of the prerogative was not necessarily for the administration of Victoria.

The Attorney-General.—That would not be dealing with Victorian local affairs, but with Imperial affairs.

The Chief Justice.—But take the case of the Imperial troops engaged in suppressing the Ballarat riots.

The Attorney-General.—They were under the control of Imperial officers just as are the Queen's troops in any portion of the empire. It was a case of rebellion against the empire then. But matters are changed, and the Imperial Government would not now intervene in a similar case. The Duke of Newcastle, in that despatch which he forwarded to the Governor of Victoria concerning the withdrawal of the Imperial troops, said that, as responsible government had been established in Victoria, the Imperial Government had no further responsibility for maintaining the internal tranquillity of the colony; that, in short, Imperial Ministers had nothing to do with our local affairs. It would be idle to suppose that the duty of maintaining the internal peace of the colony was cast upon Ministers, and, at the same time, that they were not clothed with the powers necessary to the discharge of that duty. The imposition of the duty involves the bestowal of the powers necessary to its due performance, and it would be impossible for responsible Ministers in Victoria to preserve and maintain internal tranquillity if they were not empowered to exercise the Royal prerogative necessary for the purpose in so far as it relates to local affairs.

Mr. Justice Wrenfordsley.—Suppose your Government did something incident to your local authority. That, by virtue of the Constitution Act and in accordance with the terms of that Act, you did something which would be against the comity of nations, and the Imperial Government had to deal with the question from an Imperial point of view, and that out of that circumstance an indemnity was required to be paid, who would pay that indemnity, the colony, or the mother country?

The Attorney-General.—That comes round again to the case of the *Shenandoah.* But I would remind the Court that such an act might be done by the local authority in a Crown colony.

Mr. Justice Wrenfordsley.—In the case of a colony with responsible government it would raise a grave issue.

The Attorney-General.—But I submit respectfully that that has nothing to do with my argument. The same thing might happen in Western Australia, which is a Crown colony.

Mr. Justice Wrenfordsley.—There is this difference between Western Australia and a Crown colony, that Western Australia is partially under another form of government; but the Governor of Western Australia would act on his own responsibility, under what you might call a power of attorney from the Crown, and it would be for the Home Government to ratify his act or not, and they might not ratify it. Hence, Governor Eyre's case applies. But the Governor of a Crown colony stands in a better position than the Governor of a colony with responsible government, because he can take upon himself the burthen of authority, whereas the Governor of a colony with responsible government would be bound by the advice of his responsible Ministers.

The Attorney-General.—A case like the *Shenandoah* case may happen at any time in any colony, either a Crown colony or a colony with responsible government.

The Chief Justice.—In the case of the *Shenandoah*, I can state from personal knowledge that the Government of Victoria had no belief, at any stage of the case, that they were advising the representative of the Crown as his responsible advisers.

The Attorney-General.—I was only remarking that such an incident as the case of the *Shenandoah* might happen at any time. In an empire which extends over three-quarters of the globe, with one Sovereign, we can never know when the Central Government may be made liable by the act of one or other of its numerous agents.

The Chief Justice.—According to your view, has the Governor of one of these colonies no functions except as representative of the Crown and depository of the Royal prerogatives as to which he is to be advised by his local advisers? Has he the character, for any purpose, of a mere officer of the Imperial Government?

The Attorney-General.—As the Commander-in-Chief of the Imperial military and naval forces he would be an Imperial officer.

The Chief Justice.—And for the purpose of remitting Bills for the Royal assent?

The Attorney-General.—Oh, that is a matter of law. To that extent we are deprived of responsible government by law.

The Chief Justice.—In respect of all such matters, the Governor would be an Imperial officer?

The Attorney-General.—Yes, certainly. I am not sure as to how far the Governor would or would not be an Imperial officer in regard to receiving foreign consuls and giving them their exequaturs. It may be the Governor would be responsible to the Imperial Government in these matters. However, it is enough for me to keep to the pleadings; and I submit, with regard to the act complained of by the plaintiff, that it was done in the defence of the peace of Melbourne, and that is a local matter. The last point on which I will trouble the Court is as to this defence we have put forward—that the act of the Government, in refusing to allow the plaintiff to enter the colony, was an act of State; and what I have to say is somewhat involved in what I have already submitted to the Court. The efficacy of this defence, as is shown in the case of Buron *v.* Denman, is that a foreigner, even supposing there has been a wrong done to him, cannot sue the Government in their own municipal courts for a remedy. He must either go to the Queen in Privy Council, or he must go to his own Sovereign, and get his remedy there. The case of Musgrave *v.* Pulido, to which my learned friend, Dr. Madden, referred, was decided by the Court on the ground that the plea did not show facts necessary to constitute an act of State; but it is clearly evident from the tenor of the judgment, that, if the plea had been more explicit, and had shown that the act complained of was an act of State, the plea would have been upheld. It merely stated, however, that the act complained of was done as an act of State. Governor Musgrave virtually said—"I did it as and for the Queen," but he did not show the facts which were necessary to prove that it was a real act of State. In this case we have avoided that difficulty. We say—"This act was done in defence of the public peace, of which the Government are the guardians. The question which the Court has to consider is, whether a foreigner can sue the Government of the colony, through one of its officers, for an act which is shown to be an act of State, and done in defence of public peace?"

Mr. Justice Holroyd.—What do you call an act of State? Supposing it is an act which violates the law of nations, but is admissible by the law of the land?

The Attorney-General.—I will give your Honor a description of what is an act of State. In "Sweet's Law Dictionary," page 20, an act of State is defined as follows:—

"An act of State is an act done by the sovereign power of a country, or by its delegate within the limits of the power vested in him. An act of State cannot be questioned or made the subject of legal proceedings in a court of law. Thus, where a foreign Sovereign contracted certain debts, and his territory was afterwards annexed by the British Government, it was held that the annexation having been an act of State, the creditors could not make any claim in respect of the revenue of the annexed territory."

The Chief Justice.—Is not that definition quite contrary to that given by Dr. Madden, viz., that an act of State is something done, and wrongfully done, outside the territory of the State which commits the act.

The Attorney-General.—I should quite dispute Dr. Madden's argument. I don't know whether the Court has doubts upon the point, but my learned friend will admit that there is not a shadow of authority for saying that the wrongful act must be done outside the territory of the State which commits the act.

Dr. Madden.—It may be done within the territory.

The Attorney-General.—It would be quite contrary to the definitions of an act of State given in the text-books to say that an act of State must be done outside

the territory, and in practice it would lead to most extraordinary results. Supposing, for example, that a shipload of French convicts was on the way to this colony, intended to be landed on our shores, and the Government, being apprised of that intention, sent out a gunboat to stop the convict ship. If the gunboat stopped her four miles from the shore, that would be justifiable as an act of State, whereas if the convict ship got within two miles of the shore before the gunboat came up with her, she would be within our limits, and if she were stopped there, it would be no defence to show that it was done as an act of State.

The Chief Justice.—Do I understand you to contend that an act of State would be equivalent to a public act, an act done by a public officer to a subject as well as to a foreigner?

The Attorney-General.—Oh, no; not an act done to a subject. There cannot be an act of State against a subject, because a subject who is aggrieved by any act on the part of an officer of the Crown, even if it be done by express authority of the Crown, has his remedy in a court of law, whereas if the act is directed against a foreigner, and it is pleaded that it is an act of State, the foreigner is debarred from seeking redress in the municipal courts of law. An act of State can only be applied to a foreigner.

Mr. Justice a'Beckett.—As I understand the position, it is this: An act of State is an act which is outside the law, an illegal act, done by the Government. The case of Buron *v.* Denman only shows that when an act, injurious to a foreigner, and which might have afforded a ground of action if done to a British subject, is adopted by the Government of this country, it becomes an act of State, and the private right of action is merged in the international question which arises between our own Government and the Government of the foreign State. That decision leaves the right of action between Sovereign and subject wholly untouched. A case of this kind might arise: Suppose a subject of the Crown in this colony had entered into contracts to engage a number of Chinese servants for persons in the colony, and on reaching here the Chinese were stopped and not permitted to land, as in the case of the plaintiff, that subject of the Crown might bring an action against the Government, and recover damages for the wrongful act, because the plea of an act of State is of no avail as against a subject; but the Chinese who were refused admission into the colony could not bring an action for damages, because their private right of action is merged in the international question, owing to the act they complain of having been done as an act of State.

The Attorney-General.—That is precisely the position; precisely the distinction.

The Chief Justice.—An act of State is admittedly an act which is outside the law, something which is illegal. If that act is done to a foreigner, according to the decision in Buron *v.* Denman, the foreigner cannot sue; but if it be done to a British subject, the British subject may sue.

The Attorney-General.—If the plaintiff in this case had been a naturalized British subject, he would have been entitled to bring an action against the Government in our courts of law. But I maintain, in the first place, that this act is strictly within the law. That, of course, Ministers feel great anxiety about. But if there is any technical or other difficulty, I say that this man, being a foreigner, cannot bring the action, because the act of which he complains is shown to be an act of State. Of course the case may be involved, owing to the question as to whether the Government of this colony has the power to commit an act of State. His Honor Mr. Justice a'Beckett has put exactly what we say an act of State is. We say—"An Englishman could bring this action, because there is no such thing as an act of State against a subject." Mr. Justice Stephen, in his "History of the Criminal Law of England," vol II., page 61, gives this definition of an act of State:—

"I understand by an act of State an act injurious to the person or property of "some person who is not at the time of that act a subject of Her Majesty, which "act is done by any representative of Her Majesty's authority, civil or military, and "is either previously sanctioned or subsequently ratified by Her Majesty."

Pollock, in his work on "The Law of Torts," page 94, approves of that definition. He says:—

"It is by no means easy to say what an act of State is, though the term is not "of unfrequent occurrence. On the whole, it appears to signify—(1) An act done "or adopted by the Prince or rulers of a foreign independent State in their political

"and sovereign capacity and within the limits of their *de facto* political sovereignty;
"(2) more particularly (in the words of Mr. Justice Stephen in his 'History of the
"Criminal Law,' vol. 2, page 61) 'an act injurious to the person or to the property of
"some person who is not at the time of that act a subject of Her Majesty, which act
"is done by any representative of Her Majesty's authority, civil or military, and is
"either previously sanctioned or subsequently ratified by Her Majesty,' such sanction
"being, of course, expressed in the proper manner through responsible Ministers."

The point of these quotations is that a foreigner cannot sue the Crown in a court of law for damages inflicted upon him by an act of State. In the case of Chapman and Ireland, which was tried here many years ago, this very defence was raised. It was submitted that the act was an act of State, and that it had been ratified by the Imperial Government. It was an act done in Fiji, outside our bounds, and, therefore, to make it an act of State, it was necessary to get the approval of the Imperial Government, and the Imperial Government did approve of it. The Court, however, held that there could not be an act of State against the plaintiff, because he was a British subject. That case is reported in 5 "Victorian Law Reports." The facts in the present case are totally different. The plaintiff is a foreigner, a subject of the Emperor of China, and owes allegiance to him; therefore, he cannot sue the Crown in the municipal courts of this colony for damages in respect of an act which was done as an act of State, in the name and on behalf of Her Majesty the Queen. It is not necessary that an act of State shall be known to the Sovereign. In the case of Buron *v.* Denman it was never suggested that the act done by the captain of the ship of war was known to the Sovereign. There was no formal authority, under the Great Seal or otherwise, but only a letter, written by the Under Secretary of State, saying that Lord Palmerston approved of the act. It was admitted to be an illegal act; there were other letters put in from other Secretaries of State pointing out the illegality, but it was pleaded in defence that the act of the captain was made an act of State when it was sanctioned by Lord Palmerston, and the Court held that to be a sufficient defence. I may cite, as illustrating the argument, the remarks of Lord Bacon in his argument in the case of the Post-Nati of Scotland, before the Privy Council, reported in vol. IV. of Bacon's works, 1826 edition, published by Mr. Basil Montague. In that edition, vol. IV, page 327, he puts the case thus, speaking of an alien enemy coming into England:—

"Nevertheless, this admitteth a distinction. For if he come with safe conduct,
"otherwise it is; for then he may not be violated either in person or goods. But yet
"he must fetch his justice at the fountain-head, for none of the conduit pipes are open
"to him; he can have no remedy in any of the King's Courts; but he must complain
"himself before the King's Privy Council; there he shall have a proceeding summary
"from hour to hour; the same shall be determined by natural equity and not by rules
"of law, and the decree of the Council shall be executed by aid of the Chancery."

Of course he has the alternative remedy of going to his own Sovereign; but Bacon's remarks illustrate the wide difference between a subject of the Crown and an alien. The subject can bring an action in the municipal courts of law, but the alien has only his own Sovereign to look to or petition to ours. I submit that it may be the duty of a Government to do a wrong to an alien in the interests of its own people; therefore there is no analogy between the case of a subject and the case of an alien. The moment the Court ascertains on the pleadings that the plaintiff is an alien, and that the act of which he complains is a genuine act of State, an act done by the Government and for public purposes, there is an end to the matter here. It would be no defence merely to say—"This was done by order of the Government as an act of State." We need to show the facts to prove that it was an act of State. It was the neglect to do this in the case of Musgrave *v.* Pulido which caused the Court to upset the defence; but once the Court sees stated on the pleading sufficient to show that the act complained of is a public act of State, then the Court will not inquire further, but will say to the foreigner—"Either go to your own Government or appeal to the Queen in Privy Council." In Musgrave *v.* Pulido, "Law Reports, Appeal Cases," vol V., page 111, the Court declared that:—

"When questions of this kind arise, it must necessarily be within the province
"of municipal courts to determine the true character of the acts done by a Governor,
"though it may be that, when it is established that the particular act in question is
"really an act of State policy done under the authority of the Crown, the defence is
"complete, and the Courts can take no further cognizance of it."

And, if the local Government had not the power of doing acts of State of this kind in local affairs, then that power is taken away from three-fourths of the British empire which enjoys responsible government, because it would be unlawful for Imperial Ministers to advise the Queen as to local matters. If they can do so in such local matters as they think fit, we have no real self-government; and, as I submitted before, if they cannot advise, and we cannot, the Queen has no way of exercising this essential prerogative over the greater part of her dominions. Further, in a practical point of view, it would not be possible for Ministers here to send home to the Imperial Ministers, in every emergency, to know what they might or might not do. If prior communication with Imperial Ministers be insisted upon, the Colonial Governments would not be able at the essential time to do any acts of State which might often be necessary in the very first interests of the public. There are other points, which my learned friends will dilate upon more fully; but I have endeavoured to explain the position we maintain; and if the Court will bear with me for a moment, I would be glad to recapitulate the argument as I put it. I say it is the undoubted right of every nation to exclude foreigners. That is a national right. It is not a question of doing it if they are strong enough; but it is a right recognised under international law. Under the Constitution of England, that right is vested in the Sovereign of England, and may be exercised without any Act of Parliament. That prerogative necessarily extends over the whole empire, because it would certainly be absurd to talk of such a prerogative of the Crown being limited to England or any one part of the empire. In its very nature it must extend all over the empire. If that be so, it is as active in Melbourne as it is in London, to be exercised here by somebody. It cannot be exercised by the Sovereign personally without advice, according to well-known constitutional principles of law. It cannot be exercised by Imperial Ministers of the Crown, because the law has taken away from them the right to advise the Sovereign with regard to the local affairs of this colony; and if the prerogative is to be exercised at all over a great part of the empire which enjoys responsible Government, it must be exercised by local Ministers of the Crown. I submit that this matter in question is clearly a local matter; it is a thing that happens on the Melbourne wharf; it is an act done to ensure the peace and quiet of Melbourne. Being a local matter, it would, therefore, be unlawful for the Ministers of the Crown in England to advise the Queen with regard to the exercise of the prerogative to exclude foreigners from Victoria, no matter what the threatened danger may be—an influx of convicts, or an influx of Chinese—because the law has handed over the Government of Melbourne and of Victoria to the local Government. Nor, as a matter of fact, could the Imperial advisers advise Her Majesty on the subject, as they know nothing of the facts; if they wait till they learn the facts, the evil has been done long ago. The prerogative is useless—a dead letter. We are left here without a protection that every city in Europe possesses. It necessarily follows then, that, if this act is to be done at all, it must be done by the advice of the responsible Ministers in and for Victoria. It appears on the pleadings that this has been done, and the fact is not disputed. It is admitted that responsible Ministers in and for Victoria sanctioned this act and directed it to be done; and, that being so, I say we are strictly within the law, and, further, that the act has clearly become an act of State policy, in respect of which, in no case, has a foreigner the right to bring an action.

THURSDAY, JULY 12, 1888.

Mr. Smyth addressed the Court for the defendant, as follows:—Your Honors: I propose to examine the question, which I do not think has been fully examined, as to what these acts of State really are, and how they affect our position here. Then I shall say a few words on the general question of prerogative, and address myself shortly to the case referred to in the neighboring colony, and the last question on the pleadings as to entering. I desire to state, as the Attorney-General has stated, that the Government of Victoria, in doing the act complained of, contend beyond all question that they are acting strictly within their legal rights, and that the Government, neither here nor at any time, set up the claim of this being a Sovereign State in the same sense as was affirmed in the case in the neighboring colony referred to by Dr. Madden. We altogether repudiate the notion that we are claiming to be a Sovereign State ourselves. What we say is that, within the confines of Victoria, and for all local internal purposes, the Government of this country, acting by the responsible Ministers, have a right to advise Her Majesty with respect to all local matters, and that having been done so, the act so advised becomes an act of State, and a foreigner is prevented from having a claim for damages against the Government. What are these acts of State? In the first place, there is the definition given in Mr. Stephen's handbook:—"I understand," he says, "by an act of State an act injurious to the person "or to the property of some person who is not at the time of that act a subject of Her "Majesty, which act is done by any representative of Her Majesty's authority, civil "or military, and is either previously sanctioned or subsequently ratified by Her "Majesty. Such acts are by no means very rare, and they may, and often do, involve "destruction of property and loss of life to a considerable extent." In the first place, there can be no act of State as between the Sovereign and the subject, because be he Secretary of State, or whoever he may be, that commits an illegal act as against a subject, that subject has a right to go into the Queen's Courts and demand satisfaction. On the other hand, if the person against whom the illegal act is committed is a foreigner, that person has no right to go into the Queen's Courts and ask that the Court shall sit in judgment upon the acts of State which are challenged by the foreigner. That foreigner has no right to ask the Queen's Court to sit in judgment upon the Queen's acts—acts of State. If he be injured he must apply to his own country, to seek redress from the country that has injured him, or he may make any petition to the Queen in any manner that he may be advised. Legally, he has no status in the Court.

The Chief Justice.—Is it the case that an alien friend, within the jurisdiction of the country whose officer commits the illegal act, has not the same right that a subject would have?

Mr. Smyth.—I apprehend not.

The Chief Justice.—Does any authority bear on a case, the circumstances of which are the same in that respect as in the present case—where the act is done within the limits of the friendly State?

Mr. Smyth.—I submit that there is no distinction wherever the alien be. If he be injured, he must apply for a remedy to his own country, which may go the length of declaring war against the offending State.

Mr. Justice Williams.—The principle is that there is no contract, obligation, or duty of any kind between Her Majesty and an alien.

Mr. Smyth.—That is exactly the view I want to put. There is no legal obligation whatsoever, and there is no privity between an alien and the Sovereign.

Mr. Justice Holroyd.—Then an offence against the comity of nations cannot be redressed in our courts?

Mr. Smyth.—Not in our municipal courts. There is no contract, express or implied, between an alien and the State, to enable him to bring an action in the State's Courts for acts of State policy.

The Chief Justice.—Must not this be borne in mind, that the law makes an express provision which at common law is wanting for means of redress, not from the one who does the wrong, but from the Sovereign herself? I would be glad to learn if there is any principle of law that would prevent a foreigner within the jurisdiction of the colony seeking that redress for a wrongful act done in this country.

Mr. Smyth.—If the act be in consonance with the policy of the State, I submit that he has no *locus standi* in our Courts. There is no suggestion in any book of authority that I can find that the foreigner has any such right.

The Chief Justice.—The state of the law is declared in the two cases that have been referred to in reference to the particular remedy given to the subject against the Crown.

Mr. Smyth.—But these are not the only cases which deal with these acts of State. They have arisen in many instances in the East Indies, and there the Courts have decided upon the particular acts, and it is for this Court to decide that the particular act is an act of State. It is for the municipal court to decide always whether the particular facts alleged for the defendant amount to an act of State.

Mr. Justice Williams.—There is a case decided in 1807 that has not yet been cited. It is the *Rolla* case, and is to be found in 6 Robinson's Admiralty Reports, p. 364. An American ship was proceeded against for a breach of the blockade at Monte Video, as imposed by the British commander in the expedition to the River Plata, and it was contended that the power to impose the blockade was an act of sovereignty which could not be exercised by a commander without authority, but the Court ruled that the commander carried sufficient authority from the Sovereign to do a thing of the kind. It was held that he had authority.

Mr. Smyth.—We intended to refer to that case. My friend, in opening the other day, referred to the fact that proceedings of this kind might become high-handed and tyrannical. I wish to meet that observation by this: that, assuming that this Court now holds that the responsible Minister of the Crown has the right to advise Her Majesty in doing anything that may be called an act of State, it does not necessarily follow that what is done is an act of State that would prevent a foreigner suing in this Court. Before that could be decided the facts on which the responsible Minister relies must be set out for the decision. The Supreme Court of Victoria has the right to say as to whether or not the facts disclose an act of State. If the Court be of opinion that they do not amount to an act of State judgment would go for the plaintiff. If the opinion of the Court is that there is an act of State, the jurisdiction of the Court is gone. Therefore no high-handed proceedings can take place by allowing the constitutional right to advise Her Majesty to act in emergencies in any particular way. The act itself is always subject to the opinion and decision of the Court as to whether in fact it be an act of State or not. The Minister, the same as the Secretary of State in England, is liable to have his acts reversed by the Supreme Court if the facts as set out in his plea do not amount to an act of State policy.

The Chief Justice.—The consideration of the facts in any particular case, and judgment upon them, cannot affect the principle. The difficulty I see in regard to the principle is that an unlawful act, done within the jurisdiction of the country, seems to be distinct from a similar act done abroad. It seems to be a more definite breach of international comity.

Mr. Smyth.—That may be.

Mr. Justice Williams.—I do not think you will find a single case to show such a distinction. The fact of a man being an alien debars him from suing a subject of another State for an act adopted by the Sovereign Power.

Mr. Smyth.—I say that if there is any distinction it lies upon him who sets it up to show it. It is not recognised in any case we can find. I put the broad general principle that an alien has no claim to come into the Queen's Courts to sue for redress for a wrongful act done to him in the exercise by the Queen's officers of an act of State policy. The moment it is shown to be an act of State policy the jurisdiction of the municipal court is gone in the case of an alien, and I do not care whether the act be one within the jurisdiction of the Colonial Government or outside.

The Chief Justice.—Will you say that the jurisdiction against the Crown itself is taken away? An alien friend can bring a petition of right, and bring an action under our Statute against the Crown, although not against an officer.

Mr. Smyth.—For tort?

The Chief Justice.—Well, in cases of contract. But this is put as a statutory contract, and I take it that there can be no doubt that an alien friend can sue the Crown in our Courts for a breach of that contract.

Mr. Smyth.—We say that the Chinese Acts do not constitute a contract, but that they place an additional restriction on aliens.

Mr. Justice Wrenfordsley.—I would venture to use the term condition in place of restriction.

Mr. Smyth.—We put it a restriction because if it be a condition it may possibly be waived. We put it that it is not a contract, and we decline, with the Court's permission, to adopt the term condition. I put it that, so far as these acts of State are concerned, inasmuch as they must always be subject to the opinion and jurisdiction of the Court, no harm can arise, as suggested by my learned friend. Now, first as to these acts of State, and as to how they must be pleaded. I would refer to the case already mentioned of Musgrave *v.* Pulido, 5 Appeal Cases, p. 102. This case shows very distinctly that it is not every act that is alleged by an officer of State which is an act of State, and which can be pleaded and taken advantage of as such. In that case there was a trespass charged against the Governor of Jamaica, who seized a schooner, and who pleaded that the acts complained of were done by him "as Governor" and as "acts of State." It was an action for damages for the seizure of a ship called the *Florence*, which, while on a voyage from Cuba to the island of St. Thomas, had been compelled to put in at the port of Kingston, in Jamaica, for repairs. In that case, as in the New South Wales case, the particular facts were not set out by Sir Anthony Musgrave to show that what he relied on amounted to an act of State. He simply said he acted by virtue of his powers of authority, and did the things as acts of State policy. The Court in Jamaica held that it was not a sufficient plea, and there was an Appeal to the Privy Council, which upheld the decision of the lower Court that the facts should have been set out. In that case, Mr. Herschell, Q.C., said this:—"If the "act complained of had been shown to be an act of State it would have been a defence "as well in the courts of the island as of the United Kingdom." That meets the case suggested by His Honor the Chief Justice to some extent.

"Mr. Herschell, Q.C., and Mr. Gainsford Bruce, for the respondent, contended "that the appellant did not set up his plea as a plea in bar. He therefore claimed and "intended to claim his privilege as Governor, and did not rely upon it as a defence "to the action, but as precluding the necessity of defending himself at all. The plea "shows no sufficient grounds why the writ should not be stayed without requiring the "appellant to answer over on the merits; it cannot be taken as a plea to the juris-"diction being pleaded by attorney and not in person; it gives no better writ, and "therefore is bad. If the act complained of had been shown to be an act of State "it would have been a defence as well in the Courts of the island as of the United "Kingdom; but it is not everything which a man does *quâ* Governor which is an act "of State. A private individual may set up that what he did was an act of State, "provided he was armed with the necessary authority. If he exceeds the authority, "it is not an act of State, unless subsequently ratified."

Then there were two Irish cases cited, but in them the acts were relied upon as having been done by the Lord Lieutenants, who were Viceroys. I shall refer to them later on.

"Sir James W. Colville referred to Forester *v.* Secretary of State to show "that it is a question of fact whether an act is an act of State."

Mr. Justice Kerferd.—How does that arise on your pleadings now?

Mr. Smyth.—I am examining what these acts of State really are. By-and-bye I will ask how they can be exercised. For the purposes of argument it is admitted that it is an act of State.

Dr. Madden.—My whole argument is that it is not an act of State.

Mr. Smyth.—The plaintiff says that we could not legally do this thing, but it is not pleaded that it was not an act of State.

Mr. Justice Williams.—They admit all your facts, but taking them, they say, they do not amount to an act of State.

Mr. Justice Wrenfordsley.—It would remove a great deal of difficulty if it were admitted that it was an act of State.

Mr. Smyth.—If the wording of the plea does not set out a matter which comes within the definition of acts of State policy I do not know what could. The judgment of the Court in the case of Musgrave *v.* Pulido was this:—

"The defendant has sought to strengthen his claim of privilege by averring in "his plea that the acts complained of were done by him 'as Governor,' and as 'acts of "State.' Their Lordships propose hereafter to consider the particular averments of "this plea. It is enough here to say that it appears to them that if the Governor "cannot claim exemption from being sued in the courts of the colony in which he

"holds that office, as a personal privilege simply from his being Governor, and is "obliged to go further, his plea must then show by proper and sufficient averments "that the acts complained of were acts of State policy within the limits of his commis- "sion, and were done by him as the servant of the Crown, so as to be, as they are "sometimes shortly termed, acts of State. A plea, however, disclosing these facts "would raise more than a question of personal exemption from being sued, and would "afford an answer to the action not only in the Courts of the colony but in all Courts; "and, therefore, it would seem to be a consequence of the decision in Hill *v* Bigge (3 "Moore P. C. 465) that the question of personal privilege cannot practically arise, "being merged in the larger one, whether the facts pleaded show that the acts "complained of were really such acts of State as are not cognizable by any municipal "court." Having gone through a number of cases, his Lordship goes on:—"It is "apparent from these authorities that the Governor of a colony (in ordinary cases) "cannot be regarded as a Viceroy, nor can it be assumed that he possesses general "sovereign power. His authority is derived from his commission, and limited to the "powers thereby expressly or impliedly entrusted to him. Let it be granted that for "acts of power done by a Governor under and within the limits of his commission he "is protected, because in doing them he is the servant of the Crown and is exercising "its sovereign authority, the like protection cannot be extended to acts which are "wholly beyond the authority confided to him. Such acts, though the Governor may "assume to do them as Governor, cannot be considered as done on behalf of the "Crown, nor to be in any proper sense acts of State. When questions of this kind "arise it must necessarily be within the province of municipal courts to determine the "true character of the acts done by a Governor, though it may be that, when it is "established that the particular act in question is really an act of State policy done "under the authority of the Crown, the defence is complete, and the Courts can take "no further cognizance of it. It is unnecessary, on this demurrer, to consider how "far a Governor, when acting within the limits of his authority, but mistakenly, is "protected. Two cases from Ireland were cited by the defendant's counsel in which "the Irish Courts stayed proceedings in actions brought against the Lord Lieutenant "of Ireland. In these cases the Lord Lieutenant appears to have been regarded as a "Viceroy." Then his Lordship goes on:—"Several cases were cited during the "argument of actions brought against the East India Company and the Secretary of "State for India, in which questions have arisen whether the acts of the Indian "Government were or were not acts of Sovereignty or State, and so beyond the "cognizance of municipal courts."

They had certain powers which we have not, but we have powers which they had not. They had powers *ex necessitate* in order that they could deal with a number of hostile States. It was necessary to give them power to conclude treaties with native princes, and even to enter into war with them, but they were still subject to the Sovereign power the same as we are. But they had not the right to make all laws, so that though they had larger powers to make treaties, which we have not, we have powers to make laws for Victoria in all cases whatsoever. By-and-bye I shall show that, by authority, any acts done by our Legislature are acts of Sovereign power within the limits of jurisdiction, and so held to be. So, I put it that we are in just as good a position to do acts of State.

"The East India Company, though exercising (under limits) delegated Sove- "reign power, was subject to the jurisdiction of the municipal courts in India, and it "will be found from the decisions that many acts of the Indian Government, though "in some sense they may be designated 'acts of State,' have been declared to be within "the cognizance of those courts." In the case of the Rajah of Tanjore, and in other instances the acts were referred to as acts of State policy, and your Honors will see on what slight foundation the acts were held to be acts of State. "As far as their "Lordships are aware, it will be found that in all the suits brought against the Govern- "ment of India, whether in this country or in India, the pleas and answers of the "Government have shown, with more or less particularity, the nature and character of "the acts complained of, and the grounds on which, as being political acts of the "Sovereign power, they were not cognizable by the Courts. [See the Nabob of "Carnatic *v.* East India Company (1 Ves. Jun. 388); Ex-Rajah of Coorg *v.* East "India Company (29 Beav. 300); Rajah Salig Ram *v.* Secretary of State for India "(Law Rep., Ind. App., Sup. Vol., p. 119), in which judgment was given by this com- "mittee on the 27th of August, 1872.]

"None of these cases help the present plea. On the contrary, it appears from "them not only that the facts were laid before the Courts, but that the Courts enter- "tained jurisdiction to inquire into the nature of the acts complained of; and it was only "when it was established that they had the character of political acts of State that "it was decided they could not take further cognizance of them. It is to be observed "that the sovereign authority conferred upon the East India Company appears in "Acts of Parliament, and, therefore, without being pleaded, the Courts would have "judicial notice of it.

"Coming to the present plea, we find that after stating that the defendant was "Captain-General and Governor-in-Chief of the Island of Jamaica, the only averments "in it are that the acts complained of were done by him as Governor of the island, "and in the exercise of his reasonable discretion as such, and as acts of State. There "is no attempt to show the occasion on which the seizure of the plaintiff's ship was "made, nor the grounds on which that seizure, which is not in itself of the nature of "an act of State, became and was such an act. The plea does not aver, even generally, "that the seizure was an act which the defendant was empowered to do as Governor, "nor even that it was an act of State." And so on.

That is the case of Musgrave *v.* Pulido, and it distinctly shows that the facts must be set out, and that as soon as the acts stated satisfy the Court that they are acts of State policy, the jurisdiction of the Court is done. In Buron *v.* Denman the same principle is laid down. In that case Captain Denman was on the coast of Africa, with instructions to suppress the slave-trade, and he was requested by a neighbouring potentate to rescue two British subjects from slavery. He did so, and seized a barracoon, the property of Mr. Buron, a Spanish slave-owner. It was contended that Captain Denman acted wholly without authority, and it was an utterly illegal act. It was held in Westminster that the plaintiff was entitled to recover, because it was shown that, according to the law of Spain, Mr. Buron was carrying on a legal trade in slaves at the time of the seizure. The following is the judgment:—

Having made a direction with respect to the issue in the case, his Lordship says:—

"These propositions being clear, a question arises, whether the plaintiff can "maintain this action for taking away his slaves. It is not necessary to decide whether, "if he had been simply in the actual possession of the slaves, using them as slaves, "he could have recovered against any person who took them away: on that point "it is not necessary to give an opinion, because, according to the evidence on both "sides, he was living at Gallinas, where it was lawful to possess slaves. It is con- "tended that, by the law of Spain, the plaintiff cannot possess a property in slaves "for the purpose of exporting them, *as slaves*, to the West Indies. However, there is "no evidence of such law, and we are all therefore of opinion that the second and "fourteenth issues, both as to the slaves and the goods, must be found for the plaintiff." That is to say, that a foreigner was entitled to sue for something done outside the jurisdiction of the Sovereign—for trespass, against Captain Denman. "But," his Lordship goes on, "the principal question is whether the conduct of the defendant in "in carrying away the slaves, and committing the other alleged trespass, can be "justified as an act of State, done by the authority of the Crown." Of course he had not the authority, but his acts were ratified. "It is not contended that there was "any previous authority. If the defendant had merely instructions according to the "terms of the treaty set out in the Act of Parliament, those instructions would only "have extended to the stopping of ships on the high seas, within the limits agreed to "by the treaty with the Spanish Crown. Therefore the justification of the defendant "depends upon the subsequent ratification of his acts." Having dealt with their ratification his Lordship goes on—"If an individual ratifies an act done on his behalf, "the nature of the act remains unchanged, it is still a mere trespass, and the party "injured has his option to sue either; if the Crown ratifies an act the character of "the act becomes altered, for the ratification does not give the party injured the "double option of bringing his action against the agent who committed the trespass "or the principal who ratified it, but a remedy against the Crown only (such as it is), "and actually exempts from all liability the person who commits the trespass." Therefore his Lordship says that if the jury were satisfied that the acts of Captain Denman were ratified, and they were only ratified through the letter of Lord Palmerston's secretary, approving of Captain Denman's act that was equivalent to a previous act by Her Majesty, and the acts were acts of State policy, and completely ousted the jurisdiction of the Court.

Mr. Justice Holroyd.—All these cases about acts of State apply to wrongs which have been inflicted on aliens not resident within the United Kingdom.

Mr. Smyth.—I suppose a case inside of England would scarcely arise.

Mr. Justice Holroyd.—Is there no case where an act was done within the jurisdiction of the offending country?

Mr. Smyth.—There is this case of Pulido *v.* Musgrave.

The Chief Justice.—Is that the only case?

Mr. Smyth.—In no case can we find the distinction drawn, and I submit there is no difference when you come to deal with acts of State whether the person is within the jurisdiction or out of it.

In the case of Buron *v.* Denman, Baron Parke, in charging the jury, said—"I "should observe that the Court are of opinion that it is not necessary for the defendant "to prove the pleas which expressly state the authority of the Crown; for if this act, "by adoption, becomes the act of the Crown, the seizure of the slaves and goods by the "defendant is a seizure by the Crown, and an act of State for which the defendant is "irresponsible and therefore entitled to a verdict on plea of 'not guilty.'" In the case of Phillips *v.* Eyre, 6 Queen's Bench, commencing page 1, Mr. Eyre was sued for acts done by him as Governor of Jamaica during the time of the so-called rebellion in Jamaica. After the rebellion was quelled, the local Legislature passed an Act of Indemnity, which was pleaded in the case, and it was contended that that act was not a sufficient answer as being an act of State. It was held that it was a sufficient answer. I desire to call attention to the case on account of a passage which occurs in Mr. Justice Willes's judgment. He says at the close of his judgment—"We have thus discussed "the validity of the defence upon the only question argued by counsel, touching the effect "of the colonial Act, but we are not to be understood as thereby intimating any opinion "that the plea might not be sustained upon more general grounds as showing that the "acts complained of were incident to the enforcement of martial law. It is, however, "unnecessary to discuss this further question, because we are of opinion with the "Court below that the colonial Act of Indemnity, even upon the assumption that the "acts complained of were originally actionable, furnishes an answer to the action." his Lordship says that they only decided on the ground of indemnity acts, because that was the only question before them. But we wish it to be understood that the Court did not thereby intimate any opinion that the defence might not be sustained on more general grounds. In other words that the acts were acts of State policy, and that an Act of Indemnity was not required. With respect to the powers of local legislators, His Lordship, at page 19, says—"It is certain that the Crown has, in numerous "instances, granted charters under which Houses of Assembly and Legislative Councils "have been established for the government of colonies, whether conquered or "settled, and that such Councils and Assemblies have, from time to time, made laws "suited to the 'emergencies of the colony,' which, of course, include all measures "necessary for the conservation of peace, order, and allegiance therein. In effect, the "inhabitants have been allowed to reserve the power of self-government, through their "representatives in the colony, subject to the approval of the Crown and the control of "the Imperial legislature. Beckford *v.* Wade (17 Ves. 87) in which the Limitation Act "of Jamaica was held to bar the title, and not merely the remedy, is one of many "instances in which the force of such legislation has been recognised here, and its "lawfulness was taken for granted by Lord Wensleydale in the leading case of Kielly "*v.* Carson (4 Moo. P.C. at p. 84), in a judgment of the weightiest authority, delivered "after two arguments, the second of which took place before eleven members of the "judicial committee, comprising, besides Lord Wensleydale himself, Lord Lyndhurst, "Lord Brougham, Lord Cottenham, Lord Campbell, Lord Chief Justice Tindal, and Dr. "Lushington. In that judgment Lord Wensleydale, after observing that Newfoundland "was a settled, not a conquered colony, added—'To such a colony there is no doubt "'that the settlers from mother country carried with them such portion of its common "'and statute law as was applicable to their new situation, and also the rights and "'immunities of British subjects. Their descendants have, on the one hand, the same "'laws and the same rights, unless they have been altered by Parliament; and on the "'other hand the Crown possesses the same prerogative and the same powers of "'government that it does over its other subjects; nor has it been disputed in the "'argument before us, and therefore we consider it as conceded, that the Sovereign had "'not merely the right of appointing such magistrates and establishing such corpora-"'tions and courts of justice as he might do by the common law at home, but also that

" ' of creating a local Legislative Assembly, with authority subordinate, indeed, to that of " ' Parliament, but supreme within the limits of the colony for the government of its " ' inhabitants.' "

The East India Company, under its charter, had a *quasi* sovereign position, and the acts of its officers in India have been held to be acts of State, as the same acts done here by responsible Ministers of the Crown would be held to be acts of State, and where they are acts of State the jurisdiction of the municipal courts to inquire into them is ousted. We have the same right under our Constitution Act to make acts of State as the East India Company had under its charter and Acts of Parliament. In all the East India Company's cases these acts were acts of State policy. And the acts done under our Constitution Act are equally sovereign and supreme acts, and the municipal courts cannot inquire into them. And there was this difference in our favour, that in some respects our powers are much larger than theirs were. The case of the Rajah of Tanjore had been referred to, reported in 13 Moore's Privy Council cases, p. 22. In that case the Rajah of Tanjore had been a small independent prince, but for a great many years he was practically dependent on the East India Company. At his death officers of the Company seized all the property of the Rajah—an independent prince. As he left no heir it was seized by the Company as a conquest. One of his widows sued for restitution of so much of the property as did not belong to the State —for restitution of the Rajah's private property. The Court below (at Madras) held that it was a harsh and tyrannical act for the Company's officers to seize property which could not be said to be the property of the Raj, and gave judgment for the petitioner. The case went home to the Privy Council, and it was held that, though he was a dependent on the Company, the seizure was an independent act of State policy by the Company's officers, and that the jurisdiction of the Courts was ousted. The Attorney-General of the day denounced the conduct of the Company, but this is what Lord Kingsdown said of the case:—

"This is an appeal from a decree of the equity side of the Supreme Court of "Judicature at Madras, by which it was declared that the respondent, the plaintiff in "the suit below, as the eldest widow of Sevajee, late Rajah of Tanjore, who had died "intestate, was entitled to inherit and possess, as his heir and legal representative, his "private and particular estate and effects, real and personal, left by him at the time of his "death, subject to the payment and satisfaction thereout of the present debts, if any, of "Sevajee, and to any legal claims and demands that might exist against such private "and particular estate and effects; and the Court declared that the defendants, the "East India Company, were trustees for the plaintiff, for and in respect of the private and "particular estate and effects, real and personal, left by Sevajee at the time of his "death, and possessed by them, their officers, servants, and agents, as in the bill men- "tioned. The decree also proceeded to direct various accounts and inquiries founded "upon these declarations.

"In the very able argument addressed to us at the bar, many objections were "made by the appellant's counsel to this decree; but the main point taken, and that "on which their Lordships think that the case must be decided, was this, that the East "India Company, as trustees for the Crown, and under certain restrictions, are em- "powered to act as a Sovereign State in transactions with other Sovereign States in "India; that the Rajah of Tanjore was an independent Sovereign in India; that on his "death, in the year 1855, the East India Company, in the exercise of their Sovereign "power, thought fit, from motives of State, to seize the Raj of Tanjore and the whole "of the property the subject of this suit, and did seize it accordingly; and that over "an act so done, whether rightfully or wrongfully, no municipal court has any juris- "diction.

"The general principle of law was not, as indeed it could not, with any colour "of reason, be disputed. The transactions of independent States between each other "are governed by other laws than those which municipal courts administer; such "courts have neither the means of deciding what is right, nor the power of enforcing "any decision which they may make.

"But it was contended on the part of the respondent that this case did not fall "within the principle for the following reasons:—

"First—Because, as it was said, the East India Company did not stand in the "position of an independent Sovereign; that such powers of Sovereignty as were "exercised on behalf of the company were vested, not in the company, but in the "Governor-General and Council who are protected by legislative enactments for what

"they may do in that character. Secondly—That the seizure in this case did not take "place by the exercise of a Sovereign power against another independent power, but "was a mere succession, by an asserted legal title, to property alleged to have lapsed "to the company. And, thirdly, that there is a distinction between the public and "private property of the Rajah, and that the company never intended to exercise their "Sovereign powers as to the latter, whatever they might do with respect to the "former; that the company, therefore, are in possession of property by the un- "authorized act of their officers, for which no protection can be claimed on the grounds "which would protect the public property from the jurisdiction of the Court.

"On the first point their Lordships are unable to discover any room for doubt. "The careful and able review of the several charters and Acts of Parliament bearing "upon the subject which they had the advantage of hearing at the bar, has satisfied "them that the law, as it stood in the year 1839, is accurately stated in the following "passage in the judgment of Chief Justice Tindal in the case of Gibson *v.* The East "India Company (5 Bingh. N. C. 273), in which, after referring to various legislative "enactments, he observes that from these—'It is manifest that the East India Com- "'pany have been invested with powers and privileges of a twofold nature, perfectly "'distinct from each other; namely, powers to carry on trade as merchants, and "'(subject only to the prerogative of the Crown, to be exercised by the Board of "'Commissioners for the affairs of India) power to acquire and retain and govern "'territory, to raise and maintain armed forces by sea and land, and to make peace "'or war with the native powers of India.'

"That acts done in the execution of these Sovereign powers were not subject to "the control of the Municipal Courts, either of India or Great Britain, was sufficiently "established by the cases of The Nabob of Arcot *v.* The East India Company, in the "Court of Chancery in the year 1793; and The East India Company *v.* Syed Ally, "before the Privy Council in 1827.

"The subsequent Statute 3rd and 4th Will. IV., c. 85, in no degree diminished "the authority of the East India Company to exercise, on behalf of the Crown of Great "Britain, and subject to the control thereby provided, these delegated powers of "sovereignty.

"The next question is what is the real character of the act done in this case? "Was it a seizure by arbitrary power, on behalf of the Crown of Great Britain, of the "dominions and property of a neighbouring State, an act not affecting to justify itself "on grounds of municipal law? or was it, in whole or in part, a possession taken by "the Crown under colour of legal title of the property of the late Rajah of Tanjore, in "trust for those who, by law, might be entitled to it on the death of the last possessor? "If it were the latter, the defence set up, of course, has no foundation.

"It is extremely difficult to discover in these papers any ground of legal right, "on the part of the East India Company, or of the Crown of Great Britain, to the "possession of this Raj, or of any part of the property of the Rajah, on his death; and, "indeed, the seizure was denounced by the Attorney-General (who, from circumstances "explained to us at the hearing, appeared as counsel for the respondent, and not in "his official character for the appellant) as a most violent and unjustifiable measure. "The Rajah was an independent Sovereign of territories undoubtedly small, and bound "by treaties to a powerful neighbour, which left him, practically, little power of free "action; but he did not hold his territory, such as it was, as a fief of the British "Crown, or of the East India Company; nor does there appear to have been any "pretence for claiming it, on the death of the Rajah without a son, by any legal title, "either as an escheat, or as *bona vacantia.* It should seem, therefore, that the posses- "sion could hardly have been taken upon any such grounds.

"Accordingly, the defendants, in their answer, allege that on the death of the "late Rajah 'it was determined as an act of State, by the defendants and the British "'Government,' that the Raj and dignity of Rajah of Tanjore was extinct, and that "the State of Tanjore had thereupon lapsed to the defendants in trust for Her Majesty; "and it was thereupon also determined by the defendants, as an act of State and "Government, that the whole dominions and sovereignty of the State of Tanjore, "together with the property belonging thereto, should be assumed by the defendants "in trust for Her Majesty the Queen and should become part of the British territories "and dominions in India, in trust for Her Majesty. They then allege that the whole "of the property which they have seized has been seized by virtue of their Sovereign "rights on behalf of Her Majesty, and insist that the Court has no jurisdiction to

"inquire into the circumstances of the seizure, or its justice with respect to the whole "or any part of the seizure.

"The facts, as they appear in evidence, are these:—In November, 1855, the "Rajah died. The Government of Madras, within which presidency Tanjore is "situated, communicated the fact of his death to the Governor-General of India, and "this fact, with the views of the Government of Madras and of the Governor-General "in Council as to the steps which ought to be taken upon his death in regard to his "dominion and property, was communicated to the Court of Directors in England.

"The letters in which these views were communicated are not found amongst "the papers before us; but it appears from the letter of the Court of Directors, dated "the 16th of April, 1856, that these Governments were of opinion that the dignity "of Rajah of Tanjore was extinct, and that they had taken possession or were about "to take possession of the dominions and property of the Rajah, and intended to deal "with them in such manner as appeared to them to be just.

"The answer of the East India Company is to the following effect:—After advert-"ing to a suggestion which had been made, to recognise one of the daughters of the "deceased Rajah as his successor, they say:—'3. By no law or usage, however, has the "daughter of a Hindoo Rajah any right of succession to the Raj, and it is entirely out "of question that we should create such a right for the sole purpose of perpetuating "a titular principality at a great cost to the public revenue. 4. We agree in the "unanimous opinion of your Government and the Government of Madras that the "dignity of Rajah of Tanjore is extinct. 5. It only remains to express our cordial "approbation of the intentions you express of treating the widow, daughters, and depend-"ants of the late Rajah with kindness and liberality. We shall, doubtless, receive at "an early period from you or from the Madras Government a report of arrangements "made for carrying these intentions into effect. 6. The Resident was very properly "directed to continue all existing allowances until he could report fully on them to "Government; but to inform the recipients that Government were not to be con-"sidered as pledged to their continuance.'

"It seems obvious from this letter that the East India Company intended to "take possession of the dominions and property of the Rajah as absolute lords and "owners of it, and to treat any claims upon it of his widows, and relations, and depen-"dants not as rights to be dealt with upon legal principles, but as appeals to the con-"sideration and liberality of the company.

"The further proceedings were of the same character.

"On the 10th of July, 1856, the Government of Madras wrote to the Governor-"General in Council, and after giving an account of different portions of the property "of the late Rajah, and pointing out various difficulties and questions which might "arise out of it, they suggested that some person should be specially sent as a Com-"missioner to Tanjore who should be 'directed to investigate and report upon the "'various important questions above enumerated, and any others that may hereafter "'occur to this Government as demanding inquiry in connexion with the general "'subject.'

"By a letter of the 8th of September, 1856, the Governor in Council approves "of the suggestion of appointing a Commissioner and of the selection of Mr. Forbes for "the purpose. He points out certain matters; amongst others, the abolition of the "Rajah's Courts, which he leaves to the disposal of the Government of Madras. But "the mode in which it may be proposed to deal with the Rajah's debts and with the "State jewels, library, and armoury should be reported to the Government of India "before any measures are taken, as also the apportionment of pensions and gratuities to "the family and dependants of the Rajah. Upon the last point, it will be necessary to "lay down rules by which the Government of Madras should be guided.

"Mr. Forbes was accordingly appointed to discharge this duty, and written "instructions for that purpose were given to him by the Government of Madras on "the 25th of September, 1856. He was directed not to make any general announce-"ment of the orders of the Government of India, but to possess the Durbar generally "with the purport of those instructions, informing them that it had been decided by "the Home authorities that the Raj of Tanjore had become extinct, but that all "liberality would be shown to the members of the family, servants, and dependants. "He was also, should such caution appear called for, to warn them of the consequences "that would certainly ensue from any factious opposition to the policy that had been "decided on in the case of the Tanjore Raj.

"In what manner Mr. Forbes executed the powers conferred upon him appears "in his evidence and by the documents proved in the cause.

"On the 29th of September, 1856, he caused an order to be made on the Sirkele, "an officer of the late Rajah, directing him to make out a list of the property belonging "to the Raj. No attention having been paid to this order, Mr. Forbes soon afterwards "went himself to Tanjore and took up his abode at the Residency, and on the 17th "of October, 1856, sent a letter to the Sirkele, in which he informs him of his inten- "tion to take possession of the public property of the State for the British Government "and to place it in safe keeping. He informs the Sirkele that he intends to take "charge of public property within the fort early the next morning and to place it in "charge of a detachment of British troops, and he requests that the Sirkele will meet "him at the east gate of the fort at half-past 5 o'clock in company with the Murde- "shuns of the Tashackdera, the arsenal, and the various other departments.

"On the following morning, accordingly, taking advantage, as he says, of the "presence of the 25th Regiment of Infantry, he goes to the palace. He takes posses- "sion of the property which is found in it. He has it placed in rooms, sealed with his "seal, and stations sentries at the different doors.

"It is clear from Mr. Forbes's report to the Madras Government of what took "place on the occasion, that though no resistance was offered by the family of the "Rajah or the inhabitants of the fort, to the seizure of the Raj, and of the palace and "property of the Rajah, it was regarded on both sides as a mere act of power not "resisted, because resistance would have been vain. 'Much sorrow,' he says, 'was "'expressed, and much grief was shown; but all submitted at once to the authority of "'the Government, and placed themselves in its hands.'

"It is by these acts of Mr. Forbes that the East India Company is in posses- "sion of whatever property it holds now claimed by the respondent. The acts of "Mr. Forbes were approved by the Governor of Madras by a minute dated the "21st of October, 1856; and they are adopted and ratified by the East India Company "in their answer in this suit.

"What property of the Rajah was within the authority given to Mr. Forbes "and what may be the consequence of any seizure in excess of that authority, we will "consider under the next head; but that the seizure was an exercise of Sovereign "power, effected at the arbitrary discretion of the company by the aid of military force, "can hardly admit of doubt.

"But then it was contended that there is a distinction between the public and "private property of a Hindoo Sovereign, and that although during his life, if he be an "absolute monarch, he may dispose of all alike, yet on his death some portions of his "property, termed his private property, will go to one set of heirs, and the Raj with "that portion of the property which is called public will go to the succeeding "Rajah.

"It is very probable that this may be so; the general rule of Hindoo inheri- "tance is partibility; the succession of one heir, as in the case of a Raj, is the exception. "But assuming this, if the Company, in the exercise of their Sovereign power, have "thought fit to seize the whole property of the late Rajah, private as well as public, "does that circumstance give any jurisdiction over their acts to the Court at Madras? "If the Court cannot inquire into the act at all, because it is an act of State, how can "it inquire into any part of it, or afford relief on the ground that the Sovereign "power has been exercised to an extent which municipal law will not sanction?

"It is said, however, that it was not the intention of the East India Company "that the private property of the Rajah should be the subject of seizure, and it is "observed in the judgment of the Court below that the letter of Mr. Forbes to the "Sirkele of the 17th of October, 1856, shows that he knew there was private property "amongst that to be seized; and that he expressly states that all property to which a "claim can be established shall be restored to its owner. But whatever may be the "meaning of this letter, it affords no argument in favour of the judgment of the Court; "but rather an argument against it. It shows that the Government intended to seize "all the property which actually was seized, whether public or private, subject to an "assurance that all which, upon investigation, should be found to have been impro- "perly seized, would be restored. But even with respect to property not belonging "to the Rajah, it is difficult to suppose that the Government intended to give a legal "right of redress to those who might think themselves wronged, and to submit the "conduct of their officers, in the execution of a political measure, to the judgment of

"a legal tribunal. They intended only to declare the course which a sense of justice "and humanity would induce them to adopt.

"With respect to the property of the Rajah, whether public or private, it is "clear that the Government intended to seize the whole, for the purposes which they "had in view required the application of the whole. They declared their intention "to make provision for the payment of his debts, for the proper maintenance of his "widows, his daughters, his relations and dependants; but they intended to do this "according to their own notions of what was just and reasonable, and not according "to any rules of law to be enforced against them by their own Courts. In the letter "already referred to of the 8th of September, 1856, from the secretary of the Govern- "ment in India to the Government of Madras, it is distinctly stated—'The relations "'whom the Rajah of Tanjore has left are in this position: they are without any "'rights of inheritance;' and it then proceeds to enumerate those relations who are "thus without any rights of inheritance, and mentions as the first among them the "Queen Dowager, the respondent in this appeal; and it proceeds to speak of all those "relations as claimants upon the consideration of the Government, and to describe in "what manner those claims are to be met. How is it possible, in the face of this "declaration, to hold that it was the intention of the Government to recognise the "right of inheritance of the respondent, and to exclude from seizure, and to subject to "process of law, any portion of the property of the deceased Sovereign? If there "had been any doubt upon the original intention of the Government, it has clearly "ratified and adopted the acts of its agent, which, according to the principle of the "decision in Buron *v.* Denman, is equivalent to a previous authority.

"The result, in their Lordships' opinion, is that the property now claimed by the "respondent has been seized by the British Government, acting as a Sovereign power, "through its delegate the East India Company ; and that the act so done, with its "consequences, is an act of State over which the Supreme Court of Madras has no "jurisdiction.

"Of the propriety or justice of that act neither the Court below nor the Judicial "Committee have the means of forming, or the right of expressing, if they had formed, "any opinion. It may have been just or unjust, politic or impolitic, beneficial or in- "jurious, taken as a whole, to those whose interests are affected. These are consider- "ations into which their Lordships cannot enter. It is sufficient to say that, even if a "wrong has been done, it is a wrong for which no municipal court of justice can afford "a remedy.

"They must advise Her Majesty to reverse the decree complained of, and to "dismiss the plaintiff's bill; but they will recommend that no costs should be given of "the proceedings either in the Court below or in this appeal."

There the Privy Council saw that it was a wrong for which there was no remedy. All the cases relating to the East India Company which were collected in Musgrave *v.* Pulido were of the same character. In some they were acts of State, in others they were not. Where they were acts of State the jurisdiction of the municipal courts was ousted.

Then comes the question whether a responsible Minister here has a right, in the name of the Queen, to do this act, which we allege to be an act of State policy. My learned friend, Dr. Madden, has argued it as a matter of the Queen's prerogative. He has argued that if that prerogative ever existed it had been abandoned, but at the close of his argument he admitted that it had been acted on from time to time within the last 300 years.

Dr. Madden.—No, I said it had not been exercised.

Mr. Smyth.—Queen Elizabeth turned out the Spanish ambassador without rhyme or reason.

Dr. Madden.—That was the case of an ambassador. He is *pro-rex.*

Mr. Smyth.—She turned out four, some of whom were not ambassadors. The account of it will be found in the 11th volume of Froude's History of England. Queen Elizabeth also refused liberty to the Queen of Scots to come to England for State reasons.

Dr. Madden.—A Sovereign cannot come into the dominion of another Sovereign for many reasons.

Mr. Smyth.—A Sovereign can come into the dominions of another, but he is liable to be turned out if he does acts detrimental to the State through which he is travelling or staying for the time being. My learned friend says the prerogative

has become obsolete and is gone. I should like him to cite an authority, to show where the prerogative of the King of England dies out by desuetude. The prerogative can be cut down by Act of Parliament. In this country several of the prerogatives have been abolished; for instance, that relating to forfeitures and escheats had been taken away. That relating to fines and penalties had remained; but it was, by the last Justices of the Peace Statute, transferred to General Sessions. I ask my learned friend to show any authority that a prerogative, if it once existed, can be lost by desuetude. He says this prerogative has not been exercised for 500 years.

Mr. Justice Wrenfordsley.—Parliament can restore it.

Mr. Smyth.—No doubt. But it does not follow that because a prerogative has not been exercised for 500 years therefore it cannot be exercised now. If England had been in absolute profound peace for 500 years, and there had been no necessity of exercising the prerogative of proclaiming war, can it be said that the prerogative of proclaiming war was taken away and that the Queen of England could not proclaim war against the armed nations of the Continent? Can it be said that the prerogative of proclaiming war had gone because it had not been used for 500 years? We know why in England the prerogative of expulsion has not been exercised for the last two centuries. It is the country where the oppressed of all nations come and get a home. It has been its boast that it is the home of all nations. There was no necessity to resort to the prerogative of expulsion; when the necessity to exclude aliens did arise, they were dealt with under the Aliens Act. Mr. Justice Kerferd put the question "Is it prerogative at all?" It occurred to me that the point could be put on even higher ground than the mere prerogative of the Queen. It is the right of every Sovereign State in the world to do what it likes, as far as it can, to exclude foreigners, and, if necessary, to expel them. It is one of the powers of an independent Sovereign State. Every State must act through some Chief Executive Officer. The Queen is the head of the State here, and as such has the right to prevent the intrusion of foreigners, or to expel them. In Creasy, on the *First Platform of International Law*, page 196, it is stated:—

"The perfect right of a state to independence gives it the power, according to "positive international law, to make what regulations it pleases as to its trade and its "commerce with other nations. It may place what restrictions it thinks fit on the access "of foreigners to its coasts or to its interior territories for mercantile or for any other "purposes. It may do this without being considered to inflict by those restrictions "such an injury as amounts to a *casus belli*, though undoubtedly the withdrawal of "ancient courtesies and of indulgencies which had become matters of long custom "would be a breach of the comity of nations, especially if similar indulgencies were still "allowed to the members of other foreign States. But no *casus belli* would arise. "The State or States towards which such exclusion was practised must retaliate only "by refusing in turn to the denying nation all courtesies and beneficial intercourse "under the comity of nations. A State's perfect right to regulate and restrict the "commerce of foreigners with it, and their access to its territories, extends also to an "absolute right to forbid foreign commerce, and the access of foreigners altogether. "Attempts have been sometimes made to call in question the right of any one nation "thus to isolate itself from the rest of mankind, and to renew the churlish spirit of "the Xenelasia, by which ancient Sparta strove to keep its peculiar institutions intact "and uncorrupted. But the balance of authority is clearly in favour of the existence "of such a strict right; and the balance of convenience is in its favour also. The "annoyance and disappointment which the speculative and inquisitive members of "other states may suffer by such exclusions (exclusions which, from the nature of "things, and from human nature, have always been and always must be of very rare "occurrence) are trifling in comparison with the mischief, with the amount of quar-"relling and hostility, which would be caused, if a strong adventurous State had a "right, under pretext of general good, of the advancement of civilization, or the like, "to send its ships or its subjects into another State against that other's will. For "authorities on the subject I will cite Sir George Bowyer and Vattel. The first "says a State may, without violation of international law, exclude all foreigners from "its territories, though there may be particular cases in which to exclude them would "be cruel and contrary to the common duties of humanity."

Creasy, at page 201, says:—"In certain cases (which he names) there is an "implied promise on the part of the recipient nation to continue and respect those "privileges. And the breach of that promise would justify the State whose subjects

"were thereby injured in exacting reparation for such wrongs by measures of retalia-
"tion such as have been described. This observation does not apply to cases where
"the cormorant foreigners are guilty of misconduct which requires instant repression."

The right of an independent Sovereign State, therefore, to exclude or expel foreigners being granted, the question arises, how is it to be done? It can only be done by the head of the State. Creasy, at page 101, says:—

"As we have seen, every State must, in order to be recognised as such, have
"its own organized Government, and every such Government must have its appointed
"chief organ. Whether this chief organ be an Emperor, or a King, or a Sultan, or a
"President, or a Consul, or a Senate, or a popular Assembly, or any combination of
"ruling individuals or ruling bodies, that organ, as the State's chief organ, is to foreign
"bodies the visible and practical impersonation of the State, with which they, through
"their own respective chief organs, communicate, and the acts of which are in the eye
"of international law the acts of the whole community. The person or the persons
"which is or are the chief executive organ of a State, in fact must, for international
"purposes, be always assumed to be the chief executive organ as of right; and no
"inquiry into the rightfulness of its or their authority is, for international purposes,
"admissible."

Every Sovereign State has the right to exclude, or expel, or keep away foreigners if it chooses. Every State, for international purposes, acts through its Chief Executive Officer, be he King, Sultan, Emperor, or President. Here the act was done by command of Her Majesty, as Chief Executive Officer of the State. Creasy, at page 165, quoting from Sir George Bowyer, says:—"All persons who are found
"within the boundaries of a State are to be deemed subject to the government of the
"said State, whether their residence be permanent or temporary. The rulers of
"States by comity give to the laws of every people which are in force within the
"territories of that people effect everywhere over matters that have arisen within
"that people's territories, so far as such laws do not prejudice the powers or rights of
"other Governments or their citizens." Creasy adds—"There is certainly one
"exception (there are perhaps more exceptions) to this general rule, that a State has
"full and absolute jurisdiction over all persons who are found within the boundaries
"of a State. An exceptional case arises when a foreign Sovereign (by which is meant
"here the individual person who is the actual chief of a foreign State) is travelling
"through other countries or is temporarily resident therein. In such a case the
"foreign Sovereign is considered as entirely free from the law of the land, so far as
"regards its civil jurisdiction. With regard to his liability to the law of the land for
"any crimes that he may commit therein, the better opinion seems to be that here
"also he is exempt from jurisdiction of the local tribunals, though the State whose
"hospitality he has abused and whose laws he has outraged may justly force him to
"leave its territory."

In Tarring's "Law relating to the Colonies," p. 15, it is said:—

"The power of the Sovereign to make new laws for a conquered country has
"often been asserted by the Courts. Where the King of England conquered a country
"it is a different consideration, for then the conqueror, by saving the lives of the people
"conquered, gains a right and property in such people, in consequence of which he
"may impose upon them what law he pleases (2 P. Will., 75). In Smith *v.* Brown,
"Lord Holt said that the laws of England did not extend to Virginia; being a con-
"quered country, their law was what the King pleased. So in Beaumont *v.* Barrett
"it was laid down that Jamaica was a conquered island, and, as in other territory
"attained by conquest, such laws were in force as the King by his supreme authority
"might choose to direct. But where the Sovereign has once granted legislative
"powers to a colony, he cannot afterwards himself exercise those powers in reference
"to local matters."

The King is there referred to as the mouthpiece of the country; therefore, the act, whether it is exercised *qua* prerogative or by the exercise of Sovereign power, it was exercisable by the principal officer of the State. In Victoria the only persons who advise Her Majesty on the internal affairs of Victoria are the only persons through whom she can act. It is only by their advice that she can do such an act as to exclude a foreigner from Victoria. And such an act, when it comes to be examined by the Courts, is an act of State policy so far as this colony is concerned. If the Minister cannot act, who can? Dr. Madden says that Parliament may be called together. If the Governor is away, who is to call Parliament?

Mr. Justice Wrenfordsley.—Provision is made for that. By a fiction, he is presumed to be here.

Mr. Smyth.—Suppose Parliament was prorogued to the 1st September, if an emergency arose, it cannot more speedily be summoned. And it might be necessary to meet the emergency at once. Vattel, as quoted by Creasy at page 281, says:—

"On the other hand, a constant and sad experience warns us that overpowerful "States rarely fail to molest their neighbours, to oppress them, and to subjugate them "entirely when they find the opportunity for doing so and can do it with impunity. "Is it to be said that we are to wait passively while the peril accumulates? Are we "to allow that tempest to thicken, the first clouds of which might be easily dispersed? "Are we to permit a neighbour to acquire a giant's strength, and to let him choose his "own good season for using it like a giant against us? What will be the use of "thinking of self-defence when the means of it has ceased to exist? Prudence in man "is a duty; especially is it so in those who aspire to be the leaders of a nation, and "who are pledged to watch over its safety."

In the same words, if an emergency arises, it is to be met as it arises. What other way can it be met, unless by the act of the Minister?

The Chief Justice.—In other words, you break the law in the interests of humanity.

Mr. Smyth.—It has been said that an Act of Indemnity is necessary in these cases. But to have to wait for an Act of Parliament authorizing the act of the Minister or to require an Act of Indemnity for his conduct would be to paralyze the whole Executive. If the Ministers cannot do the act, who can? It is quite clear that the Imperial Secretary of State cannot advise Her Majesty on the subject. If Her Majesty and all her Imperial Ministers were here, they cannot advise her as to the internal affairs of Victoria. Unless a responsible Minister in Victoria has the power, it is gone altogether, and the Executive would be paralyzed over half the empire; French ships with convicts from New Caledonia might come into Hobson's Bay and land their convicts; pirates might enter through the Heads, and they could not be stopped. Why should the Executive of the colony be hampered in this way? We are now in troublous times, and we do not know what may be going on. For the last fortnight we have been cut off from communication with Europe, and anything may have happened in the meantime. It is a ticklish thing to say that a responsible Minister is so shackled that he cannot act in an emergency. This act is done by the Queen, as representing a Sovereign State, and it is done by us as representing her. If she does not dissent from it by dismissing her Ministers, it is to be assumed that she ratified it. So long as the Minister remained in office, it must be assumed that the Queen, or her representative the Governor, ratified his act. And, in fact, in this very case it is a matter of common knowledge that there has been constant telegraphic communication between the Government here and the Government in England in reference to the landing of the Chinese passengers from the *Afghan*. There was also the Queen's agent here. He was called the Queen's agent with a limited authority.

The Chief Justice.—He is the representative of Her Majesty.

Mr. Smyth.—He is her representative here; and he and the Queen still retain the Ministers. Dr. Madden has referred to the decision of the Court in New South Wales, where the Court held that the defence there was not good; but the judgment of the Supreme Court of New South Wales is absolutely correct. There the question was on the return to a writ of *habeas corpus*. The return was as bad as it could be; the return was that the Chinese were held by command of the Queen—by an Inspector of Police by direction of a member of the Government. Such a return was bad.

Mr. Justice Williams.—If the return there was that they were not imprisoned, but were merely prevented from landing by virtue of the prerogative, which entitled Her Majesty's Ministers to prevent aliens from landing, would that be a good return?

Mr. Smyth.—If the Government of New South Wales were in a position to put forward facts to show that it was done by direction of a Minister of a Sovereign State, it would be a good return.

Mr. Justice Holroyd.—Are not you arguing all along that this is a Sovereign State?

Mr. Smyth.—No; I started this morning by utterly repudiating the notion that we claim, in any shape or form, that this is a Sovereign State.

Mr. Justice Holroyd.—Does not your argument necessarily imply that this is a Sovereign State?

Mr. Smyth.—No ; not at all.

Mr. Justice Holroyd.—It is only as the Sovereign of a Sovereign State that the Queen can exercise prerogative at all, and yet you claim for Ministers of the Crown in this colony the right to exercise that prerogative in and for Victoria, as if this colony were a Sovereign State.

Mr. Smyth.—My contention is that Victoria is part of the Sovereign State of England. We have the same Sovereign here as other parts of the British empire, but I do not say that under our Constitution we are a Sovereign State or anything like it.

Mr. Justice Holroyd.—I do not see how you can get out of it, after the line of argument you have adopted.

Mr. Smyth.—My position is this : The colony of Victoria is part of the Sovereign State of England, and within their jurisdiction, within the territorial limits of the colony, responsible Ministers here have the right to advise the Sovereign. The Sovereign State of which Victoria is a part extends over the whole British dominions, and we in Victoria are under the same Sovereign as the people of England.

Mr. Justice Holroyd.—The United Kingdom, then, is only a part of the Sovereign State ?

Mr. Smyth.—Yes.

Mr Justice Holroyd.—Then there appears to be no need for Imperial federation.

Mr. Justice Wrenfordsley.—But your earlier arguments would not be admissible except on the assumption that this is a Sovereign State.

Mr. Smyth.—Victoria is part of a Sovereign State.

Mr. Justice Wrenfordsley.—But you have been addressing yourself to the rights of the parent State.

Mr. Smyth.—We say that we are acting in this matter by the prerogative of the Sovereign of England, who is the Sovereign of Victoria just as much as she is the Sovereign of England, and we claim that, inasmuch as responsible government has been granted to this colony, responsible Ministers in and for Victoria have the right to advise the Sovereign as to all matters within the four corners of this colony.

Mr. Justice Wrenfordsley.—With regard to colonial matters ; but Puffendorf and the other early authorities you quoted say nothing which would support your argument that responsible Ministers in this colony have the right to advise the Crown as to the exercise of the prerogative.

Mr. Smyth.—These novel questions have all arisen since the time of Puffendorf and the other early authorities, through the creation of self-governing colonies. We in Victoria are a *quasi* Sovereign people, having a Constitution which enables us to make laws which operate within the limits of our realm. We are subject, it is true, to Imperial authority; but we have the same Sovereign as the whole of the British empire, and, when acting by command of that Sovereign, responsible Ministers in and for Victoria act by the authority of the Sovereign power. Supposing the Queen and her Imperial Ministers were out here in Melbourne to-morrow, they could not do this thing.

Mr. Justice Holroyd.—I do not say that they could. But why did you give the go-by to the Governor of this colony?

Mr. Smyth.—We did not. This act was an act of the Government and not of the Governor.

Mr. Justice Holroyd.—I speak of the Governor in his capacity as the representative of the Crown.

Mr. Smyth.—The plea says this act was done by the Government of Victoria. Does not that include the Governor?

Mr. Justice Holroyd.—But you go by the Governor altogether; you go back to the Queen. I am not speaking as to the argument of the learned Attorney-General, but as to your argument.

Mr. Smyth.—I contend that the Government of Victoria includes the Governor.

Mr. Justice Holroyd.—I know that; but you are excluding the Governor in your argument.

Mr. Smyth.—We say this thing is done by command of Her Majesty, and not by command of the Governor. As your Honor puts it, the Governor and Government would be arrogating to themselves the Sovereign power; and that would have been the case if we had done this act otherwise than by command of the Queen.

Mr. Justice Kerferd.—In your opening, you said that the colony of Victoria is not a Sovereign State. Is it not a fact that we have the three branches of Constitutional Legislature—the Queen, the Council, and the Assembly—the hand of the Governor being the hand of the Queen in our Constitution?

Mr. Justice Holroyd.—If you had been really arguing that, I might have been with you; but it strikes me that the whole weight of your argument has gone dead against that. If you had not argued that the act of Ministers was to be attributed to the Queen directly, as it were, and not through the Governor, and if you had said, it is to be supposed that what Ministers are cognizant of the Governor is cognisant of, I could have understood your argument.

Mr. Smyth.—I submit, with all respect, your Honor, that I did say that. I said the Governor is on the spot and must know of this; and, further, that we knew, from what was going on at home, the home authorities must know of it. And it is to be taken from that knowledge of the Governor that, inasmuch as Ministers have done this thing and have not been dismissed, their act has been ratified by the Crown as an act of State.

Mr. Justice Wrenfordsley.—The Attorney-General's argument was that, notwithstanding the delegated powers given to the Governor, and incident to the due carrying on of the Constitution of the colony, responsible Ministers here have a discretionary power to do certain acts of State, to wit, the act in question. But I confess that, when you enter upon an argument which endeavours to show that the colony of Victoria is a Sovereign State, and can do acts of peace and war, I part company with you altogether.

Mr. Smyth.—But I started out by repudiating the notion that we make any claim that this is a Sovereign State.

Mr. Justice Wrenfordsley.—You did, and it was a relief to my mind; but you went on to quote authorities of great weight, which would be only applicable if you were arguing in Westminster instead of in the Supreme Court of Victoria. The authorities you quoted are not apposite, unless you are arguing that this is a Sovereign State.

Mr. Smyth.—We do not claim that Victoria is of itself a Sovereign State, but we do claim that this is part of a Sovereign State, and we say that the act complained of by the plaintiff was done by command of the Queen of that Sovereign State In effect, what I say is this: The whole British Empire is a Sovereign State. The Queen—to use the language of the text writers—is the chief Executive organ of that Sovereign State. The Queen's prerogative is the same in Victoria as in Middlesex; but when she comes to exercise it in Victoria she is met by the Constitution Act, which hands over all the internal affairs of Victoria to its Government. She cannot therefore do any act here by the advice of the Imperial Ministers; but must do so by the advice of her responsible Ministers here. When they have advised her in relation to the internal affairs of Victoria, then her act commending or ratifying their action becomes the act of a Sovereign State—that is of the British Empire—not that this country is in itself a Sovereign State. We further say that this prerogative of the Queen has not been lost by desuetude, has not become obsolete; that it is still alive; and, if it is alive, how can it be exercised in this country, looking to our Constitution Act, except by and with the advice of responsible Ministers of the Crown in and for Victoria? I submit that the Queen's prerogative could not be exercised in this colony by one or more of Her Majesty's Imperial Ministers, nor by the Queen herself, if the Queen and her Imperial advisers were actually here. Therefore, unless it can be exercised in the way it has been exercised, by responsible Ministers in and for Victoria, the Government of this colony is powerless altogether, and the Queen's prerogative cannot be exercised over a very large portion of Her Majesty's dominions now enjoying responsible government. I was referring to the case which was recently argued before the Supreme Court of New South Wales, and I will return to that now. In the course of his decision on the application which was made to the Supreme Court of New South Wales to make absolute the rule *nisi* already granted for a writ of *habeas corpus*, directing Sub-Inspector Hyam to bring up to the Court the body of Lo Pak, a Chinaman, who was detained on board the s.s. *Afghan*, in Sydney Harbour, the Chief Justice said:—"Sub-Inspector Hyam has filed "an affidavit, and in the third paragraph of that affidavit he shows cause why the appli- "cant is restrained, and it is in these terms:—'The police, in preventing the said Lo "Pak from landing, are acting through the Inspector-General of Police under the "authority and by the orders of the Government of the colony.'"

The Chief Justice.—But that was a proceeding under the *Habeas Corpus Act*, and could not involve the question of preventing Lo Pak from landing.

Mr. Smyth.—It was argued for the respondent that the keeping of the man on board ship in Port Jackson was not imprisonment, and the Chief Justice of New South Wales held that preventing him from landing was imprisoning him. The Chief Justice said that, in the shape the case had taken, Sub-Inspector Hyam's statement in his affidavit, that in preventing Lo Pak from landing the police were acting under the authority and by the orders of the Government of the colony, was to be regarded as equivalent to, and stood in the place of, a return to a writ of *habeas corpus*, supposing such a writ had been issued as it might have been issued when it was first moved for; and the sole question for the Court, the Chief Justice said, was whether the statement that the police were acting under the authority and by orders of Government was a sufficient return, and would be a sufficient return if endorsed on a writ of *habeas corpus*. And the Court held that it was not a sufficient return, and discharged it, and the rule *nisi* for a writ of *habeas corpus* was made absolute for the discharge of Lo Pak with costs against the Crown.

Mr. Justice Williams.—If the same case had arisen there as has arisen here, and the return had gone a little further, and said that Lo Pak was not imprisoned further than to prevent him, as an alien, from putting foot on the soil of New South Wales, for certain reasons on account of which the Queen's responsible advisers in New South Wales had instructed the Sub-Inspector of Police to prevent him from landing, then the Court might have held that to be a good return.

Mr. Smyth.—And I should contend that that would have been a perfectly good return.

Mr. Justice Williams.—According to the Attorney-General's argument, it would have been.

Mr. Smyth.—A somewhat similar mistake was made in the return furnished by Governor Musgrave in the case of Pulido *v.* Musgrave. Governor Musgrave stated in his plea that he did the act complained of by his authority as Captain-General and as an act of State policy. If the return had gone further, and given facts which showed that the act was an act of State, the plea would have held good; and in the same way, if the Sydney Government had gone further, and set out facts which would prove that it was an act of State, the case might have met with a different fate in the Supreme Court of New South Wales, because very likely that would have been held to be a good return. We know that the decision of the Court, which, so far as I can judge of it, was correct, was based on the opinion that the return was a bad return. I will now address a few words to the Court with respect to the Chinese Immigrants Acts. The allegation is that we prevented the plaintiff from landing, and it has been put to the Court that, as the plaintiff was already within the limits of the territorial waters of Victoria, he had in point of fact and of law actually entered the colony. Now I contend that "entering and landing" means getting bodily, physically, on shore, and that merely being on a vessel in the territorial waters of the colony does not mean being within the colony. If being on board a vessel in the territorial waters of the colony means that the plaintiff had actually entered the colony, then I submit that section 4 of Act 723 shows that his being there was of itself an illegal act on his part, because section 4 says:—

"If any immigrant shall enter or attempt to enter this colony by sea who shall "not have paid or had paid for him the said sum of £10 he shall be liable to a penalty "of £10, and on default of payment of such penalty shall be liable to imprisonment for "twelve months unless such penalty be sooner paid, and may be apprehended and "taken before any justice to be dealt with in due course of law."

Dr. Madden.—But he may be willing to pay the poll-tax.

Mr. Smyth.—I do not care about that. If it is to be said that being on board a vessel in the territorial waters of the colony is equivalent to being in the colony, to having landed here, then the plaintiff's being on board the *Afghan* in Port Phillip harbour, without having first paid the £10 required by section 4 of Act 723, is in itself an illegal act on his part. That argument will convince the Court, I think, that it was not the intention of Parliament to enact that being in the territorial waters of Victoria was entering the colony within the meaning of the Chinese Immigrants Act, because a Chinese could not come into the colony by sea without entering the territorial waters of Victoria before paying the poll-tax, which Parliament did not intend to make an illegal act. I therefore contend that entering the colony, within the meaning of the

Chinese Immigrants Act, is being in the colony—bodily, physically, on shore. It has been said that the law which requires each Chinese immigrant to pay a poll-tax of £10 creates a kind of contract that the Chinese are to have leave to enter the colony on payment of that tax. I submit that the law does nothing of the kind. To put the case generally, I submit, in the first instance, that no alien has the right to come here at all; and we have specially restrictive legislation with respect to the Chinese. The Chinese Immigrants Act put a restriction on Chinese which is not put upon any other alien. The law of this colony, expressing the will of the people, says to the Chinese:—"You have no right, being aliens, to come into Victoria, if we choose to keep you out; "and we will put a restriction on your immigration, so long as we do admit you into "the colony, by requiring each Chinese immigrant to pay a poll-tax of £10." But that does not give a Chinese the right to enter the colony on payment of £10. The prerogative of the Crown to exclude aliens from any part of the British dominions cannot be affected by implication, or in any way, except expressly by Act of Parliament, and, therefore, I submit that there is no contract, expressed or implied, that, on the payment of £10, a Chinese is to have the right to enter the colony. For these several reasons, I submit to the Court that the plea of the defence is good.

Mr. Box.—Will your Honors permit me to say a few words? It is not often that counsel has the honor of addressing a Full Court, constituted, as this is, of all the Supreme Court Judges of the colony; and, as there seems to be some slight misapprehension on one or two points, I hope to be able, if possible, to remove it. In the first place, I want to call your Honors' attention to the case which has been so often cited, viz., Buron *v.* Denman, and I want to put before the Court the view I take of what is called an act of State, as defined by Mr. Justice Stephen. And my view is this: That an act of State is an altogether different thing from the common ratification of an act done by an agent on behalf of his principal. The distinction I draw is, that the ratification by the Sovereign of an act done by her servant or agent completely takes away the wrongful nature of that act, while the ratification by a principal of the act of his agent renders the principal, as well as the agent, liable for the act. The act of the Sovereign in ratifying that which her officer has done makes the officer irresponsible, and converts that which was a wrong, which could be redressed by a municipal court, into an act which is not a wrong in the eye of the law, that is to say, it is no wrong in the sense that any municipal court can enter into the question of whether or not it is right or wrong. The ratification of the act by the Sovereign takes it entirely out of the jurisdiction of the municipal courts, and an alien who has suffered a wrong which has been ratified by the Sovereign cannot go to the Courts of the country, wherever the officer who has done the wrong resides or may be caught, and sue him for damages, because the Crown, in ratifying the act, has said—"My municipal courts shall no longer deal with this question. You say you have "suffered a wrong, but you shall not seek a remedy for that wrong in my municipal "courts; and if you think you are entitled to any redress, you must seek it through "your own Sovereign." Now a word or two with regard to the maxim that "the "Queen can do no wrong." If an officer of the Queen does any wrong to a citizen, he is responsible in the civil courts for the consequences of the wrong, if his act be illegal, although the wrong was done by command of the Queen; and the only mode known to the law by which that officer can avoid the consequences of what he has done, even though it be by command of his Sovereign, is by an Act of Indemnity. And these Acts of Indemnity are always passed, in all cases of tumult and rebellion, to save the officers of the Crown from being sued in the municipal courts after peace has been restored again. Every man who went beyond the law, civil or military, in the course of a rebellion or disturbance, would be responsible in the municipal courts, after the close of the rebellion, if not protected from actions by an Act of Indemnity passed by Parliament. In Governor Eyre's case, the representative of the Crown was sued by a citizen of the State of Jamacia, and his only answer to the English Court was an Act of Indemnity. It was no use his setting up the defence that his act was an act of State, because, although there could be no greater act of State than the act of the Governor of Jamacia in suppressing the rebellion, in the case of a subject it is no defence to say that the act of which he complains is an act of State.

The Chief Justice.—An act of State can only be set up as a defence to an action brought by a foreigner.

Mr. Box.—Quite so; and when an act against a foreigner becomes an act of State, no municipal court can take notice of it. The foreigner must go for redress to

the State to whom he owes allegiance, and by means of diplomacy or war obtain the redress which the municipal courts will not give him. In the case of Buron *v.* Denman, which has so often been brought forward, there was a great wrong done to Buron. Something like £40,000 worth of his property was destroyed by Captain Denman, and yet he was not able to obtain redress in the English Courts, because the act of Captain Denman was constituted an act of State by the writing of a letter under the direction of Lord Palmerston, as Secretary of State. If your Honors will look through the letters, you will find that while Lord Palmerston said that Captain Denman's conduct was most excellent, and that he thoroughly approved of it, Lord Aberdeen said he thoroughly disapproved of everything Captain Denman had done, and that it was highly illegal; nor was it until after Lord Aberdeen's letter was written that the action was brought. There is nothing in this case of Buron *v.* Denman which shows that the Queen herself knew of or assented to the act of Captain Denman. At page 188 of the report, the distinction I am attempting to draw is mentioned by the very learned Baron Parke in the following terms:—

"Such being the law between private individuals, the question is whether the "act of the Sovereign, ratifying the act of one of his officers, can be distinguished. On "that subject I have conferred with my learned brethren, and they are decidedly of "opinion that the ratification of the Crown communicated as it has been in the pre-"sent case is equivalent to a prior command. I do not say that I dissent, but I "express my concurrence in their opinion with some doubt, because, on reflection, "there appears to me a considerable distinction between the present case and the ordi-"nary case of ratification by subsequent authority between private individuals. If "an individual ratifies an act done in his behalf, the nature of the act remains un-"changed; it is still a mere trespass, and the party injured has his option to sue either. "If the Crown ratifies an act, the character of the act becomes altered, for the ratifi-"cation does not give the party injured the double option of bringing his action "against the agent who committed the trespass or the principal who ratified it, but a "remedy against the Crown only (such as it is), and actually exempts from all liability "the person who commits the trespass."

It is immaterial whether the Crown knows beforehand or not. On page 189, Baron Parke says:—

"We are clearly of opinion that, as the original act would have been an act of "the Crown, if communicated by a written or parol direction from the Board of "Admiralty, so this ratification, communicated in the way it has been, is equally good. "I should observe that the Court are of opinion that it is not necessary for the de-"fendant Denman to prove the pleas, which expressly state the authority of the "Crown, for if this act, by adoption, becomes the act of the Crown, the seizure of the "slaves and goods by the defendant is a seizure by the Crown, and an act of State, for "which the defendant is irresponsible."

Now, no words could be larger than those I have just read to the Court.

The Chief Justice.—You say that the recognition by the Crown of an act of one of its officers is a sufficient answer on the part of that officer to any foreigner's claim against him in respect of that act?

Mr. Box.—Certainly, your Honor. That is clearly shown by the case of Buron *v.* Denman. Of course, the ratification of a wrongful act done by an officer of the Crown against a subject would be of no avail as a defence. You must always take a decision with the facts of the case, and in the case of Buron *v.* Denman you must take the decision of the Court with the fact that Buron was a Portuguese. There can be no act of State against a subject. That is proved by the decision in the case of Chapman and Ireland, which is reported in 3 "Victorian Law Reports," page 242. I was one of the counsel who advised in that case that it would be sufficient to show that the act of which Ireland complained was an act of State, overlooking the distinction between subject and foreigner. But the Court took an opposite view. Ireland, as the Court will remember, was a British subject resident in Fiji, and was arrested by Captain Chapman, of H.M.S. *Dido*, in Fijian waters. It was deemed desirable to have the act ratified as an act of State by the Victorian Government, as Captain Chapman happened to be at the Melbourne races at the time the action was brought against him by Ireland. It was then remembered that the act was done abroad, that is to say, it was done outside of Victoran territory, and it was suggested that it would not be of the slightest use for the Victorian Government to attempt to ratify, in the name and on behalf of the Queen, an act which was done beyond the territorial limits of

Victoria. We advised that the matter should be referred to the Imperial authorities in London. That was done; the act of Captain Chapman was promptly ratified at home as an act of State, and the case was brought out to Victoria ready to be proved up to the hilt. The counsel for the Crown, Serjeant Sleigh, Mr. C. A. Smyth, and myself, argued that the letter from the Admiralty to Captain Chapman approving of his conduct was admissible in evidence, as proving that the act of Captain Chapman was an act of State. It was objected to by the learned counsel on the other side; but, although they were very learned, I do not think that they saw the point as to the difference between a subject and a foreigner. At all events, they did not submit it to the Court, and I certainly did not know of it. We put in the letter from the Admiralty and the other documents from home, which were really very splendid, but were objected to as inadmissible and as utterly irrelevant, and we contended that, the defendant's conduct being thus proved to have been ratified and adopted by the Government, he was not liable for the act, and we referred the Court to the decision in Buron *v.* Denman. Mr. Justice Fellowes quietly said—"That case does not apply at all. There a foreigner sued an English officer, in an English Court, for what the English Government held he was right in doing. It would be just the same as if a wounded Turk were to sue a Russian, in a Russian Court, for what he suffered in the present war. It has never been held that between subject and subject an action could not be brought for a wrongful act merely because the Government adopted or directed it. The law is just the other way." And there was no more said, your Honors.

Mr. Smyth.—We got a verdict in the end.

Mr. Justice Williams.—The jury gave you a verdict.

Mr. Box.—Yes, your Honor; because they believed, from the evidence, that Ireland consented to what was done in Fiji for his own safety and protection. The case is reported on page 242, but the kernel of the case is given on page 252 of 3 "Victorian Law Reports." There is a distinction between an act done in this colony and an act done outside its limits with reference to the ratification of the act by the Crown so as to constitute it an act of the State; and as there appears to be some slight misapprehension on the point, I may be permitted to offer a few words with regard to it. A wrong done to a foreigner abroad can only be made an act of State by the ratification of the Imperial Government; a wrong done to the foreigner within the territorial limits of a British colony enjoying responsible government may be constituted an act of State by the ratification of the Government of the colony within which the wrong is committed. A wrong done to a foreigner outside the limits of this colony could not be ratified and made an act of State by the Government of Victoria. Assuming, in the present case, that a wrong has been done to this Chinaman, in refusing to permit him to land, the wrong is done by Mr. Musgrove, the Collector of Customs, and may be the subject of a transitory action. The plaintiff may bring his action against Mr. Musgrove, wherever the defendant may be, throughout the whole empire. It is perfectly immaterial whether the plaintiff catches him in one part of the empire or another. Wherever he may catch the defendant, the action is maintainable. If a wrong is done within the territorial limits of a British colony, it may be made the subject of an action in the Courts of that colony; but I submit that if the act be recognised and adopted by the Government of that colony, it becomes an act of State, and its ratification by the local Government would be a complete answer in the local Courts. Whether it would be an answer in London or not is another matter. The act of which the plaintiff in this case complains has been ratified by the Government of Victoria as an act of State, and, therefore, it cannot be inquired into in the municipal courts of this colony. The fact of its ratification is a complete answer to this action. Undoubtedly, I am bound to say a word or two on these Acts of Parliament and the question of contract. It is contended by Dr. Madden that these foreigners have a right to come into Victoria. That is a very singular statement to make—that a foreigner of any State has the right to come into any other State as a question of right. As a question of public international law, that may be so, but public international law is not a subject for this Court. No authority can be cited in support of the contention that a foreigner has a legal right to walk into a different country from his own. I have no doubt at all about it. That a man has a right by the comity of nations to walk into another country I admit, but that a foreigner has a right by law to enter the colony of Victoria, a right, which, if he were stopped and prevented from entering, he could enforce in a court of justice, I entirely deny. Such a right does not exist. Now, it is said that these Chinese Acts recognise and indeed authorize Chinese immigration,

and in that view His Honor the Chief Justice seemed to concur. But do these Chinese Acts recognise and authorize Chinese legislation? The Chinese Acts in effect say this:—

"We don't like you Chinese; we won't have you come here; we will do some-"thing more to restrict your immigration into this colony than we do to restrict any "other class of foreigners. You foreigners say you have a right to come here, but as "far as you Chinese are concerned we will fine the captain of any vessel heavily who "brings to this colony more than one Chinese passenger for every 100 tons of his "ship's burthen, and we will make every Chinese who comes here pay £10 for the "privilege of entering the colony." My learned friend, Dr. Madden, has argued that these restrictions, applied to one particular class of foreigners as distinguished from any other class, give that class a right to come into the colony; but I contend, on the contrary, that these restrictions constitute a limitation on the immigration of Chinese more than is put upon any other sort of foreigners, that they impose upon the Chinese a disability, as compared with any other class of foreigners, and that certainly these restrictions do not confer upon the Chinese a statutory right to come into the colony. I submit that the law of the land does not give the Chinese immigrants an advantage over other foreign immigrants, such as Germans, Frenchmen, Russians, or any other nationality; but, on the contrary, it places restrictions on the Chinese which are not imposed upon other foreign immigrants. I do not know how it can be deduced from argument that the fact of special restrictive legislation having been passed with regard to Chinese—the only one foreign nationality against whom restrictive legislation has been passed—gives the Chinese immigrants a statutory right to enter the colony.

The Chief Justice.—Is not this the general effect of the provisions of the Chinese Immigrants Acts, that they are restrictions by which the Government aims at preventing what the legislature conceives to be an excessive number of people belonging to this particular nation from entering the colony? But is it not a fact that the same Act which restricts the number of Chinese immigrants indicates upon what terms the number that is admissible may find admission, and is not that an expression of the national will that people of this nationality, within the number prescribed, and on paying the sum named and complying with the terms laid down by the Act, shall have admission?

Mr. Box.—Certainly not, your honor, with great respect. That seems to me to be a most extraordinary proposition. If that view be correct, I don't see what is to prevent 100,000 Chinamen coming into the colony.

The Chief Justice.—Upon the terms provided by the law. It is said in the pleadings of the plaintiff that these terms were not discussed.

Mr. Box.—But, if your honor's view is right, then the whole of these 286 Chinamen, who, it appears from the pleadings, came by the steamer *Afghan*, would, on tendering the poll tax, have had what is called a statutory right to enter the colony.

The Chief Justice.—No; I did not say that at all. It appears to me that every one of these Chinese passengers would have been affected by the illegality in the mode of bringing them here.

Mr. Box.—That is the Attorney-General's argument. It was not the intention of Parliament, I submit, to put these Chinese in a better position than other foreigners coming to the colony.

Mr. Justice Williams.—And as a matter of fact they are in a worse position.

Mr. Box.—Parliament never intended to give Chinese immigrants a right which immigrants of other foreign nationalities do not possess. On the contrary, it is made manifest that they, of all foreigners, are the very ones we don't want.

Mr. Justice Holroyd.—And the way to get rid of them is, the Act prescribes, by imposing a poll-tax on every Chinese who comes here, and, secondly, by making it an offence—not in the Chinese immigrants, which would be very unfair—but in the captain of any ship which brings them to our shores, to bring more than a certain specified number.

Mr. Box.—That was the intention of Parliament, possibly; but I don't understand how restrictions on the immigration of a race which has no right to come here—no legal right enforceable in a court of law—can be said to give immigrants of that race a greater right with regard to entering this colony than is enjoyed by any other foreign race. That would prevent—as we contend in this case—the Executive taking such action as might be deemed necessary for the purpose of dealing with a sudden emergency, which we say on this plea has arisen.

The Chief Justice.—I would be glad, Mr. Attorney, if you would answer a question, in order to clear up a portion of the argument. You have left out of your

argument any reference to the representative of the Crown—the Governor. Do you contend that the prerogatives and powers of the Crown are vested by virtue of the Constitution Statute in responsible Ministers in Victoria, or in the representative of the Crown?

The Attorney-General.—I would say that all the prerogatives of the Crown that are necessary for the internal government and the local affairs of Victoria are vested in the Governor as representative of the Sovereign, but this I submit does not interfere with the universal sovereignty of Her Majesty over the whole of her empire, which in certain cases may be exercised outside the ordinary authority of the Governor's commission. There might be a case where her Royal prerogatives would be exercised outside, though I hold most of them to be confided to the Governor. But as to this, it is a matter done in defence of the internal peace of the country, and the prerogative of the Sovereign necessary for that purpose is vested in the representative of the Crown here.

Mr. Justice Williams.—I misunderstood your argument yesterday. I thought the steps of your argument were these :—That this right to exclude aliens was part of the prerogative of the Crown; that that prerogative was vested in the Queen; that as she could only act through her responsible advisers, they were the persons to exercise that prerogative; that that prerogative is alive all over the British Empire; that therefore it is alive in this colony; that as the Queen can only act by her personal representatives, that prerogative which in this colony must be vested somewhere, must be vested in Her Majesty's responsible advisers here.

The Attorney-General.—It is exercised by the advice of Her Majesty's responsible Ministers here, but you would not say that the prerogative was absolutely vested in them.

Mr. Justice Williams.—I rather understood your argument as conveying the impression that the Queen exercised her prerogative through her responsible Ministers in this colony, apart from the Governor.

The Attorney-General.—I have put it both ways, and in one sense I would say that the view put by your Honor is right. I say this is the Sovereign prerogative, and it goes through the whole of the empire. I say it can only be exercised through the medium of responsible advisers. I contend that His Excellency the Governor would have vested in him such prerogatives as are necessary for the good government of Victoria, and that through him Ministers would act, but I am not necessarily bound to that. The view may also be taken that the prerogative comes directly from the Queen. But either way, whether you view it as coming directly from the Sovereign or that the Governor is the local repository of it, the prerogative is exercisable only by the resident Ministers here.

Mr. Justice Williams.—There may be a difficulty in holding that this prerogative is vested in the Governor, because he is an agent of the Queen with limited powers. As between him and the Queen his authority is defined, and therefore it may be said the exercise of this prerogative does not fall within the scope of the prerogatives which are confided to him. That argument might be sound, and yet it might well be argued that there are other prerogatives outstanding in the Queen which could be exercised through her responsible advisers.

The Attorney-General.—That is so. In truth I submitted both views, and I am not confined to one. I say that the prerogative is exercised by the Ministers here whether the view be taken that Her Majesty's representative is the conduit pipe, as it were, for the prerogative, or whether it comes directly through Her Majesty. I say the Royal prerogative, however technically it may be held to come here, can here be exercised lawfully only by advice of local Ministers in local affairs; if not by them, it is lost altogether, as the Imperial Ministers could not advise locally.

The Chief Justice.—Is there not a distinction in this? The powers vested in the Crown form by virtue of the Constitution Act part of the Constitution of Victoria, and they cannot be recalled, nor altered, nor modified, nor reduced. Any prerogatives or powers conveyed to the Governor by the terms of the Royal Commission, however, may on being granted be immediately afterwards withdrawn, modified, or controlled in any way by the Queen. That seems an important matter to consider in dealing with the very foundations of constitutional law. If this be a prerogative which is merely an assignment by the Queen to the Governor, and is not a portion of constitution statute law, where are you to look for that particular power except in the commission to the Governor? It might be a question if not found there whether it

could be said to be, by virtue of the system of responsible Government, the subject of responsible advice at all. But if you consider the prerogatives necessary for the administration of local affairs to be conferred by the Constitution Statute, then you have to consider in each case what are these powers and prerogatives apart from these other prerogatives which are clearly outside of the constitution of responsible Government, and which, if entrusted to the officer of the Imperial Government, are to be exercised by him under the orders he receives from the Imperial Government, and not as a responsible Viceroy.

The Attorney-General.—I should submit clearly that whether the Government gets them through the Constitution Act, or whether they are outstanding prerogatives, as His Honor, Mr. Justice Williams says, these prerogatives, which are necessary for the good and safe government of Victoria, are clearly the subject of responsible advice in local matters by local Ministers.

Mr. Justice Holroyd.—Through whom—the Governor or Her Majesty direct?

The Attorney-General.—That may be a difficult question, and a very nice question, but the real point is that if this prerogative is alive at all in Victoria, it can only be exercised by responsible officers.

The Chief Justice.—Well, it can only be exercised by responsible officers if they have statutory power of giving advice.

Mr. Justice Williams.—Whichever is the pipe through which the prerogative comes, according to your argument responsible Ministers can exercise that prerogative here without any intercommunication with either the Governor or the Queen.

The Attorney-General.—Certainly.

Mr. Justice Williams.—And if either the Governor or the Queen does not like their act they can be got rid of?

The Attorney-General.—Precisely. So long as the Sovereign and Governor retain the Ministers as theirs, they are an absolute entity. If the Sovereign or her agent is dissatisfied the Ministers can be dismissed.

The Chief Justice.—If your contention be correct, according to this conduit pipe system, and the double character of the Governor resulting therefrom, all powers and prerogatives which are necessary for the administration of the laws are vested by the force of the Constitution Statute in the Governor.

The Attorney-General.—No doubt; I submit that view too. But however it is, I say that when Ministers have acted, and their act is not disavowed by either the Governor or the Sovereign, the Court will assume that it is done with the sanction of the Sovereign or the Governor.

Dr. Madden addressed the Court in reply. He said: Your Honors, in replying to what has been brought forward by the other side, if I shall trench upon your Honors' time to any great extent, I trust that the Bench will attribute it to the very able argument which has come from my learned friend the Attorney-General, every part of which demands attention. To begin with, I would like to establish once and for all the views which we propound as to the general effect and the interpretation to be drawn from the Chinese Statutes and the Alien Acts in this country. Let us for a moment lay aside Her Majesty, and deal with this case as though it were between two ordinary subjects. Let us say that one is possessed of an estate to which access is desirable. He says to the other: "If you come to my "estate you shall enjoy all the rights and privileges that myself and servants have, but "before you come to that estate I shall charge you £10," or £10,000, as the case may be. The second person comes from a distance to take advantage of the representation which is made to him, and presents his money. Could it be said that the man who gave him the invitation could be permitted to withdraw it? But supposing, on the other hand, that the person had got in, and had a family of natural born subjects of the Queen, would it be contemplated as a just thing that any power would have a right to say to that man: "We invited you on the representation of our Alien Statute, which "gives you equal rights to any natural subject, we get your £10, but you must go "out. You must leave your children, who are natural born subjects, and you must "go out, because we have got a prerogative to turn you out." If such a set of facts was presented, as between subject and subject, I think there would be little doubt as to how any Bench would decide the case. Laying that aside for a moment, we come to the case of the Crown. Large powers are vested in the Crown, but, nevertheless, the theory is that the English Constitution always acts justly. It may be driven to do a temporary injustice, but if there is a just Government a remedy is afforded. In this

particular case, it is stated by Mr. Smyth, with an air of lamentation: "Here we are "on the verge of destruction because 268 Chinamen arrive in the *Afghan*. We are "afraid of an invasion, and we must take means to protect ourselves." The answer to that is: "You have ample means of protection; you have a law which gives you "the fullest possible protection;" but my contention principally is that the English Constitution accords to every person coming within its territory protection against what might be a flagrant or high-handed act which would interfere with personal rights or property. There was no real ground for apprehension on the part of the Government. "Cæsar goes not forth to-day, for Cæsar's wife hath had a dream"—a dream in which the members of the Trades Hall were the incubus. That is the real history of this proceeding. When a plea of this kind is made for such a high-handed remedy, it must be based upon a statement of such facts as would warrant this Court in believing there were reasonable grounds for the allegation. There must be some reasonable and probable grounds for the apprehension that they were called upon to take the step for the salvation of the country. There must be reasonable grounds for apprehending a breach of the peace. When my learned friends seek a simile they are driven back to the same point. They see that the conduct of the Government is unwarrantable and unjust, if they can show no element of threatening danger. Does it not show that if this prerogative exists at all it must be as a part of the prerogative of war and peace? It is a principle of the law of nations that a formal declaration of war is not necessary—the first shot of the cannon may be the declaration of war, and, therefore, this alleged prerogative, if it exists at all, should be available only as part of the prerogative of war and peace, which prerogative it is not contended could be exercised by the Government of this colony in any case. There is not a suggestion for a single instant that there was the slightest possible ground of such a danger being at hand. I would, therefore, fall back again to this: It appears by the admissions of the plea that my client was on board a British ship, and having arrived at the port of Melbourne he tendered his money, or the captain of the ship did. It was refused, and he was not permitted to land. At this point my friends take an objection. They say that until he has landed he is not within that Statute or the Alien Statute. If he has not been able to land he is obnoxious to the law, for he is illegally in the territory. He is invited to come and tender his poll-tax; but if he is not allowed to land, how is he to tender it? By shooting it out of a cannon into the Customs? A man must be here to tender his £10, and if he is forbidden to land, how can it be said that he is illegally in the territory when he has got his money in his hand?

The Chief Justice.—The object of that Statute is to prevent more than a certain number of Chinese coming in, and it imposes a law on the master of a vessel. But here is a person who is seeking to obtain the advantages of the Act by tendering his £10, and at the same time saying—"I have no obligation to obey the requirements of the Statute." Although the master is liable, surely every passenger is responsible for compliance with the primary condition with regard to entering. I understand how it can be put by you that these people are taken into a ship without knowing the conditions on which they go to Australia. If so, they do not know the rights which you contend they have acquired. But whether they are deceived or not by those who ship them, are they not themselves responsible for the breach of the law?

Dr. Madden.—I submit not, because it is perfectly conceivable that although 200 Chinamen may go on board a ship, 10 only may be apparent to one another. They may go in tens and tens. It may be that each ten may only know of themselves being aboard.

Mr. Justice Holroyd.—How about the first ten?

Mr. Justice Williams.—If there are more than ten on board, does not the Act contain an implied prohibition against the ship coming into this port?

Dr. Madden.—I submit not. If a ship arrives with more than the statutory number, it is provided that a penalty shall be imposed upon the captain. If I get into a cab that is overcrowded, I am not amenable to the law. The cabman is. The penalty is the same in the one case as the other. If a Chinaman was liable to be punished for coming with more than the statutory number of fellow-passengers, I could understand that the penalty implied a prohibition on the Chinaman.

Mr. Justice Williams.—Does not section 2 of the Chinese Act imply that no ship shall arrive at any port in Victoria with more than the specified number of Chinamen on board?

Dr. Madden.—I do not think so at all.

Mr. Justice Holroyd.—Even if it did, is the Chinaman guilty of any illegality?

Mr. Justice Williams.—The point may affect the question indirectly. Some reliance is placed upon the fact that the Chinaman was lawfully in British territory—in this port. Now if the ship has no right to be here, I do not see how the argument can be used that the Chinaman is lawfully on Victorian soil.

Dr. Madden.—My argument is that he is here, and it is not a question whether he is here illegally or not. The fact that he is here as an alien friend is quite sufficient, and as such he is entitled to the protection of our laws as well as liable to their obligations. No matter what illegality attaches to the ship, the illegality does not attach to him.

The Chief Justice.—Supposing the governing body of Collingwood has a right to make a law that passengers shall not be brought within the limits of the city of Collingwood in cabs carrying more than a certain number, and you went there in an overcrowded cab, could you be said to be lawfully there?

Dr. Madden.—I should say I was, however audacious it may seem.

The Chief Justice.—Is not the whole purpose of the Statute to prohibit Chinese from coming to the colony except in a certain way?

Dr. Madden.—I do not think so. I think it is plain that the desire was to exclude Chinese, but at the same time the Act does not say that Chinamen shall not come into the colony in greater numbers than are specified; but that if a ship comes with a greater number, the captain rendered himself liable to a penalty.

Mr. Justice Williams.—I do not think the Act says that. I think it is open to argument.

Dr. Madden.—The ordinary principle is that a penalty implies a prohibition, but the prohibition applies to a particular individual. Section 3 provides that every Chinaman who comes and tenders his £10 has a right to land. It would seem that whatever the desire of the Legislature was, the Act entitles every man who comes and pays his £10 to land. One section deals with the captains, and the other with the Chinamen; and there is no restriction with regard to the latter.

Mr. Justice Kerferd.—Is the Act not open to the construction that only those Chinamen who are on board a ship carrying but one to every 100 tons shall be entitled to pay the £10? Your contention might apply to the 3rd section, but you must read it along with section 2.

Dr. Madden.—My contention is that section 2 deals with the master, charterer, and shipowner, and the object of making the captain alone liable is that he has an opportunity of knowing the law of the land.

The Chief Justice.—And they deliberately violate it. It may be that the Chinaman is the victim of the deceit of others, but the point is not whether the law is violated by the person who claims the right to enter, but that he has only arrived through a violation of the law.

Dr. Madden.—I think that you must read the Act according to its arrangement. Section 2 addresses itself to owners, charterers, and captains of ships, and section 3 to immigrants. The reasonable interpretation to be placed on the Act is that, although the wrongdoing of the captain may be punished, the only condition imposed upon the Chinaman is that he shall pay his £10.

Mr. Justice Williams.—There is great force in your argument and illustrations if you leave out the object of the Act. You mention the illustration of the cab. The object of the by-law in reference to cabs is to prevent too many passengers from being carried. The object of this Act is not to prevent too many passengers being carried in the ship, but to prevent an influx of Chinese. I think that makes all the difference.

Dr. Madden.—Must not we interpret the Act as we find it? Can we add to what the Legislature has said?

Mr. Justice Williams.—But that is my interpretation of the Act itself.

Dr. Madden.—There is no express prohibition put upon Chinamen by the Act at all. Although we may consider that the general intention of the Statute was to exclude Chinese or regulate their coming, we must look to the way in which the Legislature has arranged the Statute. More onerous conditions must not be attached to the Chinese than the Legislature has attached itself. It must be remembered that the Statute is penal, and therefore must be interpreted according to its very terms.

The Chief Justice.—There would be great force in your argument if one of the Chinese was not claiming the benefit of the Statute of which he knows the provisions, or must be taken to know them.

Dr. Madden.—If he were not claiming the benefit of the Statute, how could the question arise?

Mr. Justice Wrenfordsley.—Before you can say he has a right to come in it must be determined who has the right to come in.

Dr. Madden.—His right is complete. There is nothing in the Act to say which of them shall come in. The Statute does not earmark them. They start at scratch, and the first ten to come in are entitled to be allowed to land. I submit that all are entitled to land, but if not, at all events the first ten who offer to pay the poll-tax are entitled to land.

Mr. Justice Holroyd.—The imposition of a penalty indicates that on payment of the poll-tax they would be allowed to land. The Act puts a severe penalty on the master, but does not prohibit the landing. If he has to pay a heavy penalty, the master will think twice before coming here again. It contemplates that the ship might get in carrying more Chinese than the tonnage allowance. It therefore inflicted a severe penalty on the captain, but it did not prohibit the Chinese on board from landing. It was thought that the best way to exclude the Chinese was to terrify the captain by heavy penalties. The Chinese must come here by a ship, and if a captain won't bring them they can't come. That was quite effectual to prevent a large number of Chinese coming here. The Statute nowhere says which of the Chinese coming here in a vessel carrying more than the tonnage allowance shall be permitted, and it must therefore be assumed that all are entitled, to land.

Dr. Madden.—I also submit that an alien friend within our territory is a subject for the purpose of this act of State, whether legally or illegally the ship was at the pier, and, once there, the petitioner became a British subject *sub modo*.

The Chief Justice—It is admitted on the face of the case that he is a subject of the Emperor of China.

Dr. Madden.—Of course he is an alien friend, but, being within the territory, he is a local subject.

The Chief Justice.—Is he a British subject within the terms of that expression?

Mr. Justice Williams.—He says he has the same rights as a British subject.

Dr. Madden.—That is so. My friends say they don't want an Act of Parliament to prevent his landing, nor yet an Act of indemnity for what they have done. The Attorney-General has said very little about the prerogative beyond what I stated at the outset. He has added Kent and Vattel to the authorities I quoted. Kent quotes Vattel, but they all go back to Puffendorff as the authoriy for the alleged prerogative. We find him as the authority in Blackstone also. Of course Puffendorff's statements are only statements of opinion. He wrote a book because something moved him to write it. But his opinion on this subject is extra-judicial. He has no authority for it. Undoubtedly the power exists of turning out an alien by the exercise of the law of the land, namely, by an Act of Parliament. Kent cites the same authority as Blackstone, so does Vattel. But all come back to Puffendorff. Phillimore says the Government may recognise the state of aliens.

Mr. Justice Williams.—He says more than that.

Dr. Madden.—Phillimore does not deal with English law but with social philosophy. It has never been disputed that an Act of Parliament can exclude Chinese; but we say that is very different from a Minister, without consulting the Governor, whose Minister he is, going and ordering aliens out of the colony. The Attorney-General stated that the prerogative was not part of the prerogative of war and peace, but arises from the law of nations. He has no authority to show that. All the authorities arrange it under the prerogative of war and peace. These are the only authorities for its existence, and they arrange it in that way. There is no authority for its existence apart from that. As to the authorities for the existence of the prerogative, my friends say that Lord Ellenborough agreed with Lord Eldon that it existed. But Lord Ellenborough did not say it in such a way as if, were he cross-examined, he would adhere to it. He only says if it exists it is in the King or Parliament. And Lords Eldon and Ellenborough, as politicians, with all due respect to them, if they were asked if His Majesty was entitled, by prerogative, to a latch-key to the Kingdom of Heaven, would have been very sorry indeed to say that he was not. This is what they say:—

"The *Lord Chancellor* (*Lord Eldon*) said that, whether the power of sending "aliens out of the country resided in the King and Parliament conjoined, or the King

"alone, no man could be more satisfied than he was of its wisdom and policy when "sparingly exercised. Adverting to the period of 1793, when he was Attorney-"General, he recollected the apprehension that was then excited, not of French arms "but of French principles. He thanked God that that apprehension was strongly felt "in the country, otherwise the consequences might have been such that it was impos-"sible to contemplate without terror. It had been felt to be absolutely necessary, "whether the Crown had or had not the prerogative of sending aliens out of the "country, to arm it with the assistance of Parliament. With reference to the constru-"tion put by Lord Coke on Magna Charta, as it related to this subject, he observed "that at the period to which he had alluded he had the honour of knowing many "learned men, now in their sepulchres, but whose names would long live, and he knew "of none, whether they opposed the measure then proposed or not, who denied that "the King had the power, without the sanction of Parliament, to prevent aliens from "staying in the country. But the establishment of this point had no reference to the "present case, in which the adoption of the Bill before the House was required by "imperious circumstances. For what could the Royal power do alone? It was easy "to say that by that power an alien could be sent out of the country, but how was he "to be got out? He must be indicted. Then a Bill must be found. That he might "traverse. The cause might then be removed by *certiorari* to another court, and so "on. With respect to the cases which the illustrious duke had so ingeniously argued, "all that he could say was that every case must be determined by the particular cir-"cumstances which belonged to it. There was this single fact, in answer to any ques-"tion that might be raised about difficult cases, namely, that with all possible difficul-"ties on the subject, Government had successfully grappled since the year 1793. To "him it appeared most astonishing that any of their Lordships should think that, after "a war of 25 years, the mere act of signing a treaty of peace was to produce so com-"plete a tranquility as entirely, and at once, to calm all the agitation which the recent "convulsions had occasioned. Of this he was persuaded that there were not wanting "persons who, if an opportunity were afforded them, were perfectly ready to put into "operation those principles against which this country had been so long contending. "It was to guard against the machinations of such persons that he supported the Bill.

"Lord *Ellenborough* declared his decided opinion that the Crown possessed the "prerogative of sending aliens out of the country, and maintained that such preroga-"tive belonged of right not only to the Monarch of this country but to the Sovereign "of every country. In support of this opinion he quoted the authority of Vattel. As "to the construction of Magna Charta, it would be recollected that, upon the subject "of merchant strangers, the citizens of London presented a petition to Edward I., "asserting the prerogative of the Sovereign to send such aliens out of the country, "and that the King concurred in that opinion. Such then was the impression almost "immediately after Magna Charta was enacted; and yet the present Bill was pro-"nounced tyrannical, and inconsistent with the Constitution of the country. But he, "on the contrary, maintained that the present was comparatively a lenient measure, "imperiously called for by the existing circumstances of the world."

Now lawyers have a very pestilent habit of posing as authorities on many subjects in Parliament. And persons in Parliament who are not lawyers have an equally pestilent tendency to say, "How do you know that?" And that is what Lord Grey says to Lord Ellenborough. After he had supported the Bill in a very doubtful and hesitating house, as Lord Holland challenged Lord Eldon, so did Lord Grey challenge Lord Ellenborough. Lord Grey said:—

"From all he had heard he felt fully satisfied that although this Bill might "be voted, it could not be defended. The doctrine with respect to the prerogative, so "confidently alleged, had in fact received no support whatever from either the learned "lord on the woolsack or the learned lord who had just sat down. When the latter, "who was at the head of the administration of the law of the country, rose to address "their Lordships, he expected to hear some history of the common law, in favour of "this measure, or a series of precedents to sustain his main position, or the *dicta* of "some of our eminent law writers, Bracton, or Fortescue, or Lord Coke, for instance, in "support of that prerogative which was upon this occasion so confidently asserted. But "instead of having his expectation fulfilled, the learned lord quoted a French writer upon "the law of nations. That writer, M. Vattel, for whom he (Earl Grey) entertained great "respect upon the subjects to which his work referred, had no doubt stated that the "right alluded to belonged to the Sovereign power of every State. But what was the

"Sovereign power in this country? Was it in the Crown or in the Parliament? "Vattel had also laid it down that the raising of money and the maintaining of armies "also belonged to the Sovereign power; but did such power form a part of the pre- "rogative of the Crown in England? Certainly not, and therefore the authority "quoted by the learned lord was totally inapplicable. Yet this Bill, according to the "learned lord, was only necessary to aid the execution of the prerogative which it "which it appeared was incapable of execution without the Bill. Therefore this "boasted prerogative must be ineffectual without some legislative provision, and what "sort of prerogative then could it be deemed? It was in fact no prerogative at all, "even upon the learned lord's own showing. But when the learned lord quoted, as "law authority, a petition from the city of London, alleging the right of the King to "send aliens out of the country, in which allegation the King, to whom the petition "was addressed, very naturally acquiesced, he really heard the learned lord with con- "siderable surprise. The learned lord himself, and the learned lord on the woolsack, "were no doubt very high law authorities: yet, according to the learned lord's pre- "cedent this evening, we might hereafter hear those high authorities discarded, and "be referred to a petition from Sir William Curtis and the citizens of London. The "privileges granted to aliens by several statutes combined with the precedents so ably "stated by his noble friend, formed, in his judgment, a conclusive argument to show "that such a prerogative as that at present insisted upon was never recognised to "belong to the Crown of England." (*Hansard's Parliamentary Debates*, vol. 34, p. 1070).

Lord Ellenborough quotes nothing against it. It would not pass now in the House without interruption. Lord Ellenborough's statement was not from the Bench and was extra-judicial. We say the prerogative does not exist, and we challenge the other side to produce an authority for it. They can't produce one. Some lawyers of the time of James I. or of George III. would find a prerogative for anything the King did. They would find it easy to swallow anything that had the faintest glimmering of the character of prerogative. My friend the Attorney-General has raked up three instances of expulsion by the prerogative. In 1290, Edward the First expelled the Jews from England. The Jews had been in England at all events from the time of the conquest, and many of those expelled must have been born in England, and were natural-born subjects of the British Crown. I do not know what are the facts in relation to that expulsion; but it was obviously an act of great tyranny, and a great wrong had been done not to aliens but to English subjects. The Jews acquiesced in it no doubt, because they knew that, if they resisted, they would be sent not only out of the kingdom, but sent to another kingdom from which they could not return so easily. Besides, this occurred in the earliest part of our Parliamentary history, when the Commons had only been recently called into existence, and had very little control, and the powers of Parliament were in their infancy. Then as to the case of *Re* Adam. 1 "Moore's Privy Council Cases," p. 460. There the Crown had allowed the Governor of Mauritus to expel Mr. Adam as an alien, and Mr. Adam contended that the Governor had no legal right to expel him. The Privy Council said that in England that might be so, but the French law which prevailed in Mauritius said that express written permission must be given to an alien to enable him to reside in the island, and in the absence of that written permission, Mr. Adam might be legally expelled. But that is no reason for exercising the authority here, according to English law, against a British subject. Then as to the expulsion of Victor Hugo from Jersey, we don't know whether he was expelled by virtue of the prerogative. He seems to have been expelled from Jersey to Guernsey. That does not look as if it was done for the protection of the British Dominions. And one of the Judges, De Quetteville, said it was illegal. It never came before the Law Courts in England, and is not mentioned in any of the text books. We have, therefore, only a vague and cloudy statement of facts as to Victor Hugo's expulsion. These are the grounds on which the Attorney-General maintains that the authority exists.

Mr. Justice Williams.—There is the recognition of the authorities by the Aliens Acts. One Act does not give power to make proclamation. It recognises the right as existing in the Crown. The other does give the Crown power to make a proclamation.

Dr. Madden.—I think that is mere refinement. The Act nowhere recognises the existence of the prerogative. In those days it was very customary to have long

preambles reciting the reasons for the Act. Why then not have inserted a preamble to the effect that whereas His Majesty had the prerogative, but there was no machinery to work it?

The Chief Justice.—Is there any preamble there?

Dr. Madden.—Yes. It is as follows:—

"Whereas a great and unusual number of persons, not being natural-born "subjects of His Majesty, or denizens or persons naturalized by Act of Parliament, "have lately resorted to this kingdom; and whereas, under the present circumstances, "much danger may arise to the public tranquility from the resort and residence of "aliens, unless due provision be made in respect thereof, be it therefore enacted by "the King's Most Excellent Majesty, by and with the advice and consent of the Lords "spiritual and temporal and Commons in this present Parliament assembled, and by "the authority of the same, that during the continuance of this Act, the Master or "Commander of every ship or vessel which shall arrive in any port or place of this "kingdom shall, immediately on his arrival, declare in writing to the collector and "comptroller or other chief officer of the customs at or near such port or place, "whether there are, to the best of his knowledge, any foreigners on board his said ves- "sel, and shall in his said declaration, specify the number of foreigners, if any, on board "his said vessel, and also specify their names and respective rank, occupation, or "description, as far as he shall be informed thereof." (33 Geo. III. c. 4).

Mr. Justice Williams.—What does the preamble to 56 Geo. III. c. 86 say?

Dr. Madden. It says:—

"Whereas it is expedient that provision should be made for establishing regu- "lations respecting aliens arriving in this kingdom or resident therein in certain cases, "be it enacted by the King's Most Excellent Majesty, by and with the advice and "consent of the Lords spiritual and temporal and Commons in this present Parliament "assembled, and by the authority of the same, that when and so often as His Majesty, "his heirs and successors, shall by his or their proclamation, or by his or their Order "in Council, or under his or their sign manual or the Lord Lieutenant or other Chief "Governor or Governors and the Privy Council of that part of this realm, or United "Kingdom of Great Britain and Ireland, called Ireland, and shall by proclamation or "by Order in Council direct that any alien or aliens who may be within this realm, or "who may hereafter arrive therein, shall depart this realm within a time limited in "any such proclamation or order respectively, and any such alien shall knowingly and "wilfully refuse or neglect to pay due obedience to such proclamation or order "respectively, or shall be found in this realm, or any part thereof, contrary to such "proclamation or order, as the case may be, it shall be lawful for any of His Majesty' "principal Secretaries of State, or the Lord Lieutenant or other Chief Governor o "Governors of Ireland, or his or their Chief Secretary, or for any justice of the peace, "or for any mayor or chief magistrate of any city or place, to cause every such alien "to be arrested, and to be committed to the common gaol of the county or place where "he or she shall be so arrested, there to remain without bail or main prize, until he "or she shall be taken in charge for the purpose of being sent out of the realm "under the authority hereinafter given for that purpose."

In that there is not the slightest reference to the prerogative as then existing. The Attorney-General contended that the prerogative existed, but it could not be used for lack of machinery, and therefore the Act was passed. If that were so, why was it not stated in the Act?

Mr. Justice Williams.—It recognises the King's right to order an alien to depart from the realm by proclamation.

Dr. Madden.—It does not recognise his pre-existing right to proclaim. It gives him the power to proclaim, in the same way as our Health Act does here.

Mr. Justice Williams.—The Act recognises the King's prerogative and provides speedy means for enforcing it if it is disobeyed.

Dr. Madden.—Suppose we never heard of the right of prerogative—what is it but an enactment of a power. It is an authority to the Government to do certain things. If any argument of that sort was to be available, one would expect to find it recognised in the preamble; but, inasmuch as this is an enactment, it differs in no respect from other enactments; it prescribes what is prescribed in a thousand and one enactments, that the King's proclamation shall be initiated by steps. We submit that this prerogative could not be enforced unless an Act of Parliament were first passed, and there has been no Act of Parliament passed here authorizing the Government of

the colony to expel or exclude Chinese. Therefore, how could that prerogative be enforced ? There must be first a proclamation, and then an indictment. There has been no proclamation here that aliens, by virtue of this prerogative, were to leave the colony. There has never been any Order in Council or *Gazette* notice, and, in fact, the Governor has not been asked to do anything in the matter at all.

Mr. Justice Wrenfordsley.—But might not the circumstances of the colony render it necessary to resort to an act of State in the interests of public peace and public safety ?

Dr. Madden —The prerogative and an act of State are apart, in my opinion. My contention is that this prerogative has never been shown to exist, and that no authority has been cited upon which the Court could act. Nothing that has fallen from my learned friend has displaced my proposition that the prerogative upon which he is relying does not exist. I submit that this Court would not affirm its existence unless there was very distinct authority adduced to prove that such a prerogative does exist, because it is an intrusion on the law, and any such intrusion must be narrowly watched. And I venture to think that in this case it will be closely watched by the Court; and also, that unless distinct authority is shown for the recognition of the prerogative which is claimed by the defence, the Court will not affirm its existence. I argue to the Court that the expulsion of the Jews from England, by Edward I., in the year 1290, is no proof of the existence of the prerogative, for the reasons I have already adduced; but admitting, for argument's sake, that the prerogative ever did exist, it may have become obsolete; and assuming that there ever was, from the most remote period, any existence of such a prerogative, not only may it have become obsolete, if that be possible, but everything indicates, I submit with confidence, that it has become obsolete.

The Chief Justice.—But is that possible ? Can a prerogative vested in the Crown become obsolete ?

Dr. Madden.—It seems to me that it can, and I may cite one very remarkable instance in support of my argument—the case of the attempt of the Crown to make Sir James Parke, who was created Baron Wensleydale, a life peer, and entitle him to sit and to vote in the House of Lords, by virtue of the Royal prerogative. I find on that occasion the question as to whether the prerogative of the Crown could become obsolete by desuetude was argued and decided in the House of Lords. In vol. I., "May's Constitutional History of England," 4th ed., page 295, it is stated Baron Parke was selected, with others, to be made a life peer, in order that the Government of the day might swamp the votes of their opponents in the House of Lords. "May" says:—

"Certain precedents and authorities having been cited, Ministers advised Her "Majesty, before the meeting of Parliament in 1856, to issue letters patent to Sir "James Parke, lately an eminent baron of the Court of Exchequer, creating him Baron "Wensleydale for life. The letters patent were issued; but the peers loudly protested "against the intrusion of a life-peer to sit amongst the hereditary nobles of the realm. "An untimely fit of the gout disabled Lord Wensleydale from presenting himself, with "his writ of summons, on the first day of the session; and on the seventh day of Feb- "ruary, Lord Lyndhurst proposed, in a masterly speech, to refer his exceptional patent "to the Committee of Privileges.

"Throughout the learned debate which followed, the abstract prerogative of "the Crown to create a life-peerage was scarcely questioned; but it was denied that "such a peerage conferred any right to sit in Parliament. It was treated as a mere "title of honor, giving rank and precedence to its possessor, but not a place in an "hereditary legislative chamber. The precedents and authorities in support of life- "peerages were exposed to a searching criticism, which failed, however, to shake the "position that the Crown had, in former times, introduced life-peers to sit in the House "of Lords. But it was admitted on all sides that no such case had occurred for "upwards of four hundred years. Hence arose a most difficult question of constitu- "tional law. Had the ancient prerogative of the Crown been lost by desuetude; or "could it be exercised, if the Queen thought to revive it ? The Ministers, relying "on the maxim, '*nullum tempus occurrit regi*,' argued that there could be no loss of "prerogative by lapse of time. But their opponents forcibly contended that the "Crown could not alter the settled constitution of the realm. In ancient times, before "the institutions of the country had been established by law and usage, the Crown "had withheld writs of summons from peers who were unquestionably entitled by "inheritance to sit in Parliament; the Crown had disfranchised ancient boroughs by

"prerogative, and had enfranchised new boroughs by Royal charter. What would now "be said of such an exercise of the prerogative ? By constitutional usage, having the "force of law, the House of Lords had been for centuries a chamber consisting of "hereditary councillors of the Crown, while the House of Commons had been elected "by the suffrages of legally-qualified electors. The Crown could no more change the "constitution of the House of Lords, by admitting a life-peer to a seat in Parliament, "than it could change the representation of the people by issuing writs to Birkenhead "and Staleybridge, or by lowering the franchise of electors.

"Passing beyond the legal rights of the Crown, the opponents of life-peerages "dilated upon the hazardous consequences of admitting this new class of peers. Was "it probable that such peerages would be confined to Law Lords? If once recognised, "would they not be extended to all persons whom the Ministers of the day might "think it convenient to obtrude upon the House of Lords? Might not the hereditary "peers be suddenly overpowered by creatures of the Executive Government—not "ennobled on account of their public services, or other claims to the favour of the "Crown, but appointed as nominees of Ministers, and ready to do their bidding? Nay, "might not the Crown be hereafter advised to discontinue the grant of hereditary "peerages altogether, and gradually change the constitution of the House of Lords "from an hereditary assembly to a dependent senate, nominated for life only? Nor "were there wanting eloquent reflections upon the future degradation of distinguished "men, whose services would be rewarded by life-peerages instead of those cherished "honors which other men—not more worthy than themselves—had enjoyed the "privilege of transmitting to their children. Sitting as an inferior caste among those "whom they could not call their peers, they would have reason to deplore a needless "innovation, which had denied them honors to which their merits justly entitled them "to aspire.

"Such were the arguments by which Lord Wensleydale's patent was assailed. "They were ably combated by Ministers; and it was even contended that, without a "reference from the Crown, the Lords had no authority to adjudicate upon the right "of a peer to sit and vote in their House; but, on a division, the patent was referred "to the Committee of Privileges by a majority of thirty-three. After an inquiry into "precedents, and more learned and ingenious debates, the committee reported, and "the House agreed, 'that neither the letters patent, nor the letters patent with the "usual writ of summons issued in pursuance thereof, can entitle the grantee to sit and "vote in Parliament.'"

That is the decision of the House of Lords, that the prerogative of the Crown may become obsolete by desuetude. It was admitted that in ancient times the Crown had exercised the power to appoint life-peers, and that life-peers so appointed might sit and vote in the House of Lords, but it was decided that, as the power had not been exercised for a period of 400 years, it had become obsolete by desuetude. The next point my learned friend argued upon was, that the prerogative is vested in the Sovereign. Now, on that point, we are at one, I am happy to say; and I think I may go further, and show that not only is the prerogative vested in the Sovereign, but also that it is to be exercised only by the Sovereign. In order that we may be better able to deal with the word "prerogative," it may be well to look at the definition of it which is given by Chitty on page 4 of the "The Prerogative of the Crown." Chitty says:—

"By the word 'prerogative,' we usually understand," observes Sir Wm. Blackstone, "that special pre-eminence which the King hath over and above all other persons, "and out of the ordinary course of the common law, in right of his Royal dignity. It "signifies in its etymology (from *præ* and *rogo*) something that is required or demanded "before or in preference to all others. And hence it follows that it must be in its "nature singular and eccentrical; that it can only be applied to those rights and "capacities which the King enjoys alone, in contradistinction to others, and not to "those which he enjoys in common with any of his subjects; for if once any one "prerogative of the Crown could be held in common with the subject, it would cease "to be prerogative any longer. And therefore Finch lays it down as a maxim, that the "prerogative is that law in the case of the King which is law in no case of the subject."

And again, at page 9, he writes:—

"In considering *who, in legal contemplation, is entitled to exercise the prerogatives*, it will naturally be our first inquiry in whom the Crown is constitutionally

"vested. It is unnecessary to remark that by the King alone can prerogatives be "exercised."

My learned friend referred to the case of M. Chevalier, who was French ambassador in London, and who was ordered by notice from the Executive Government of the day to leave England upon his nation getting into one of these intermittent disturbances or misunderstandings which then so frequently occurred. Now, there is a marked and most important distinction between the ambassador of a foreign nation and an ordinary foreigner. My learned friend, Mr Smyth, argued that an ambassador is ordered from England by virtue of the prerogative; but I desire to point out that, in the fiction of law, an ambassador and all that appertains to him are extra-territorial. His house, with the flag of his nation above it, is, in the eye of the law, a part of the territory of his own country, and he himself never professes to be a subject of the foreign country in which he resides. Even his children who are born in the foreign land are regarded as natural-born subjects of his Sovereign. That is shown distinctly in Wheaton's "Elements of International Law," page 392 :—

"From the moment a public Minister enters the territory of the State to which "he is sent, during the time of his residence, until he leaves the country, he is entitled "to an entire exemption from the local jurisdiction, both civil and criminal. Repre- "senting the rights, interests, and dignity of the Sovereign or State by whom he is "delegated, his person is sacred and inviolable. To give a more lively idea of this "complete exemption from the local jurisdiction, the fiction of extra-territoriality has "been invented, by which the Minister, though actually in a foreign country, is "supposed still to remain within the territory of his own Sovereign. He continues "still subject to the laws of his own country, which govern his personal status and "rights of property, whether derived from contract, inheritance, or testament. His "children born abroad are considered as natives. This exemption from the local laws "and jurisdiction is founded upon mutual utility, growing out of the necessity that "public Ministers should be entirely independent of the local authority, in order to "fulfil the duties of their mission. The act of sending the Minister on the one hand, "and of receiving him on the other, amounts to a tacit compact between the two States "that he shall be subject only to the authority of his own nation."

"The passports or safe-conduct granted by his own Government in time of "peace, or by the Government to which he is sent in time of war, are sufficient "evidence of his public character for this purpose."

"This immunity extends not only to the person of the Minister, but to his "family and suite, secretaries of legation and other secretaries, his servants, movable "effects, and the house in which he resides."

The mission of a foreign Minister, resident at a foreign court, may be terminated in various ways, and, amongst others, Wheaton mentions, at page 437, that it may be terminated—

"When, on account of the Minister's misconduct or the measures of his "Government, the court at which he resides thinks fit to send him away without "waiting for his recall."

Then we come to a branch of the case in which my learned friend asks this question—"Do the Chinese Acts (and the Aliens Acts too, I would say) abrogate or diminish the prerogative?" My friend answers "No," because the Crown has not expressly given up the prerogative thereby. This is coming back somewhat to the statement I made to the Court in opening that the enactment of these Acts and the assent thereto by the Crown are necessarily an abrogation *pro tanto* of that prerogative, if it existed, which I deny. What does the Queen's assent to these Acts mean? It means that the Queen says in effect ?—"I assent to an Act which pro- "vides that aliens may come to this part of my dominions, may have all the privileges "of my subjects, with certain exemptions," and then, having said so much, and proclaimed it to the world in the shape of an Act, my learned friend would have Her Majesty turn upon these Chinese immigrants, when they arrive here, and say—"Although I have granted you this privilege by Act of Parliament, I will not let "you enter the country, and, if it pleases me so to do, I will turn out all the "Chinese who are already here, at a moment's notice." Would that be consistent with our notion of the effect of an Act of Parliament ? Would it not rather be in direct contradiction to the Act of Parliament?

Mr. Justice Williams.—Do you contend that the effect of the Aliens Acts in England was to do away with the Royal prerogative?

Dr. Madden.—To limit it *pro tanto*.

Mr. Justice Williams.—And in that respect do you place the Aliens Acts of this colony on the same footing as the Aliens Acts of England?

Dr. Madden.—Oh, certainly ; I think that both limit the Royal prerogative in so far as they are inconsistent with the prerogative. The Queen must have been conscious of the fact that, in assenting to the Act of Parliament intended to regulate the immigration of Chinese, she was undertaking not to drive the Chinese out of the country at a moment's notice, because doing that would be practically repealing an Act of Parliament, which is beyond the power of the Sovereign.

Mr. Justice Williams.—In the English Act 33 Victoria, chap. 14, an Act to amend the law relating to the legal condition of aliens and British subjects, section 16 provides:—

"All laws statutes and ordinances which may be duly made by the Legislature "of any British possession for imparting to any person the privileges or any of the "privileges of naturalization to be enjoyed by such person within the limits of such "possession shall within such limits have the authority of law, but shall be subject "to be confirmed or disallowed by Her Majesty in the same manner and subject to the "same rules in and subject to which Her Majesty has power to confirm or disallow "any other laws statutes or ordinances in that possession."

Dr. Madden.—I propose to call your Honors' attention to that in another aspect presently, when I come to the powers of Ministers here. At present, I maintain that, in so far as these Acts of Parliament—the Aliens Act and the Chinese Immigration Act—are inconsistent with the honorable exercise of the prerogative, they are an abrogation, *pro tanto*, of that prerogative. The Queen is the fount of honor, and she is not supposed to exercise the prerogative otherwise than justly and honorably. She says, in assenting to the Chinese Immigration Act, "You Chinese may come into "my dominions in Victoria under all the privileges of that Statute, and I undertake not "to exercise my prerogative in so far as its exercise would be inconsistent with that Act." A Chinaman with only a sixpence in his pocket is not different in the eye of the law from the alien who has accumulated property in the colony by virtue of that Statute. He is entitled to have all the advantages of the Act. On the third division of my learned friend's argument, we are widely apart. My learned friend argued that the Queen personally cannot exercise any prerogative. Now, as to that question, we start with this great authority of Chitty, who is undoubtedly a great authority on all legal matters. Chitty argues that the prerogative is vested in the Sovereign, and if that is undisputed, the prerogative can only be exercised by the Sovereign. My learned friend says the Queen herself, personally, cannot exercise any prerogative; but, in coming to that conclusion, my learned friend confuses two things which it is of considerable importance to keep apart—he confuses the determination, the will of the Sovereign with the Executive hand that gives effect to that determination. I admit at once that, in no part of the dominions of our Queen, governed by our Constitution, can the Queen's hand exercise any act. And for these reasons: First, there is the theory that the Queen is not responsible for anything done by her or in her name; her servant alone is responsible. Secondly, although the hand that exercises the prerogative is not the hand of the Queen, but the hand of her servant, the Queen in all cases is to have a voice in the determination of what is to be done. The Queen is to have the advice of her responsible Ministers; they inform her mind, but they do not supersede her; they are her hands to execute her will, but her will must operate in determining the exercise of the prerogative.

Mr. Justice Williams.—When the responsible advisers of the Queen are created, does not she clothe them with authority to exercise these Acts in her behalf until she countermands that authority?

Dr. Madden.—No, your Honor, I think clearly not; the very nomination of the Ministers themselves shows that that is not so. They are not her agents, and they are not shackled; they are her responsible advisers. They have not general authority as her agents to go abroad and do anything they like in her name, trusting that out of the scope of their general authority justification may arise; and it has never been suggested in our Constitution that the Crown stands otherwise than as a living, potent factor in our Constitution. The Queen is at the head of our Constitution, as a head, to think.

Mr. Justice Williams.—She can very soon bring her Ministers to book if they do an act which the Crown disapproves of.

Dr. Madden.—Of course she can; but the Queen is not bound to take notice of any unlawful act of her Ministers. If she is advised thereupon, and ratifies the act, of course the act becomes hers. But supposing Ministers choose to commit a burglary?

The Chief Justice.—That is not an act of government.

Dr. Madden.—It may be an unhappy illustration, because of its remote contingency; but if Ministers choose to do something notoriously illegal, the Queen is not bound to take notice of it, and unless she ratifies the act it cannot be pleaded in justification that it was an act of the Crown.

The Chief Justice.—Has not a responsible Minister implied authority to do ordinary and not important duties of government without presenting his advice and receiving authority for every minute act?

Dr. Madden.—Of course; there is no doubt about that; none whatever.

The Chief Justice.—Then, if a Minister may do that in ordinary events, and without proving that he has consulted the Sovereign, is he not to be allowed to do any act of government which appears to be, or, as in this case, is said to be an act of government within the range of a certain Minister's department, unless the authority of the Crown is given for the doing of that act?

Dr. Madden.—I submit most assuredly not, in matters of public policy like the one involved in this case. The legal pleadings of the Crown, in any defence, would be bound to allege that the Queen did the act, because that alone would justify the defendant and constitute the act an act of State.

The Chief Justice.—But is no act done by a Minister to be considered the Queen's act, unless the Queen has expressly ordered or ratified the act?

Dr. Madden.—Well, it could never be expected or supposed that a Minister would consult the Queen with respect to everyday correspondence or other ordinary matters. In that class of business, acts of responsible Ministers would be assumed to be acts of the Queen. But in matters of public policy I submit that the Crown is entitled to be advised and consulted, and that unless she is advised and consulted the acts of Ministers are not her acts.

Mr. Justice Holroyd.—Suppose the Imperial Government concluded a treaty with a foreign power without the knowledge of the Sovereign, would that treaty bind the Sovereign?

Dr. Madden.—Not in the slightest degree. A treaty, however, is a peculiar matter, because it requires the signature of the Sovereign to make it binding.

Mr. Justice Holroyd.—The question I desired to put was whether, in your opinion, a treaty concluded by Her Majesty's Ministers in the United Kingdom with a foreign power, without the knowledge or subsequent sanction of the Queen, would be binding as between the two powers who were parties to the treaty?

The Chief Justice.—In matters amounting merely to negotiation, that question would be answered by the history of Lord Palmerston, who repeatedly forwarded ordinary despatches to France without submitting them for Her Majesty's approval before despatch. The Premier, with the authority of the Queen, dismissed Lord Palmerston from his position.

Mr. Justice Williams.—Supposing the present English Ministry were to make a treaty with China, whereby Chinese immigration into British territory was to be stopped for a number of years, without consulting Her Majesty; if, after making that treaty, the Ministers who made it were allowed to remain in office, surely that treaty would be valid and binding without the express approval of the Queen?

Dr. Madden.—I submit it would not. As soon as anybody desired to break the treaty, it might be regarded as a nullity.

Mr. Justice Williams.—Would not these Ministers be supposed to be acting with her authority, if the Queen continued them in office as her Ministers? Would not their acts become her acts, if they were not dismissed from their positions as Ministers of the Crown?

Dr. Madden.—Surely not. The Queen would be entitled to say, "I did not "make that treaty; I do not approve of that treaty; but I am satisfied with my "Ministers in all other respects, and, therefore, I will not dismiss them, but will continue "them in office; and, if ever any difficulty arises with regard to that treaty, I shall "treat the treaty as a nullity." The mere continuance of Ministers in office, after any such act on their part, has no effect on the validity of that act; it does not ratify or

approve the act. Of course Ministers might threaten to resign, if the Queen did not approve of the treaty; and, if she persisted in her refusal to sanction it, and Ministers resigned, the Queen would have to send for other Ministers, if she could get them.

The Chief Justice.—She must get them.

Dr. Madden.—If she could not get them, she must dissolve Parliament and go to the country; and if the new Parliament did not approve of her course of procedure in regard to the treaty, Her Majesty would have to give way, because she would then be in conflict with the people, and the whole spirit of the Constitution is founded on the theory that the Crown shall never be in conflict with the people. On the other hand, if the question did not arise between the Ministers and the Crown, it is perfectly possible for the Queen to take no notice of the treaty, and if she did not ratify it, and if ever the treaty was acted on, it would rest with the party who was relying upon the treaty to prove its validity.

The Chief Justice.—Assuming that to be so, the making of a treaty is an act of policy, and so long as that treaty stands not disallowed by the Sovereign state, is it not an act which appears to the public and to the world and is to be treated by them as a valid act?

Dr. Madden.—I would submit not.

The Chief Justice.—If that be so, then, according to your argument, responsible Ministers require the personal sanction of the Sovereign to every act before it can be said to be a valid act?

Dr. Madden.—That is so; there must be regularity. It may be inconvenient, but we are daily told of how Her Majesty sits up late and early to do her duties as Sovereign. I am not sure, however, that a treaty is a happy illustration, because a treaty must be signed by the Sovereigns of the States which are parties to it before it becomes valid.

Mr Justice Holroyd.—Unless Her Majesty's signature was obtained, the treaty would be invalid.

Dr. Madden.—Quite so, I submit.

FRIDAY, JULY 13, 1888.

Mr. Smyth stated that the passage in Froude to which he wished to refer in reference to the expulsion of Mendoza, was in the 11th volume, pages 622 and 623. The passage relating to the other Spaniards was in pages 620 and 621.

Dr. Madden.—I referred yesterday to some passages to which my learned friend made reference. I now wish to refer to others. The case of Mendoza is probably that which is referred to in "May."

The Chief Justice.—"May" mentions three cases as having occurred in Queen Elizabeth's time. He gives the years, but does not state the persons or the reasons. He says it was then exercised for the last time, never afterwards.

Dr. Madden.—I had yesterday overshot myself, and must hark back to some matters without re-opening the whole question. As to the question of the desuetude of the prerogative, I will refer to "Hearn's Government of England," 2nd edition, page 452, in which he says the same thing:—

"The prerogative of creating peers seems to follow from this consultative cha-
"racter of the peerage. The King is entitled to the counsel and assistance of every
"subject whose services he may require. So far has this principle been carried that
"it is doubtful whether the offer of a peerage may be refused. The law indeed
"pointed out to the Crown its principal tenants as its constant, and, as it were, its
"natural advisers. But it at the same time left unrestrained the Royal discretion to
"obtain additional advice from any person who may seem capable of giving it. Ac-
"cordingly, at a very early period, probably as early as Henry the Third, three
"principles were established. The first was, that no peer could attend Parliament
"without a formal writ of summons. The second was, that the King could not refuse
"such writ to any greater baron or other lord of Parliament The third was, that
"the King might summon to Parliament any person not being a greater baron. Sub-
"sequently it was held that any person so summoned upon taking his seat acquired

"for himself and his lineal descendants the same rights as a greater baron. There "were thus in our earlier Constitution two modes of creating peers, one by tenure the "other by writ. It followed from the nature of peerage by tenure that the dignity "ran with the land; and that if the land were by any means alienated, the title passed "from the original possessor to the purchaser. I have said that in times when land was "hardly, if at all, regarded as an article of commerce, transfers of baronies were rare. "But we find several cases in which the principle that the title went with the estate "was recognised. In the reign of Henry the Sixth, the House of Lords admitted the "claim to the Earldom of Arundel as annexed to the castle honour and lordship of "Arundel. In the same reign we find the barony of Kingston Lisle bringing with "it as of course a writ of summons. At length, in 1669, a claim to the title of "Fitzwalter was argued before the King in Council. Several eminent Judges "attended, and the nature of barony by tenure was fully discussed. It was resolved "that this form of peerage 'had been discontinued for many ages, and was not in being, "and so was not fit to be received, or to admit any pretence of right to succession "thereto.' This decision, although not proceeding from the House of Lords, has "been regarded as final, and subsequent attempts to revive the ancient doctrine "have been defeated. The case indeed is very similar to the recent decision against "life peerages. In early times the writ of summons to Parliament may have been "founded on tenure, and the Crown may have exercised the power of creating peer-"ages for life. In both cases, however, a contrary practice had prevailed for centuries; "and a froward retention of customs, in an altered state of society, would, as Lord "Bacon observes, have caused as much disturbance as a positive innovation. Neither "barony by tenure, therefore, nor barony for life, can be regarded as living parts of "our existing Constitution."

The Chief Justice.—That merely shows that a title when created may cease by disuse, and that the power to create baronies has ceased.

Dr. Madden.—The right to create a barony by tenure exists, which entitles the incumbent to a writ of summons. It was decided on another prerogative that the Queen can create as many peers as she please. But life cannot be given to a power that has been disused.

Another matter to which I intend to refer is the existence of the prerogative at all. The Attorney-General has referred to the opinion of Sir Francis Northey. That opinion is that the right to expel aliens does exist. That opinion, however, is merely the opinion of the Attorney-General of the day, of whom, I must say, I never heard before. Nobody in court can say it carries more weight than that of other Attorney-Generals, and the best intended opinions of the best Attorney-Generals frequently go wrong. The Attorney-General has also quoted from Forsyth, at page 181. The Attorney-General read the earlier part of the page, which merely deals with the power of the King to forbid a subject to leave the kingdom by the issue of a writ of *ne exeat*, and the power to send a messenger after him to compel a subject to return to the realm; and he says the King has power to enforce that order by escheating the property of the subject if the order was not complied with. But Forsyth goes on to say:—"The Crown has no power, by its prerogative alone, to send any one, whether he be "a subject or an alien, compulsorily out of the realm. In a debate, however, in the "House of Lords, in June 1816, on the Alien Bill, which was introduced at the "restoration of peace, Lord Ellenborough, C.J., contended that at common law the "Crown has the right, by the Royal prerogative, to send all aliens out of the king-"dom; and, to prove this, he cited a petition of the merchants of London, in the "reign of Edward I., praying that Monarch to do so. (34 Parl. Debates, 1069.) But "this is certainly not the law of England."

Mr. Justice Williams.—It is possible that may mean what is meant in the remarks of Lords Eldon and Ellenborough on the Aliens Acts, that though the King might order a man to leave the country there was no machinery to enforce it, and therefore the Aliens Acts were passed to provide the machinery. You can't by mere proclamation deport a man out of the country. It may mean that, and it would be consistent with the previous portion of the passage.

Dr. Madden.—If that is so it is a complete answer here, for if the machinery did not exist in England *a fortiori*, it did not exist in this colony at all. You can't have the law for one purpose and not for the other. It is said, however, that the plaintiff is not here legally. I submit that when a man is in the territorial waters of a State he is in it for all purposes.

Mr. Justice Williams.—They say he is illegally here, and therefore cannot claim the same privileges as if he came here legally.

Dr. Madden. I submit that it does not matter whether he was legally in the country or not. If he is unlawfully here they can seize him and punish him. They can't send him out of the country without the authority of an Act of Parliament. It was necessary to pass an Act of Parliament to authorize the expulsion of expiree convicts who came here. If a person was *de facto* in the country, he cannot be sent out of it without the authority of an Act of Parliament. If there is a penalty against him being here, that penalty can be enforced, if the Act does not provide means for sending out of the country as well as inflicting a penalty. Forsyth, at page 369, states that the constitutional doctrine is that the Executive has no power or statutory right to seize an alien and deliver him to a foreign power.

The Chief Justice. That is not merely expulsion. It is taking him into custody and handing him over to the custody of a foreign country. That has never been claimed for the Sovereign.

Dr. Madden.—It was a removal.

The Chief Justice.—To expel a man from the country is one thing, but to seize him and deliver him into the custody of another Sovereign is another thing. It is a very much wider power. It can only be exercised by means of extradition treaties and the agreements between the different Governments to carry them out. It has never been claimed as part of the prerogative.

Dr. Madden.—There may be expulsion of him from the kingdom, and the others would take their chance of running him down. The Crown has never attempted to expel an alien till the Aliens Act. Forsyth goes on to say—"Lord Denman said he "believed that all Westminster Hall, including the judicial bench, were unanimous "in holding the opinion that in this country there was no right of delivering up, indeed "no means of securing persons accused of crimes committed in foreign countries. "The other law Lords entirely concurred in this opinion." (Hansard's Parl. Deb., vol. "60, pp. 317–327.)

Mr. Justice Williams.—There is little doubt about that. There is no power to do it except under an extradition treaty.

Dr. Madden.—One would have thought that, in the interests of justice and morality, if a murderer escaped from Boulogne to England, the Government of England would order him to leave, and that every country to which he went would order him to depart, so that at last he would have to return to his own country, where he could be arrested and punished; but Mr. Dicey, in his book, has pointed out that that power has never been exercised in England apart from the statutory authority. Now, returning to the point which I had left on the previous evening: that the prerogative, if it existed at all, existed in the Crown of England, and according to the law of England the Ministers of the Crown were the persons entitled to deal with that prerogative. Taking it by steps: Responsible Ministers are otherwise called advisers of the Crown. Their existence is only as advisers of the Crown. In order that there may be advisers, there must be some one to be advised. There are some people who think that though this is a monarchy, yet that it is, virtually, a republic. But that is not so. The Queen is not a mere ornament, but a living entity.

The Chief Justice.—The statement has been made that the Government of England is a veiled republic.

Dr. Madden.—Other people, who are bold enough to say what they mean, say boldly, that, though monarchical in form, yet it really is a republic.

Mr. Justice Williams.—There is not the slightest doubt that the Queen has real and substantial power, which she has exercised and may exercise. In this way—If she does not like their acts, she can dismiss her Ministers, and she can appoint others if she can find persons to take the responsibility.

Dr. Madden.—No doubt. That is a matter essentially involved in the Constitution. I trust every one who reads our Constitution knows that she is a thinking, living entity; she has advisers on whose advice she may or may not act. But the advise must be tendered to her before she can decide whether she will act upon it or not. There must be a living person to whom the advice has to be tendered. The Queen has a duty to discharge of thinking for herself, and she has a duty to discharge to the country, she cannot dismiss her Ministers as though they were menial servants. She must demand from her Ministers the reason for their conduct before determining to dismiss them.

The Chief Justice.—In a country where there is responsible Government the law does not recognise any personal duty in the Sovereign, and the law therefore says that she is absolutely irresponsible to human law. She can do no wrong. Does not that imply that there is no duty recognised by law on the part of the Sovereign—no duty existing in her to do any act apart from her responsible advisers. The reason is that every act is done by the responsible advisers, who are responsible for the acts.

Dr. Madden.—The Executive Councillor is the actor or agent, but the Crown must have some participation in it personally. The difference between the ordinary relation of principal and agent, and that between the Crown and its advisers, is this—that in an ordinary case, if an agent did an act it may be implied that, because he was appointed generally he had authority to do the act. But in the case of the Crown, Her Majesty was responsible as principal for the act done. She has this right and this position, that she must judge of the rights and wrongs of the acts of her responsible advisers. It would be her duty to the country, if she thought it right, to dismiss them, and to summon other councillors to her aid. If she were unable to obtain councillors on that basis, if they all declined responsibility, she may dissolve Parliament to ascertain the will of the people. When the will of the people has been declared, Her Majesty, though perhaps differing from it, must get such responsible advisers as she can.

Mr. Justice Kerferd.—Can she dissolve Parliament without advice?

Dr. Madden.—Certainly.

The Chief Justice.—Individually, Her Majesty may have a duty in certain cases. But, quite apart from duty, has she any legal right? Has Her Majesty any duty that the law recognises as legally existing to do any act which comes within the constitution of what is known as responsible government in England?

Dr. Madden.—The duties of the Sovereign are of imperfect obligation, as they cannot be enforced in any Court.

Mr. Justice Holroyd.—She may have a duty, but she cannot be punished for not doing it.

The Chief Justice.—Although there may be no means of enforcing the duty, yet, if it is a legal duty, she is subject to the judgment of her subjects upon it. I do not know of any act done by a Sovereign under a Constitution where there is responsible government which is the legitimate subject for human judgment, and for which the Sovereign is amenable to human criticism.

Dr. Madden.—She is obviously amenable for dissolving Parliament if she differs from her subjects on a question on which she also differed from the Parliament that she had dissolved.

Mr. Justice Holroyd.—It is useless to have the maxim that "the King can do no wrong" if he cannot do anything at all. There must be a mind to be advised. If there is no mind no advice can be tendered to it.

Mr. Justice Williams (to Dr. Madden).—You answered off-hand just now the question of Mr. Justice Kerferd. It tests the validity of your argument. You answered to Mr. Justice Kerferd, "Certainly." That is hardly satisfactory. Mr. Justice Kerferd asked if the Queen could, of her own motion, dissolve Parliament, and you said "Certainly." I agree with Mr. Justice Kerferd that she has to call in the aid of other advisers before dissolving Parliament, and in order to enable her to act.

Dr. Madden.—It is within the personal knowledge of Mr. Justice Kerferd that the representative of the Crown here has several times refused to accept the advice to dissolve Parliament.

The Chief Justice.—Unless Her Majesty can find other advisers, she must accept her position, and keep those that she has. Her Majesty can't act without the advice of some one who will take the responsibility of the act.

Dr. Madden.—In this country the advice of Ministers has been refused, and other advisers have been obtained. And these advisers have been allowed by the Crown to carry on in the face of a majority in Parliament.

The Chief Justice.—The Crown need not take the advice; but there is no authority that for a distinct personal act of the Sovereign she can act without advice. When the Sovereign is *inops consilii*, when she has no advisers, she must get others. Her Majesty may in that case consult her footman, if she pleases, as to what she should do; but she must have advisers responsible to Parliament for her acts; she must find advisers who, after the dissolution of the previous Parliament, will be answerable to the new Parliament when it assembles.

Dr. Madden.—Lord John Russell says that the Crown may grant or refuse a dissolution. If I am sinning, in the answer I gave to Mr. Justice Kerferd, I am sinning in good company. Dr. Hearn, in his "Government of England," 2nd ed., page 98, paragraph 4, says:—

"There are, however, certain cases, and these too, of no common magnitude, "which form exceptions to the foregoing rule. In these cases the King does not "necessarily require either the assistance or the advice of any officer. He acts in "person and does not merely command actions. The first of these cases is the pro-"rogation or the dissolution of Parliament. Parliament is convened by writs under "the great seal issued, as they always set forth, by the advice of the Privy Council; "but it may be terminated by the mere oral announcement of the King himself. This "mode of dismission is usually adopted for prorogation unless it be personally incon-"venient to Her Majesty to attend. A dissolution is now seldom announced in this "way, but the power so to dissolve Parliament does not admit of doubt. In like "manner the Royal assent may be given to, or withheld from, any Bill without the inter-"ference and without the responsibility of any officer. The Clerk of the Parliament "indeed, announces in a set form to the Parliament the Royal pleasure with respect "to every Bill that is presented for assent; but even if that officer were to refuse to "notify in any case the Royal disapprobation, the Bill in respect to which he ventured "upon such a course would still fail to become law."

Mr. Justice Williams.—Do you contend that?

Dr. Madden.—It raises a question that is unsettled.

Mr. Justice Williams.—But he puts it very distinctly as settled.

The Chief Justice.—According to the modern doctrine she can't refuse her assent.

Dr. Madden.—No doubt. The right to refuse assent to Bills has fallen into disuse; that is all that can be said of it. It is so long since the Crown refused to assent to a Bill.

The Chief Justice.—The last time was in 1705.

Dr. Madden.—How has the Crown lost that prerogative by disuse? If that prerogative is gone, other prerogatives may also be lost by disuse. If it is not lost it still exists. I was pressed to maintain the proposition that she must consult advisers or she can't be advised. Dr. Hearn puts it in a plain and intelligible fashion. In the 2nd edition of Hearne's book on the Government of England, page 124. He says:—

"It has been a subject of no small surprise and remark that our modern system "of government is not expressed, and seems incapable of being expressed in a legal "form. The Cabinet is a body unknown to the law. When it was desired that "responsible government, as it is called, should be introduced to the colonies, it was "found that the nearest approach to a written description of it was obtained by a very "trifling change in the Governor's instructions. The reason of this strange fact is "now apparent. Our present political system deals with the discretionary powers of the "Crown. But where powers are discretionary, their exercise cannot by the very "terms be controlled. Where there is legal obligation, there is no room for discretion. "But unless the monarchial form of government were changed, a course which neither "now nor at any previous time the country could be induced to adopt, a large discre-"tion must rest with the Crown. Thus, since this condition must be accepted as an "ultimate fact in our political system, and since all direct control is from the very "nature of the case impossible, nothing remains but to provide such indirect influences "as may best tend to secure the satisfactory use of that discretion."

At page 127 he says "It may be thought an inherent defect in our institutions "that so great powers are placed in the hands of one person, and that the successful "working of the whole political system is dependent upon his willingness to use his "power without regard to his own personal inclinations. It is there recognised "distinctly that he has the power to do it if he will. Such a defect would doubtless "exist if there were no influences calculated to direct and determine the Royal will. "But of such influences our Constitution in its modern form is full. It deals with "the King as with a man possessed of free will, and capable of a reasonable choice. "It leaves him free to distinguish between right and wrong; and while it never "presumes that he will choose the wrong, it is careful to surround him with every "inducement to choose the right. Some of these motives are positive and some are "negative. Some offer distinct inducements to the adoption of the constitutional "course; and others take away the inducements to abandon it. By their combined

" operation that result has been obtained, which, up to the present time at least, has " proved so eminently successful."

These two passages state the fact that the Queen is the person who is assumed to be capable of judgment and endowed with the right to exercise a free judgment. She is a person with a discretion, and if that is subject to control, it cannot be a discretion at all. That is the opinion of a writer who devoted a life-long study to these matters, and his works have been received in England with the same respect with which they have been received here. He may differ with the opinions of others, but he is not an authority to be lightly disregarded. I therefore submit that in England the Ministers cannot act without the Queen's knowledge or consent, or without tendering the advice which she is to have the opportunity of receiving or refusing. My learned friend has quoted the case of Buron *v.* Denman as a sort of direct authority that Ministers may act without the consent of the Crown. It is about as unsatisfactory an authority for that purpose as can be found. It is a case in which the learned Judge who gives the direction to the jury, tells them that he himself is very doubtful indeed about what he is telling them as a matter of law, and the decision is the result of one of those least satisfactory of judicial consultations where a few words are had with some learned brethren, who give advice without debate or consideration. The case never went to appeal, the report stating—" But the plaintiffs afterwards obtained an " order to discontinue, certain terms of settlement of this and other similar actions " having been agreed to." The case, therefore, never went to its legitimate conclusion. Two other things are to be borne in mind in connexion with it. I do not think it is by any means clear that Her Majesty necessarily had not cognisance of the matter. It appears, amongst other things, that the correspondence relating to these proceedings was laid before Parliament, and, by the 10 and 11 Victoria, chap. 107, that the sum of £7,750 was appropriated for the suppression of the slave trade, £4,000 of which went towards settling this case. Her Majesty must have known of that vote, which is recognised by these Acts. It is a direct approval and acquiescence by the Sovereign. At the time there was in force an Act of Parliament in relation to the slave trade. It was the 2nd and 3rd Victoria, chap. 73, which reads:—
" Whereas it is expedient that persons employed under the authority of Her Majesty " in the detention and seizure of vessels engaged in the slave trade should be indemni- " fied against the consequences of vexatious suits and actions with which they may be " harassed; and whereas it is also expedient that power should be given to the High " Court of Admiralty and to Courts of Vice-Admiralty to adjudicate upon vessels and " their cargoes captured for having been engaged in the slave trade and also upon " slaves taken on board thereof; and whereas it is further expedient to extend the " provisions of certain Acts of Parliament which empower Her Majesty to grant " bounties for the capture of vessels engaged in the slave trade; and whereas Her " Majesty has been pleased to issue orders to her cruisers to capture Portuguese " vessels engaged in the slave trade and other vessels engaged in the slave trade not " being justly entitled to claim the protection of the flag of any State or nation. May " it therefore please your Majesty that it may be enacted; and be it enacted by her " Queen's most excellent Majesty, by and with the advice and consent of the Lords " spiritual and temporal, and Commons, in this present Parliament assembled, and by " the authority of the same, That it shall be lawful for any person or persons in Her " Majesty's service under any order or authority of the Lord High Admiral or of the " commissioners for executing the office of Lord High Admiral of Great Britain or of " any of Her Majesty's Secretaries of State, to detain, seize, and capture any such " vessels, and the slaves, if any, found therein, and to bring the same to adjudication " in the High Court of Admiralty of England or in any Vice-Admiralty Court within " Her Majesty's dominions in the same way as if such vessels and the cargoes thereof " were the property of British subjects; and all persons concerned in or advising the " giving of, or giving or issuing, any such order, authority, or acting under or in pur- " suance thereof, or carrying the same into execution shall be and they are hereby " indemnified: Provided always, that no such Court shall proceed to condemn any " vessel, not being British or Portuguese, the owners or master whereof shall estab- " lish to the satisfaction of such Court that they are entitled to claim the protection of " the flag of a State other than Great Britain or Portugal."

There was also an Act relating to Spaniards in force at that time, the 6 and 7 William IV., chap. 6, which is referred to and relied on in the case of Buron *v.* Denman. There was a treaty with Spain, which was embodied in that Act of Parlia-

ment, that Spain should concur with England in abolishing the slave trade, and it was also provided that all steps necessary for the suppression of the slave trade should be taken by England. But the objection was taken that it was not proved that Spain had complied with that treaty so far as to pass an Act, and the Court would not presume that the man had not property in his slaves. I refer to this case to show that it is not an authority of general application and is to be regarded lightly in connexion with the issues involved in this case.

The Chief Justice.—Referring to your argument yesterday, I should like to know what acts of the Sovereign must require her previous or subsequent sanction, and what acts are assumed to be authorized by her without express proof of her sanction? I suppose you do not contend that every direction given to a clerk in the Government offices, or in the ordinary transaction of public business by a Minister of the Crown, requires previous sanction or subsequent ratification?

Dr. Madden.—I would say not in matters of administration.

The Chief Justice.—That being so, is there any means of determining what acts will be assumed to be sanctioned by the Sovereign without proof of her personal sanction?

Dr. Madden.—I would say no public act whatever as soon as it is challenged. In our law courts things pass by agreement of everybody in an irregular fashion, because they cannot be questioned. So it is with matters affecting the Sovereign. Ministers do venture to do these things without consultation and the acquiescence of the Sovereign, and Her Majesty does not object, but as soon as a matter becomes the subject of investigation in a court of justice, or by any tribunal, it must be shown that the Sovereign acquiesced.

The Chief Justice.—Then you contend that a Minister has no power to do any act without the knowledge of the Sovereign?

Dr. Madden.—Acts of State policy.

The Chief Justice.—Can you define them? I understand you now to say that the rule applies to all acts as soon as they are challenged. If that be so, every act is unlawful, and liable to be challenged, unless it has the previous sanction or subsequent ratification of the Sovereign.

Dr. Madden.—I think a definition might be supplied by an illustration. The clerks employed by Government are technically servants of the Crown, but substantially they are clerks of the Ministers, who must have some persons to write letters and despatches. These are in connexion with matters about which there can be no doubt as to the Queen's will.

The Chief Justice.—I understood you to put it a moment ago that all these acts would have to be proved to have the Queen's authority when challenged.

Dr. Madden.—I do not think that would be so.

The Chief Justice.—If it be not so, can you suggest any means of determining what act, great or small, can be legally done?

Dr. Madden.—I can only do that by still further extending my example. It would be impossible to challenge the propriety of the question whether it was Mr. Smith or Mr. Jones who wrote a certain letter. That would be unchallengeable. It would be a matter within the cognisance of the Minister of the department. But whether Her Majesty had been consulted and had agreed to it or no, the subject matter of the letter could be discussed. An act of policy is a thing on which the Queen must be consulted.

The Chief Justice.—We are to affirm, according to your argument, that all acts of the Minister are illegal unless it be presumed that the Crown has given its personal assent?

Dr. Madden.—I think so.

The Chief Justice. I think you are compelled to go to that extent.

Dr. Madden.—I feel much satisfaction in going that length under compulsion, because I am satisfied in theory it must be right. Those who maintain the contrary must say that the Queen is no thinking or existing entity in our Constitution.

Mr. Justice Wrenfordsley.—Your contention goes to this extent: the Sovereign may do acts which are not void but voidable.

Dr. Madden.—I think so. I intended illustrating my argument in this connexion. We are all familiar with the fact that occasionally an issue arises in a case as to whether an act of the State is an act of the Crown. The moment it is challenged the *Government Gazette* is taken as evidence of its contents, but the Order in Council

has got to be proved. Inasmuch as the *Government Gazette* is only made *primâ facie* evidence of what the Crown has done, if it is challenged the original Order in Council must be got and proved in Court. I assume, for the purpose of my argument, that if this prerogative exists at all it must be exercised with the cognisance or at least the acquiesence of Her Majesty. Before I go to the more concrete proposal, which is the crucial question, I may deal with the question as to whether an act by a Queen's servant may by her apparent non-interference be considered to be ratified. That has been closely considered in the case of Cameron *v.* Kyte, 3 Knapp. p. 332:—

"But it was contended that the Governor in that character had not any such "power; that none such was delegated to him by the King, expressly or by implication. "On the other hand, the appellant insisted that such a power ought to be implied; and "if not, the fact of the Governor having made an order of this nature, and the King's "Government not having objected to it, was sufficient to render it valid, as the Crown "must be presumed to have adopted the order by its acquiescence. To the latter argu- "ment it was answered, and we think most satisfactorily, that such an order cannot be "supported on the ground that the acquiescence of the Crown is equal to its express "authority. If the King had expressly given his sanction to it, it would have been "obligatory from that date. But when the Royal confirmation is to be inferred from "acquiescence, who shall say when that operated? And who can assign any certain "time when the order became valid, and when the subject was to be bound to obey "it? Indeed there is no proof in the case that this notification was even communicated "to His Majesty, which would be found necessary to found the argument of acqui- "escence. We are, therefore, clearly of opinion that the notification cannot be rendered "valid on this ground. Then the question is reduced to this single point, whether or "not such an authority as was exercised in this case can be implied."

What evidence is there before the Court that in this particular case the Governor in Council even heard of this act at all? If not, how is he to acquiesce in it?

The Chief Justice.—I would say that the rule might be that the acquiescence of the Sovereign is to be assumed until it is shown to have been witheld by an act done by the Governor.

Dr. Madden.—I would submit that no such doctrine as acquiescence is to be inferred from the silence of the Crown. At page 346 there is also an important passage in relation to the same proposition. It is as follows:—"Under these circumstances, "we are of opinion that the Governor was not, in point of law, competent to make "the order in question, and that it was not valid and obligatory. We do not mean to "say that this portion of the King's sovereign authority may not be exercised by other "means than by the order of His Majesty in Council. That it may not be given by "a commission or instruction under the King's sign manual and signet; for we have "already held in the case of Jephson *v.* Piera, decided, after much consideration, that "Orders in Council are not the sole method of carrying the Royal will into effect, in "the government of countries conquered by His Majesty's arms. We do not say that "the King's will, intimated by the Secretary of State for the Colonies might not be "operative. All that we decide is that the simple act of the Governor alone, unauthorized "by his commission, and not proved to be expressly or implicitly authorized by any "instruction is not equivalent to such an act done by the Crown itself; and it may "not be amiss to observe that in whatever way the Royal authority be exercised, for "the alteration of an existing law, it is highly fit and proper that it should be done in "such a form as that the subject may know, in the face of the act itself by which the "alteration is made, that it is made by that authority which he is bound to obey. It "would be most inconvenient if he were left to ascertain by collateral inquiries, often "difficult, and sometimes impracticable, whether the act did or did not emanate from "the Sovereign power." That is the only authority which it occurs to me I can submit to the Court on this point, but it seems a principle which is clearly sustainable. I shall now proceed to what must be considered to be the crucial argument of my learned friend. It is: Ministers must have the power to exercise the prerogative; otherwise the prerogative will be lost to the greater part of the empire.

The Chief Justice.—You must take the explanation that the authority is not directly transferred to the Ministers, but to the representatives of the Crown.

Dr. Madden.—Of course, I propose to deal with the whole of the argument. The argument is that the Ministers, without consulting the Governor, have the right to exercise the prerogative, if it exists, and it is assumed for the purposes of argument that it does.

The Attorney-General.—With subsequent ratification.

Dr. Madden.—My learned friend has never maintained that the Governor has ever ratified this act further than that he has not discharged his Ministers.

The Attorney-General.—Certainly.

Dr. Madden.—We may assume that in this case the Governor was neither asked to allow, nor to ratify what Ministers did, but afterwards the Ministers continued in office.

The Attorney-General.—And there was no Order in Council.

Dr. Madden.—I am very desirous, and I am sure my learned friend the Attorney-General is anxious, that this case should not lapse on any mere misunderstanding on the pleadings. For that reason, the Attorney-General stated the meaning he intended by the plea of subsequent ratification by Her Majesty. If there is any misunderstanding as to the term, it may be as well to amend the plea, so that its exact meaning may be understood, and the case not decided on a mere technicality.

The Chief Justice.—Surely the facts are stated in this plea, and it appears on them that the Governor has neither previously sanctioned nor subsequently ratified this act of the Ministers of the Crown by an Order in Council.

Dr. Madden.—If this plea is read with that understanding there is no difficulty.

Mr. Justice Holroyd.—It might possibly place me in a great difficulty if I am compelled to look at anything else but the pleas—to accept any statement at all by the Attorney-General.

Mr. Justice Wrenfordsley.—I assume, from the Attorney-General's argument, that he places reliance on the fact that the Governor has never intimated any dissent from the act of State policy.

Mr. Justice Williams.—That is the ratification he intends to rely upon—that the Ministers continued in office.

Mr. Justice Wrenfordsley.—That silence gives consent.

Dr. Madden.—Let us proceed to consider the proposition. Assuming the prerogative does exist—are Ministers, independently of the Governor, at liberty to exercise that prerogative? Now it is admitted on both sides that the prerogatives of the Crown are vested in the Crown. It is also admitted that the Ministers in England advise the Queen in England. It is also admitted, and it must not be forgotten, and it cannot be excluded, that in this case the Governor is appointed by a commission from the Queen, which expressly enjoins upon him how he is to act for her, which conveys to him the right to deal with two prerogatives specially, and enjoins upon him the necessity of acting on his own judgment in these prerogatives.

Mr. Justice Williams.—And which authorizes him upon every measure that passes Parliament to act in direct opposition to the advice of the Executive.

Dr. Madden.—I do not think it does that.

Mr. Justice Williams.—How about this clause, clause 7—"The Governor "may act in the exercise of the powers and authorities granted to him by our said "letters patent."

Dr. Madden.—You are reading the instructions.

Mr. Justice Williams.—I am.

Dr. Madden.—I am speaking of the commission, which is an entirely different document. Now we start with this proposition. Here is vested in the Queen all her prerogatives. She has made a grant of some of them—certain powers have been granted to this colony of self-government, and Mr. Attorney cannot point out any single expression in the Act which expressly conveys the right to exercise these prerogatives to Ministers. The very two prerogatives which are included in the Governor's commission are expressly referred to in the Constitution Act, but there is no express conveyance by that Act of Parliament of the right to exercise any other prerogative whatsoever.

Mr. Justice Williams.—What are the two prerogatives?

Dr. Madden.—The prerogative of mercy and the right to call and dissolve Parliament. The Act of Parliament also confers a third prerogative—the prerogative of justice. It authorizes the creation of the Supreme Court, and directs commissions to be issued. I see that the commission does confer the prerogative of justice thus far, that it gives the appointment of judges and justices to the Governor. The 8th paragraph is, "The Governor may constitute and appoint in our "name and on our behalf all such judges, commissioners, justices of the peace, and other "necessary officers and Ministers of the colony as may be lawfully constituted or

"appointed by us." Then the 9th is, "When any crime has been committed within the "colony, or for which the offender may be tried therein, the Governor may, as he shall see "occasion, in our name and on our behalf, grant a pardon to any accomplice in such "crime who shall give such information as shall lead to the conviction of the principal "offender, or of any one of such offenders if more than one; and, further, may grant "to any offender convicted in any court, or before any judge or other magistrate "within the colony, a pardon, either free or subject to lawful conditions, or any "remission of sentence passed on such offender, or any respite of execution of such "sentence for such period as the Governor thinks fit; and, further, may remit any "fines, penalties, or forfeitures due or accrued to us; provided always that the "Governor shall in no case, except where the offence has been of a political nature "unaccompanied by any other grave crime, make it a condition of any pardon or "remission of sentence that the offender shall absent himself or be removed from the "colony." And then the 11th is, "The Governor may exercise all powers lawfully "belonging to us in respect of the summoning, proroguing, or dissolving any Legisla-"tive body which now is or hereafter may be established within our said colony."

The Chief Justice.—Do you maintain that the commission is a legal instrument, and having authority in Victoria at the present time ?

Dr. Madden.—Yes.

The Chief Justice.—If so, it may be altered at any time by the Royal will ?

Dr. Madden.—Assuredly it may.

The Chief Justice.—If that be so, does there exist in Victoria by Statute or by any permanent authority any Constitution which the Royal will cannot determine?

Dr. Madden.—I should say there does exist a most admirable Constitution without one or the other.

The Chief Justice.—I mean a Constitution having responsible government?

Dr. Madden.—Certainly, I should say so, if it be also part of the Constitution that prerogatives may exist.

The Chief Justice.—A Constitution including responsible government as part of it?

Dr. Madden.—Certainly; I think we have a very ample constitution of responsible government.

Mr. Justice Williams.—Assuming that there is any stipulation or order in the letters patent inconsistent with the provisions of our Constitution Act, would you contend that that stipulation is legal?

Dr. Madden.—No; anything necessarily inconsistent in that commission must yield to the Act of Parliament.

The Chief Justice.—With reference to the instruction which commands the Governor in all cases to refuse the advice of his Executive Council if he thinks fit, and immediately report to the Crown, do you contend that that injunction, in whatever instrument it be conveyed, is a legal instrument?

Dr. Madden.—In so far as it is inconsistent with the Constitution Act, it is an instruction which has no force.

The Chief Justice.—Does the Constitution Act establish any system of responsible government for any purpose?

Dr. Madden.—That is the next branch of my argument. I proceed to examine the Constitution Act, and ask the Court to consider what it does.

Mr Justice Wrenfordsley.—Supposing the Governor to differ with the Executive Council, he must give his reasons according to the commission. To whom must these reasons be submitted?

Dr. Madden.—To Her Majesty, clearly. That would bring us to the question—Are the Governor's Instructions inconsistent with the Constitution Act? I think they are not. I submit that that is beyond contention. But I was endeavouring to clear the ground by pointing out that the prerogatives are in the Crown, and that the Crown has by commission expressly conveyed certain of these prerogatives, for use, to the Governor. That being so, we have these prerogatives, by a grant known to the law, vested in the Governor; and I submit that as these prerogatives are entrusted to the Governor, it is his mind that is to determine as to their exercise. If it were otherwise, the Governor would be reduced to a mere depository of the Crown's prerogatives, a sort of portmanteau, out of which Ministers might take this or that prerogative at pleasure. My contention, therefore, is that the Governor, in whom the prerogative is invested, is entitled to share in the determination as to whether the prerogative shall be exercised

or not. My learned friend admitted, in answer to a question from the Bench, that he is of opinion there is no means by which these prerogatives of the Crown have been conveyed to this country, except in so far as they are conveyed to the Governor by his commission.

The Attorney-General.—Oh, no.

Mr. Justice Williams.—I did not understand the Attorney-General to say that. I took his contention to be that the prerogatives of the Crown have been conveyed to this colony, to be exercised here by responsible Ministers in and for Victoria, under the Constitution Act.

Dr. Madden.—The Attorney-General will find that a very troublesome and difficult position to maintain. But I understand the Attorney-General to say that whether the prerogatives were conveyed to Ministers by the Constitution Act or not, undoubtedly they came to this colony through the Governor.

The Attorney-General.—Oh, no.

Mr. Justice Williams.—In answer to the question I put to him, as to whom the prerogatives of the Crown in Victoria were vested in—in the Governor or in responsible Ministers—I understood the Attorney-General to say that either portmanteau would do for him; that it was immaterial to his defence whether the prerogatives were vested in the Governor or in responsible Ministers in and for Victoria.

Dr. Madden. Of course, he said that; but, coming from a less reputable and less worthy person than the Attorney-General, I should say that that gives no answer which can be acceptable to the Court. It is useless for the Attorney-General to say "either will do for me," neither being an answer to the question. As a lawyer and a conveyancer, your Honor knows——

Mr. Justice Williams.—I am not a conveyancer.

Dr. Madden.—I would not hear your Honor's enemies say so in regard to such a simple proposition as this—that where there is property, according to our law, that property has to be conveyed by some means known to the law. Well, it is admitted that this prerogative of the Crown is in the Sovereign. Chitty says that is beyond doubt; and it has been conveyed to the Governor by the Queen by her Royal commission. But how has it got into Ministers? The Attorney-General says that, whether it is vested in the Governor or in responsible Ministers, the result is the same. If it was conveyed to the Governor and rests in him, Ministers, argued the Attorney-General, could resort to the Governor, and use the prerogative whenever they liked, without consulting him. If it was vested in Ministers, they could use it when they liked. So that in either case, the Attorney-General says, the result is the same. But that, I submit, is no answer. The Attorney-General has got the prerogative into the Governor; how does he get it out?

Mr. Justice a'Beckett.—I am afraid you have somewhat misapprehended the Attorney-General's contention. He was asked whether the prerogative is in the Crown in England or in the Crown here. The Attorney-General's answer was—"It does not "matter, for the purposes of my argument, whether this prerogative is in the Governor "as representative of the Crown here or in the Crown in England." But he did not say that Ministers here are the recipients of the prerogative—that they have got the prerogative. What he contended for was that, no matter whether the prerogative is vested in the Crown in England or in the Governor here, the only persons who can use it here are the responsible Ministers of the Crown in and for Victoria, and that if Ministers use the prerogative it is to be assumed they use it with the sanction of the Crown, taking the Crown to mean the Queen or the Governor. The Attorney-General says, "It may be a nice question whether the prerogative is handed over from the Crown "in England to the Governor here, or whether it remains in the Crown in England, "but either will do for my argument, because wherever the prerogative of the Crown "may be, whether in a box here or in a box in England, the only persons who can "take it out of the box and use it in this colony are the responsible Ministers of the "Crown in and for Victoria." But I did not understand the Attorney-General, in any part of his argument, to put it that the prerogative of the Crown was transferred to Ministers.

Mr. Justice Holroyd.—That raises another question, and it makes a vast deal of difference which of the two propositions is adopted as correct. Because, if the prerogative of the Crown, to use the language already employed, is not in a box here, it is in a box at home. If it is in a box at home, then it can only be exercised by Imperial Ministers. If it is in a box here, then the contention is it can only be exercised by Her Majesty's Ministers in and for Victoria.

Mr. Justice Williams.—But for our Constitution Act, the prerogative of the Crown would be in a box at home. If responsible government has been given to Victoria, is not the prerogative here as well as at home?

Dr. Madden.—That brings me at once to the Constitution Act, and I submit that, except by a most extraordinary straining of the language of that Act, such a contention is not available under it.

The Chief Justice.—Before coming to the Act, I understand you to contend that, apart from the Constitution Act, responsible government does not exist in Victoria by law, except so far as it is conveyed by authority from the Crown?

Dr. Madden.—So far as that assumes that I consider the prerogatives of the Crown are matters that may be exercised in England without consulting the Queen, I don't accept the position, because I do not admit or assume that the prerogatives of the Crown can be exercised in England without consulting the Queen.

The Chief Justice.—Let me put my question in another way. Is there any source of authority, in addition to the provisions of the Constitution Act, referred to by the Attorney-General, and the Governor's commission with the documents accompanying it, referred to by you—is there any other source from which Victoria draws a political constitution, including responsible government?

Dr. Madden.—Not in my opinion. It is well-known to all of us that, before the Constitution Act was passed, this colony had no right to government, except such as the Imperial Government could afford us. We were entitled to be governed from England. But, except the right to responsible government given to us by the Constitution Act, there is no other right at all, and we are bound by the terms of that Act. As I follow the Attorney-General, this is the Alpha and Omega of his contention, and it will be found that necessarily it should be so. Victoria was constituted a separate colony by the first section of the Act 13 and 14 Victoria, chap. 59, and the Constitution Act of this colony is contained in the First Schedule of the Act 18 and 19 Victoria, chap. 55. Before I come to that, however, let us see what limitations were placed upon our right to self-government by the Act that amended the 13th and 14th Victoria, chap. 59. The third section of that amending Act provides:—

"The provisions of the said Act of the fourteenth year of Her Majesty, chap. "59, and of the Act of the fifth and sixth years of Her Majesty, chap. 76, "'for the government of New South Wales and Van Dieman's Land,' which relate to "the giving and withholding of Her Majesty's assent to Bills, and the reservation of "Bills for the signification of Her Majesty's pleasure thereon, and the instructions to "be conveyed to Governors for their guidance in relation to the matters aforesaid, and "the disallowance of Bills by Her Majesty, shall apply to Bills to be passed by the "Legislative Council and Assembly constituted under the said reserved Bill and this "Act and by any other legislative body or bodies which may at any time hereafter be "substituted for the present Legislative Council and Assembly."

I refer to that in order to meet Mr. Justice Williams's question with regard to the instructions of the Governor, to the effect that inasmuch as there were Acts which required the reservation of all the Bills for the assent of Her Majesty, the instructions of the Governor were to be regarded as controlling Acts passed by Parliament under our Constitution Act.

Mr. Justice Williams.—These are Acts which it is admitted, without responsible government, do not exist.

Dr. Madden.—No; they are instructions which existed under Acts passed for the Government of New South Wales and Van Dieman's Land, and which were attached to constitutional government in New South Wales, but which existed before we got responsible government in this colony. When we got responsible government these instructions were still attached to our constitutional or responsible government.

The Chief Justice.—You say "constitutional or responsible government." Both colonies had constitutional government before they received responsible government. Those instructions to which you refer may all be found in the instructions and commissions issued to Governors of New South Wales before the passing of the Constitution Statute.

Dr. Madden.—Yes.

Mr. Justice Williams.—And it has been impressed upon my mind that they are totally unsuitable to the present day. They are instructions which would be eminently suitable to a Crown colony.

Dr. Madden.—As a matter of fact, in some degree that is so. Apparently these documents have been carefully maintained. Any change from them has

evidently been carefully avoided, lest, by innovation, they should bring about some variation of established proceedings. These regulations were originally intended to apply to every Bill, but that is so no longer, because they apply only to special Bills. An Act of Parliament has since been passed repealing that provision, and now only certain limited classes of Acts are to be remitted for Her Majesty's special assent.

The Chief Justice.—What is that Act?

Dr. Madden.—There are two such Acts, 25 and 26 Victoria, chap. 11, and 29 and 30 Victoria, chap. 74. Now I come to the Constitution Act. Section 1 provides:—

"There shall be established in Victoria, instead of the Legislative Council now "subsisting, one Legislative Council and one Legislative Assembly, to be severally "constituted in the manner hereinafter provided; and Her Majesty shall have power, "by and with the advice and consent of the said Council and Assembly, to make "laws in and for Victoria in all cases whatsoever."

Therein is conveyed to this colony the right of making its own laws, and it will be subsequently found in this Act that the right to administer those laws is granted, but nowhere is it suggested that the prerogatives of the Crown, existing under the common law of England, are conveyed to Ministers of the Crown or to anybody else in this colony. The Act goes on to constitute the Legislative Council, provides for the retirement of the members in rotation, sets forth the qualification of members and of electors, specifies the mode of electing a President of the Council and the declaration to be made by members of the Council, makes provision for the resignation of members, and fixes the number of members required to form a quorum. It provides for the constitution of the Legislative Assembly, the qualifications of members and electors, the rights of voters, and who shall be incapable of voting. And then we come to section 18, of which section 37 of the Act as it now stands is a re-production. I invite the Court's special attention to this section, because the Attorney-General drew some argument from the use of the words "responsible Ministers" in the Officials in Parliament Act. But, first, I would remind the Court that the Officials in Parliament Act is not an Act of the Imperial Parliament, but an Act of the Parliament of this colony, passed subsequently to the Constitution Act, and made under the Constitution Act. Therefore, it is not to be read as any part of the original conveyance of any right to us. I do not personally say whether the use or non-use of the term "responsible Ministers" makes any substantial difference; I should be inclined to say it did not, but the Attorney-General drew something from the express use of that term in the Officials in Parliament Act, and what I say is that it must be borne in mind that the Officials in Parliament Act is one of our own Acts, and not one of the grants from the Imperial Parliament. Section 18 of the original Act passed by the Imperial Parliament, to establish a Constitution in and for Victoria, reads as follows:—

"Of the following officers of government for the time being, that is to say, the "Colonial Secretary or Chief Secretary, Attorney-General, Colonial Treasurer or "Treasurer, Commissioner of Public Works, Collector of Customs or Commissioner of "Trade and Customs, Surveyor-General or Commissioner of Crown Lands and Survey, "and Solicitor-General, or the persons for time being holding these offices, four at "least shall be members of the Council or Assembly."

The Act goes on to provide for the duration of the Legislative Assembly, the election of a Speaker, the number of members necessary to form a quorum, that a quorum in either House may act although an election may have failed to return a member or members from a district or districts; it provides for the resignation of members, how seats may be vacated, that public contractors are incapable of sitting and voting in Parliament; the effects of incapacity; the power of the then existing Legislature to make provision for regulating elections; and then comes the prerogative of convening and dissolving Parliament, which is dealt with expressly by the 28th section, as follows:—

"It shall be lawful for the Governor to fix such places within Victoria, and, "subject to the limitation herein contained, such times for holding the first and every "other session of the Council and Assembly, and to vary and alter the same respec- "tively in such manner as he may think fit; and also from time to time to prorogue "the said Council and Assembly, and to dissolve the said Assembly by proclamation "or otherwise whenever he shall deem it expedient. Provided that nothing herein "contained shall empower the Governor to dissolve the Council."

From this section it will be seen the power to convene, prorogue, and dissolve Parliament is given to the Governor, with an express discretion to him. Then the Act

goes on to provide as to the length of sessions, the time of first election, declaration by members, the oath of allegiance, what is to happen in the event of a false declaration; that the Legislative Council and Legislative Assembly may make standing rules and orders; then it authorizes the Legislature to define the privileges to be enjoyed by Parliament; makes provision for the Governor's messages to Parliament transmitting amendments which His Excellency desires to be made in any Bill presented to him for Her Majesty's assent; and then comes the section to which I invite the special attention of the Court, section 37 of the present Act, with respect to appointments to public offices. That section provides:—

"The appointment to public offices under the Government of Victoria hereafter "to become vacant or to be created, whether such offices be salaried or not, shall be "invested in the Governor with the advice of the Executive Council, with the excep- "tion of the appointments of the officers liable to retire from office on political grounds, "which appointments shall be vested in the Governor alone."

There comes the first element of responsible government. The Governor may appoint the officers who are liable to be removed on political grounds; he has the power to appoint persons to advise him, but, beyond what arises from those few words which I have quoted, there is no other conveyance of responsible government to this colony whatever. And one has to give effect to the legal condition of things, no matter how one may lament its deficiency, if it be deficient. If responsible government, as conveyed to this colony, be deficient, it has got to be remedied in the proper way; but it is within those narrow limits, whatever they may mean. A definition is clearly drawn, in the same section, between things which the Governor may do of his own accord and things which he may do with the advice of the Executive Council. All public offices are to be filled by the advice of the Executive Council, with the exceptions named; but officers liable to retire from office on political grounds are to be appointed by the Governor alone. Then the Act goes on to provide for another part of the prerogative, namely, the administration of justice. It authorizes the issue of commissions to judges of the Supreme Court; provides as to the salaries of the judges; the continuation of existing laws, so far as they are not inconsistent with the Constitution Act; the continuation of existing courts and officers; the levying of certain customs duties; the consolidated revenues; the charges of the collection and management of those revenues; the civil list; that Her Majesty is to have the sums which are voted by schedule D voted without alteration, in lieu of Crown revenues and royalties; and that the Governor may abolish certain offices. Then provision is made for pensions to judges, and pensions to responsible officers who may retire or be released from office on political grounds; a list of pensions is to be laid before Parliament annually; then money is provided for the purposes of religion; and the Legislature is authorized to legislate with respect to the waste lands of the Crown, by section 54, which provides that:—

"Subject to the provisions herein contained, it shall be lawful for the Legisla- "ture of Victoria to make laws for regulating the sale, letting, disposal, and occupation "of the waste lands of the Crown within the said colony, and of all mines and minerals "therein."

Reference was made to mines and minerals, with respect to the prerogative of the Crown. I am not prepared to say that the Royal mines and minerals are matters of prerogative, in the ordinary sense of the term. They are matters of Crown property, which the Crown conveys to the Legislature of the colony, and it has conveyed them definitely in the section I have just read to the Court. The Act goes on to provide power to appropriate the consolidated revenue, and limits the authority of the Legislative Council to rejecting the Appropriation Bills, the Council not being allowed to alter them. Then we come to section 57, which says that—

"It shall not be lawful for the Legislative Assembly to originate or pass any "vote, resolution, or Bill, for the appropriation of any part of the said consolidated "revenue fund, or any other duty, rate, tax, rent, return, or impost, for any purpose "which shall not have been first recommended by a message of the Governor to the "Legislative Assembly during the session in which such vote, resolution, or Bill shall "be passed."

The Act goes on to provide that warrants for the issue of money shall be under the hand of the Governor, and for the proclamation of the Constitution Act within three months of its receiving the Royal assent. Then the Legislature is empowered to alter the Constitution Act, subject to the Queen's assent to any Bill that may be passed for that

purpose; power is also given to alter the Electoral Act; and then there is the interpretation clause, and a section providing that the Constitution Act is not to come into force until the repeal of certain Acts with regard to the government of the colony as a part of the colony of New South Wales. That is an outline of the Constitution Act as granted to us originally, and, for all practical purposes, there has been no alteration of it since.

The Chief Justice.—What is the effect of the Act in respect of the powers of responsible government. Do you admit, or deny, or pass by this question. Is it the legal effect of that Constitution Act, or of that Act combined with the Governor's instructions, to have created or not to have created, in Victoria, a system of responsible government, whatever that system may mean ?

Dr. Madden.—Certainly it does. The legal effect of the Constitution Act is to create a system of responsible government here; but I would say that that system of responsible government stands in relation to the present argument thus: That it is a system of responsible government, in which, as I would maintain, according to the law of England, Ministers here have no greater power than Ministers of the Crown in England, and I submit that Ministers in England could not exercise the Royal prerogative to exclude aliens without the authority of the Sovereign. I hold that Ministers of the Crown in this colony have less powers than Her Majesty's Ministers in England, inasmuch as the Crown and the Imperial Parliament have conveyed only certain specified prerogatives to be used here at all.

The Chief Justice.—If that Statute creates responsible government, more or less limited, necessarily or by express limitation, can the Crown, by any subsequent commission, instructions, or directions, or any other communication whatever, alter, by diminishing the powers conferred under that system, as created by the Act?

Dr. Madden.—I should say "No." Nothing can diminish what is conveyed by that Act, except an Act of the Imperial Parliament that passed the Constitution Act. The Queen has no authority to alter that which is enacted by Act of Parliament. The Crown cannot repeal an Act of Parliament, either in whole or in part. The Crown can exercise its own prerogatives, and, amongst other things, it may say who shall exercise those prerogatives, except in so far as any Act of Parliament says it shall not.

The Chief Justice.—I only desire to get at your real views, and not to embarrass you. The Constitution Act, as I understand you, creates a system of responsible government in Victoria, and the extent of that system of responsible government is to be ascertained from the Statute as well as the incidents of it. Can any authority of the Queen alter, by diminution, that system, as it is created by Statute?

Dr. Madden.—No; so far as it is inconsistent with the express enactment or necessary intendment of the Statute. I desire to answer your Honour's questions in the fullest and most unreserved manner, except that I do not, in the least degree, acknowledge that the Constitution Act does give full responsible government in the sense in which the Attorney-General claims it; and I say, further, that if it did there is no responsible government known to the English Constitution anywhere which deprives the Crown of the right to acquiesce in the exercise of its prerogatives.

Mr. Justice Williams.—You say that anything which takes away or diminishes our rights under the Constitution Act would have no validity whatever ?

Dr. Madden.—Unless enacted by the Imperial Parliament.

Mr. Justice Williams.—But I understand you to say that this Constitution Act does not give to responsible advisers of the Crown here powers of the same extent as are enjoyed and exercised by Ministers of the Crown in England, and also that you further say that by this Constitution Act only certain prerogatives are conveyed here, and that that is clearly the case, according to your reading of the Act.

Dr. Madden.—I say so, applying the ordinary rules of interpretation.

The Chief Justice.—Then you say that the system of responsible government, as created by that Act, only authorizes the operation of the prerogatives expressly mentioned in it.

Dr. Madden.—That is, so far as the prerogatives are concerned.

The Chief Justice.—And powers.

Dr. Madden.—Yes. Whosoever may exercise the prerogatives of the Crown in this Colony, only certain prerogatives are authorized to be exercised here, and these cannot be exceeded.

The Chief Justice.—Then it would follow, would it not, according to your view, that it is only to those prerogatives which are expressly mentioned that the system created by the Act applies?

Dr. Madden.—It is only in the case of the prerogatives of summoning Parliament, exercising mercy, and the administering of justice that Ministers of the Crown here have the right to advise the Governor.

The Chief Justice.—Would you refuse to apply to the Constitution Act the principle which is applied to other Acts for the benefit of the public, as well as to private instruments, viz., that, whenever the law gives anything, it creates all that is necessary for the exercise of the powers or benefits given? Would you say that there may not be and there is not contained in the express terms of this Constitution Act all the powers and authority necessary for the exercise of the system of responsible government which you admit to be created by the Act?

Dr. Madden.—I say that, as to the prerogatives conferred by the Act, these are expressly conferred on the Governor, and that when the Act desires to speak of "the Governor with the advice of his responsible Ministers" it says so; but where it deals with what is conferred on the Governor for his use alone there it refers to the Governor only in his capacity as the representative of the Crown.

Mr. Justice Williams.—I feel much pressed by this portion of your argument, but the Chief Justice points this out to me, that another section, section 28, provides that it shall be lawful for the Governor to convoke, prorogue, and dissolve Parliament; and he contrasted that with section 37, which provides that the appointment to public offices is vested in the Governor, with the advice of the Executive Council, "with the "exception of the appointments of the officers liable to retire from office on political "grounds, which appointments shall be vested in the Governor alone." That argument almost cuts both ways, because you have the word "alone" emphatically put in at the end of section 37, and you have it seemingly expressly left out in section 28, and that would seem to imply that the words "It shall be lawful for the Governor," &c., were intended to mean "It shall be lawful for the Governor, with the advice of his Ministers," or "through his advisers," to do the things specified, viz., convoke, prorogue, and dissolve Parliament.

Dr. Madden.—I would submit that the word "alone" is put in to draw the distinction, the apposition which is made in the very same section between the Governor and the Governor with the advice of his responsible Ministers, and has no reference to section 28.

Mr. Justice Williams.—Would it not then have sufficed to have said the "Governor" without the word "alone"?

Dr. Madden.—It might have done; and certainly I submit that where only the word "Governor" is used it should be taken to have its usual signification of the Governor alone. I am aware that in the Interpretation Statute passed by the Parliament of this colony, it is provided that wherever the word "Governor" is used in any existing or subsequent Act of Parliament it shall mean the Governor with the advice of his Ministers. But that provision could not apply to this Statute—the Constitution Act—because in that case a local Act would be over-riding an Imperial Act; but I contend that the very enactment of that Interpretation Statute shows that in the Imperial Act "the Governor" was regarded as meaning the Governor alone and not the Governor as the creature of the Executive Council.

The Chief Justice.—Do I understand you to contend that the system of responsible government created by the Constitution Act only operates in those cases under the Act where the Governor is empowered to do something with the advice of his Executive Councillors?

Dr. Madden.—I should be disposed to think that that would be the meaning of responsible government under the Constitution Act at that date. I am perfectly aware that, by subsequent enactments, some of these things have become otherwise.

The Chief Justice.—If your interpretation of responsible government as created by the Constitution Act be correct, it is certainly very widely different from the belief which has existed everywhere as to the intention of the Imperial Legislature at the time the Constitution Act was passed, as to the intention in the mind of Ministers of the Crown in England when they introduced and passed this Statute, and as to the belief in the mind of the Legislature of this colony when the Act was passed. From that time down to the present, I think there has been a universal belief that the system of responsible government exists in Victoria to a far larger measure and in a far larger

area than would appear to be the case according to your argument. Of course, I am well aware that whatever may have been the opinion of Ministers, and however universal that opinion, we are bound to deal with the law; but it is an element in the case that you adopt a line of argument which seems to be quite different from the impression which prevailed in the Legislature at the time the Constitution Act was passed, and which has been prevalent throughout the colony for a period of 33 years.

Mr. Justice Williams.—I must say that I am very much impressed with this view of the case. The onus lies on the Crown to show that the right to exercise the prerogative to prevent aliens landing upon our shores, to exclude aliens from our soil, exists here; and I quite think that the starting point and the key, so to speak, of the whole of this argument is this Constitution Act. What are the powers that we get under this Constitution Act? It appears from the Act that under this Statute certain prerogatives, and certain prerogatives only, are conveyed to Victoria, no matter whether to the Governor alone, or to the Governor with the advice of the Executive Council; and, according to the ordinary rule of interpretation, the fact that certain prerogatives are specifically mentioned in the Act is a very strong implication that other prerogatives were not intended to be conveyed, and amongst those other prerogatives would be this very prerogative to exclude aliens from our soil, to prevent aliens from landing upon our shores, which is claimed by Ministers of the Crown in and for Victoria, and is relied upon as the defence in the present case.

Mr. Justice a'Beckett.—It is scarcely fair to Dr. Madden's contention to call upon him to give a definition of the extent of responsible government which we possess in this colony, to define at once and expressly the various forms that that responsibility may assume. It is enough for him to show that the nature of the powers conferred upon this country is such as to exclude the exercise of this particular prerogative which is relied upon by the defence. It would be impossible, I think, for Dr. Madden to specify, at once and in express terms, the full range of the powers included in responsible government as it is enjoyed by this colony. It does not follow, because Dr. Madden mentions some things that the Government of this colony can do, that therefore our responsible government is confined to these particular instances, and that all the Government can do are these particular things.

The Chief Justice.—I do not think it is necessary for Dr. Madden to do more than show that this particular prerogative cannot be exercised in Victoria by the Ministers of the Crown in and for Victoria; but, speaking for myself, he will greatly assist me if he can meet the argument, or rather part of the argument, which was put forward by the Attorney-General, that the Constitution Act implies, and indeed contains, not merely the system of responsible government expressly created by it, but also all that is necessary to give effect to the system of responsible government in Victoria; that is to say, all the prerogatives and powers necessary for the administration of the law and the conduct of public affairs in this country. That argument is based on the ordinary rule of interpretation and construction of the provisions of Acts of Parliament, and Dr. Madden will greatly assist my mind if he can answer that argument of the Attorney-General, and show how it is that that ordinary rule as to the construction of Acts of Parliament should not be applied to the Constitution Act, and that, in fact, only one or two prerogatives are created in this colony by the Constitution Act.

Dr. Madden.—I fully apprehend your Honour's view of the nature of the question, and although it is, of course, quite impossible for me to exhaust the area over which responsible government may operate in this country, I may very easily point out to your Honour what the whole scope of the Act is, and thereby demonstrate the vast area over which responsible government does exist. The Constitution Act, I would submit, is threefold. It authorizes the making of laws in and for the colony of Victoria, and, so far as it is an Act for that purpose, it is an Act for conferring upon the colony a general power——

The Chief Justice.—Which it had before.

Dr. Madden.—After a certain fashion, but not to the same extent as is given by that enactment. The Constitution Act authorizes the making of laws, and, by necessary intendment, it authorizes the administration of those laws. Then there is a vast machinery provided, first of all for creating the Legislative Assemblies to make the laws, then for the reproduction of those Assemblies, the qualifications of the persons who may be elected to those Assemblies, and of the electors, the manner in which they are to vote and exercise their privileges, and how the Houses of Legislature are to make their laws. Then the Act makes a large provision for appointing

staffs to administer the laws. The ordinary rule which your Honour refers to would apply to these matters—the rule that a Statute implies the intendment of the Legislature to give effect to its provisions. But no prerogative of the Crown is to be presumed to have been granted by the Crown. The prerogative of mercy, for example, it was necessary to give, and that has been granted; it was obviously necessary that the Crown should grant the prerogative of calling together and dissolving Parliament, and that has been given; the prerogative of administering justice was obviously indispensable, and that prerogative has likewise been granted. But as to that portion of the Act which conveys the prerogative of the Crown to this colony, the ordinary rule of interpretation is that every intendment must be expressly stated, and nothing is to be presumed to have been given by the Crown or taken from the Crown except it is expressly given or expressly taken. The Crown has expressly given the three prerogatives I have named, but it has given no more in that Act, and I submit that the Court cannot say that the Crown may be presumed to have given anything else, seeing that it has limited its gift to these three prerogatives. A liberal interpretation may be applied to the Act so far as its provisions refer to the granting of powers of self-government and the making of laws; but the other rule must be applied to the grant of the Crown's prerogatives.

Mr. Justice Kerferd.—Then do you contend that the Parliament of this colony could not legislate on any subject-matters dealing with the prerogatives of the Crown except such as are enumerated in the Constitution Act?

Dr. Madden.—Not lawfully.

Mr. Justice Kerferd.—Then what about the legislation with regard to the restriction of Chinese immigration?

Dr. Madden.—It may or may not be a good Act. But the question may arise whether, the Queen having expressly assented to the Act, Her Majesty's assent may not be *pro tanto* a further grant of her prerogative.

Mr. Justice Williams.—You said that the prerogative of mercy was granted; I don't see that in the Act.

Dr. Madden.—I am not sure I was correct in stating that the prerogative of mercy was granted by the Act.

The Chief Justice.—It is given by the instructions to the Governor.

Dr. Madden.—My impression was that the prerogative of mercy was conferred by the Act; but I find, on reference, that the three prerogatives which are in the Governor's commission are mercy, justice, and Parliament; and the three prerogatives in the Act are Parliament, justice, and the grant of the Royal minerals, if that be a prerogative. That may, however, be a matter of property rather than a prerogative. With regard to the question whether the word "Governor" in the Constitution Act is to be taken as meaning the Governor with the advice of the Executive Council, my learned friend Mr. Hodges calls my attention to this fact, which is certainly very important, viz., that section 62, the interpretation clause, provides that "In the construction of the provisions of this Act the term 'Governor' shall mean the person for the time being lawfully administering the government of the colony of Victoria." In our local Act it is interpreted to mean the Governor "with and by the advice of the Executive Council."

The Chief Justice.—This prerogative about convening Parliament is given by the Constitution Act. What do you say as to the same thing in the Governor's commission?

Dr. Madden.—I say it is a grant by the Queen as well as by Parliament.

The Chief Justice.—Had the Queen the power to give or to take away that grant, seeing that it was given by the Constitution Act? Is not that grant in the commission void?

Dr. Madden.—I don't think so; because it is not inconsistent with the Constitution Act.

The Chief Justice.—But is not that power taken away by the Constitution Act?

Dr. Madden.—Both grants, I submit, are good; neither is inconsistent with the other. If the Queen previously or subsequently to the Act of Parliament granted the prerogative which the Act has given to us, there are two springs to the authority. But whether the Queen is the repository of that prerogative or not, Parliament may take it away.

The Chief Justice.—The Queen has assented to the Act of Parliament.

Dr. Madden.—And my contention is that the colony has that power.

The Chief Justice.—But does it come from the Governor's commission or the Constitution Act?

Dr. Madden.—We get it from the Act, and we get it from the commission. If the Queen had said "You shall not have it," and Parliament had said we should, then the Queen's commission so far would have been void.

The Attorney-General.—I am sorry to say that I am summoned to attend a meeting of the Cabinet, and will not be able to be here this afternoon; therefore, I wish to be allowed, at this juncture, to refer to the case *in re* Bateman's Trust, Law Reports, Equity Cases, vol. 15, as it bears upon the very serious view put by Mr. Justice Williams. The passage I am going to read is on page 361. The question was whether a conviction in New South Wales was sufficient to support a petition by the Attorney-General in England for forfeiting the property of a felon. The conviction was in New South Wales and the property was in England. Vice-Chancellor Bacon, in the course of his judgment, said—

"In the view that I take of the evidence, that does, in point of fact, cover the "whole case; but if it were otherwise—if there were any doubt as to the facts—I "cannot hesitate to say and to decide that the Queen's prerogative is as extensive in "New South Wales as it is here, in this county of Middlesex. It has been contended "that the title of the Crown by forfeiture was confined to this soil—the soil of England. "But the Queen is as much the Queen of New South Wales as she is the Queen of "England, and I must hold that every right which the Queen possessed by forfeiture "extended as much to the colonies as to this country."

I would remind the Court of the view I submitted in my argument that, from necessity, this particular prerogative of the Sovereign of forbidding foreigners to land, being vested in the Sovereign, must run through the whole of Her Majesty's dominions, and, from the nature of the prerogative, it must be vital here. There is no question of whether the prerogative is conveyed to this colony by the Constitution Statute; that prerogative must of necessity, from its very nature, be as vital on the shores of Victoria as on the shores of England. It is not like the prerogative of summoning the Parliament of this colony. The prerogative of forbidding foreigners to land in Victoria, as in any other part of the British dominions, exists vitally in Her Majesty, otherwise it would be useless.

Mr. Justice Williams.—Then Her Majesty has retained that prerogative which she might exercise in Great Britain or any other part of her Empire if she thinks fit; but do you say, then, that, as far as the exercise of prerogatives in Victoria by the Victorian Government is concerned, Ministers are limited to such prerogatives as are expressly granted by the Constitution Act?

The Attorney-General.—No; I would say that the Constitution Act must carry with it, by implication and without express mention, any prerogative which may be necessary for carrying on the internal government of the country. A Constitution was established here, and government by responsible Ministers given to the colony. Necessarily, I submit, that would carry with it the right to exercise every prerogative necessary for the good and safe government of the colony; and the exercise of this prerogative on which we rely in the present defence is necessary for maintaining the public peace, for preventing riots; and therefore, by necessary implication, that prerogative, at any rate, would be given. It is inherent in the nature of that prerogative that its potentiality extends over all the Empire, and therefore it is vital here, to be exercised by somebody. The Queen herself cannot exercise it here, neither can Her Imperial advisers, and I submit that this prerogative can only be exercised in and for Victoria through and by the advice of the responsible Ministers of the Crown in and for Victoria. The grant of a Constitution to this colony necessarily carries with it the grant of all that is necessary to carry on safely every-day government, and I contend that the Constitution Act certainly conveys to the Government of this colony whatever power is necessary for that purpose. Supposing, for example, that a shipload of pirates proposed to land on the shores of Victoria, and the Government of the colony forbad them to enter, that would be an exercise of the prerogative of the Crown, and there is no particular grant of that prerogative; but I submit that, in granting a Constitution to Victoria, this power of preserving the local peace was granted.

The Chief Justice.—That rule applied recently in the case of an appeal home from New South Wales, as to the powers of one of the legislative bodies to do whatever was necessary to maintain order.

Dr. Madden.—That was the case of Clark *v.* Barton, the Speaker.

The Chief Justice.—It was held that whatever was necessary to carry on the government expressly conferred by the Statute was implied by the Act.

Dr. Madden.—But that only related to the power to maintain peace in Parliament.

The Attorney-General.—And similarly, I contend, the Constitution Act hands over to the Government of the colony the power to maintain peace within its borders. The Duke of Newcastle, in his despatch, declared that the Imperial Government had no further concern with the internal tranquillity of the colony after the grant of responsible government. That is the legal effect of the Constitution Act—the whole duty and power of maintaining the peace and carrying on the good and safe government of the colony is handed over to the Government of the colony.

Mr. Justice Williams.—That ought to be the effect of the Constitution Act; whether it is the effect is a very different question.

The Attorney-General.—And it necessarily is; or we are put here to maintain the Queen's peace in Victoria, and yet are denied the necessary prerogatives for so doing.

Mr. Justice Williams.—I am very much pressed with the last portion of Dr. Madden's argument, and I am seriously going back to the box illustration. The Queen has a box in London with a number of prerogatives in it—the prerogative of convening and dissolving Parliament, the prerogative of administering justice, and the grant of minerals. She sends out to Victoria duplicates of these three prerogatives, and retains all her other prerogatives in this box to exercise them all over the Empire by herself. Then, if occasion should arise to exercise the prerogative of keeping aliens from this colony, we have not got the duplicate of that prerogative here, because the Queen keeps it in London, and she can only exercise it by the advice of her responsible advisers in London.

The Chief Justice.—But I understood the Attorney-General to contend that there is no duplicate in London of any prerogative granted to Victoria; that if any prerogative be given to Victoria there is no duplicate of that prerogative in London to be exercised in Victoria by the advice of Imperial Ministers.

The Attorney-General.—I certainly contended that, your Honour; and I said that if Lord Salisbury had been here, he could not have advised Her Majesty to keep these Chinese out. Firstly, I submitted that the Court would take judicial notice that we had here as a matter of fact and daily exercised responsible government in all internal affairs. Then I further contended that the Constitution Act has conveyed to us expressly responsible government over our local affairs, and I called in aid that despatch to which I referred as being an expression of the Imperial Minister under whose direction and by whose advice this legislation came about. The Constitution Act and that despatch show most clearly that, whatever is or is not conveyed in other respects, the responsibility of the every-day internal government of Victoria is thrown upon the Victorian Government; and I say that necessarily carries with it whatever powers are required for preserving the public peace and carrying on good and safe government in Victoria, one of which powers is the power, on emergency, to prevent dangerous people from landing. If only Imperial Ministers have that power, then, so far as Victoria is concerned, that power is gone altogether, because long before they could be informed and take action, the dangerous people would be in and the people of the colony would be plunged into riot. Such an idea is untenable if we regard it in the light of common sense, and common sense is the essence of good law.

Dr. Madden.—I was about to refer to the despatch of Lord John Russell, to which the Attorney-General referred as in some degree illustrating the intention of the Constitution Act. That letter, though entitled to some weight as accompanying the despatch of the Minister charged with the amendment of the Constitution Act, does not control it. Nevertheless it bears out my contention as to what was the intention of the Legislature in granting it.

In his despatch in paragraphs 4 and 5 he states:—

"It was their opinion and that of Parliament that although the Legislature of "Victoria had exceeded the powers conferred on it in passing these Bills, and although "therefore Parliamentary enactment was necessary, it was more expedient to preserve in "form as well as substance the measure which had been fully considered and finally "enacted by that Legislature, than to supersede its provisions by direct Parliamentary "legislation.

"In rigorous adherence to the same principle, no alteration has been made "in any of those provisions which are simply of a local character. It has been the

"conviction of Parliament that the Legislature must itself be trusted for all the details "of local representation and internal administration. Her Majesty's Government have "every reason to hope that the measure before them will form a durable foundation "for the social prosperity and good government of Victoria. But the responsibility "for its introduction will rest as it ought to do with the Members of the Council by "whom it was in all substantial points prepared and discussed."

I venture to think that that really accords with what I stated as to the real effect of establishing constitutional government not interfering with the prerogative in local legislation. The Parliament is to deal with internal affairs. The despatch proceeds:—

"But those portions of the provincial enactment which controlled and regulated "the future power of the Crown as to the reservation and disallowance of Colonial "Acts, and as to the instructions to be given to Governors respecting them, have been "omitted by Parliament. These portions were plainly not of a local character, but "regarded the connexion of the colony with the body of the empire.

"I will not now enter into the very important subject of discussion which the "omitted clauses afford.

"It is sufficient for me on the present occasion to observe that Her Majesty's "advisers were of opinion that a change of such vital consequence ought not to be "effected by partial legislation in the way proposed, and that even if this were other-"wise the particular clauses in question were open to difficulties of an insuperable "kind.

"With respect to the instructions given to Governors I am not sure that some "amount of misapprehension does not prevail. It has been the uniform practice, not in "Australia only but throughout the Colonial empire of Great Britain, for Her Majesty's "Government to issue general directions to Governors as to the classes of Acts which "should be reserved by them for the assent of the Crown, sometimes by the formal "instruments accompanying their commissions, sometimes merely by despatch. But "these instructions, however binding on the Governor's discretion, are not in the nature "of legal conditions precedent, the non-observance of which in any way affects the "validity of Colonial Acts. The clauses in question would therefore have removed "no substantial legal impediment, while they would have fettered the supreme executive "authority in a manner wholly inconsistent with the preservation of the general "interests and unity of the empire."

The other matters in the despatch are practically immaterial. Now, giving in the fullest measure everything that can possibly be given to the intention of the despatch, there need not be the slightest conflict between the local and the Imperial Governments. The local Government has only to deal with representation and the administration of internal affairs.

The Chief Justice.—The writer goes on to say that the existing system of instructions requires and shall receive qualification.

Dr. Madden.—He does not say that. You propose to strike out that part of the instructions which relates to certain Acts of Parliament. But that striking out would place the Imperial connexion in practical difficulty.

The Chief Justice.—Paragraph 15 says—

"I have only further to instruct you as to the introduction of responsible "government; but it is so evident from the general provisions of the Colonial Bill "before me respecting executive appointments—some of which, however, I fear may "prove inconvenient in practice—that your advisers and the Legislature have had fully "in view the exigencies of that system, that I am not aware that any special directions "are required from myself. You will shortly receive a fresh commission and instruc-"tions amended in those particulars which the introduction of that system renders it "necessary to change. There need be no delay in bringing the Act into operation, as "these documents will arrive in time for the assembling of the new Legislature."

Dr. Madden.—That is to say the commission and the instructions would be made appropriate to the new Act, or as little as possible in conflict with it.

The Chief Justice.—With the exception of some verbal alterations there was no alteration made in the instructions until the year 1879, and then the alterations were alterations of form. The instructions are still the same as those that were given to Sir Charles Fitzroy in 1851, six years before the present system.

Dr. Madden.—They probably thought it unnecessary on further consideration to make any alterations. It is admitted that this Act relates only to local matters. I

submit that such a matter as this, prohibiting aliens from landing in this colony, is not a matter of mere local concern in that sense. For that reason it does not fall within the principle contained in the despatch. There is only one other argument on this branch of the question. The concerns with which we are authorized to deal are those purely local. An act cannot be local if it be such an act as may bring about a serious source of embarrassment to the Empire or lead to the annihilation of the Empire. If the Government of Victoria determined to prevent the intrusion of Chinese, it might be a serious cause of embarrasment to the Empire at large. It is not likely that a combination of any other countries will lead to the destruction of England. But if the Victorian Government can expel Chinese they can also expel Frenchmen and Germans, and the result might be such a combination against the Empire as might lead to serious trouble. It therefore involves a question not merely of local concern. Supposing the Imperial Government were to consider our action indefensible, and the Emperor of China were to demand an indemnity for the way in which his subject was treated, his claim would be not against the Victorian Government, but against the Imperial Government, and the Imperial Government would have to pay the indemnity if it came to the conclusion that we were wrong. This shows that, though it may involve a matter of local concern, it is not a matter of purely local interest. On the contrary, we would have been acting in defiance of the Empire.

The Chief Justice.—It is consistent with the argument on the other side that if it be the effect of the Constitution Act that all prerogatives necessary for the internal affairs of the colony are left here, and none of the prerogatives in relation to foreign affairs are vested here, that there may be cases involving both prerogatives. This case affords an illustration of the fact that there might be a case in which the interests of Victoria will be involved, and the interests and duties of the Empire, as a whole, would be also involved. In such a case there might be a conflict of powers, which would necessitate consideration, conferences, and concessions. The power to exclude aliens from Victoria might be considered by Her Majesty's Government in Victoria to be essential to the interests of Victoria, and if it were essential to the interests of Victoria, it would be held by this Court that it related to the local affairs of Victoria, and, therefore, that the power exists, although it may be that the Imperial Government has, in reference to foreign relations on the same question, the right to advise the Crown of England upon it. The exercise of these powers may be in conflict without either power being annihilated.

Dr. Madden.—That shows that it is not a purely local matter, and, therefore, the prerogative cannot be exercised here. It is only in matters involving purely local concerns that the prerogative can be exercised—not in matters which involved the Empire, such as the exclusion of foreigners. The exclusion of foreigners is a matter which affects the Imperial Government, and does not apply exclusively to Victoria. Another curious fact which bears out the same view is that, in relation to the naturalization of aliens, it has been found necessary for the Imperial Parliament to pass an Act of 33 and 34 Vict., which authorizes the colonies to make laws for the naturalization of aliens. Under the general powers of the Constitution Act, it might be assumed that our Parliament had power to legislate without another Act from the Imperial Parliament, that all the colonies having constitutional government would have the power. The preamble to the Act was as follows:—

"Whereas it is expedient to amend the law relating to the legal conditions of "aliens and British subjects."

That would apply to the colonies like this. One would have supposed that all the colonies that had the power to legislate would have had authority to pass laws for all local purposes. But this Statute gives new authority to deal with this question, and it suggests that this question as to aliens was reserved for the British Parliament, and the power to deal with it was given away piecemeal and sparingly. The next question I have to deal with is whether this was an act of State. The Attorney-General quoted, as an additional definition of an act of State, *Sweet's Law Dictionary*. But he did not rely upon it altogether. He adopts Stephen's definition and *Pollock on Torts*, who approves of Stephen's, and treats it as a true definition of an act of State policy for this purpose. Stephen's definition of it is substantially this: that it is an act done by some officer of the Government against a person not a subject with the previous authority or subsequent ratification of Her Majesty.

Mr. Justice Williams.—An unlawful act.

Dr. Madden.—Yes, an act of aggression. Who are the persons against whom an act of State can operate? It is admitted it cannot operate on subjects. In Craw *v.* Ramsay, Vaughan's Reports, page 274 (decided in 1706), the action was for trespass and ejectment. The matter turned on how far an alien heir could succeed to his land in England. And it is there said that aliens are local subjects if they are in the dominion of the King. In the judgment of the Court at page 278, it is said—

"As to the second part in the case of aliens, nothing interrupts the common "course of descents but *defectus nationis*, as Bracton terms it. Therefore, that being "taken away by naturalization, they shall inherit, as if it had not been inherited "before the second brother.

"It is admitted, as will easily appear, that one naturalized in Scotland since "the Union cannot inherit in England. . . .

"He that is privileged by the law of England to inherit there must be a "subject of the King's; he must be more than a local subject either in the dominion "of England or out of the dominion of England, for mere aliens when locally in "England or any other dominions of the King's are local subjects."

In Broom's *Constitutional Law*, page 9, it is said the law recognises four species of allegiance. The third is this:—

"*Ligeantia localis*—allegiance wrought by the law, as when an alien *ami* comes "into England. So long as he is within England he is within the King's protection, "and therefore owes unto the King a local obedience or allegiance."

Then there is the important case of Lowe *v.* Rutledge, 1 Chancery Appeals 42, where it was held that an alien friend residing temporarily in any part of the British dominions, and publishing a work, acquired a copyright in that work, under 5 and 6 Vict. Lord Justice Turner says—

"Several other arguments were also urged on the part of the defendants. It "was first said that the Statute now in question does not extend to colonies like "Canada having Legislatures of their own. I have not, however, any doubt whatever "on that point; the word 'colonies' in the Statute must extend to all colonies in the "absence of a context to control it, and I can find no such context. A more plausible "argument on the part of the defendants was this. It was said, and I assume for the "purposes of the argument, but for that purpose only, that by a Canadian Statute an "alien coming into Canada for the purpose of publishing a work and publishing "it there would not be entitled to copyright in the work so published; and "it was insisted that an alien coming into Canada could acquire only such rights "as are given by the law of Canada, and could not, therefore, be entitled to copyright, "and some cases were cited in support of this argument. On examining these cases, "however, they will be found to decide no more than this—that as to aliens coming "within the British colonies their civil rights within the colonies depend upon the "colonial laws; they decide nothing as to the civil rights of aliens beyond the limits "of the colonies. This argument on the part of the defendants is, in truth, founded "on a confusion between the rights of an alien as a subject of the colony and his "rights as a subject of the Crown. Every alien coming into a British colony becomes "temporarily a subject of the Crown, bound by, subject to, and entitled to the benefit "of the laws which affect all British subjects. He has obligations and rights both "within and beyond the colony into which he comes. As to his rights within the "colony he may well be bound by its laws; but as to his rights beyond the colony he "cannot be affected by those laws, for the laws of a colony cannot extend beyond its "territorial limits. Now in this case the question is not what were or are the "rights of the plaintiffs within the colony of Canada, but what were or are their "rights in this country."

Mr. Justice Williams.—As to an act of State policy, it is important to bear in mind the distinction drawn by Mr. Box—can he sue in this court? As long as the Sovereign does not adopt the act as one of State, he can sue; if she does adopt it, he can't sue.

Dr. Madden.—The plaintiff here is a subject in our territory.

Mr. Justice Williams.—Except Craw *v.* Ramsay, does any authority recognise that?

Dr. Madden.—Yes, the observations of Lord Justice Turner, in Lowe *v.* Rutledge. That case is approved of in the House of Lords (3 House of Lords, page 100).

Mr. Box.—That shows he owes allegiance to England. He can't owe allegiance to two countries.

Dr. Madden.—Yes, he can. There are Americans here, who, while they are here, owe allegiance to this country and to our laws, and they are entitled to the protection of those laws; but, at the same time, they owe allegiance to the United States of America also.

Mr. Justice Williams.—I agree with you up to a certain point, that a friendly alien has the same rights as a subject. But supposing the Sovereign adopts the tortious act of a subject against an alien, can the alien sue in this court?

Dr. Madden.—I submit that the Sovereign cannot ratify an act which is done against a subject, whether that subject is a natural-born subject or a local subject. Being a subject, he has his remedy in this court for any injury done to him. For acts done outside the realm, the Crown could ratify them, could throw out a challenge to other nations, and resort to the final arbitrament of nations—namely, war. The injury there could only be rectified by war, not by the courts. I therefore say, under the definition of an act of State, that an act of State won't prevail against a subject at all. By the authorities I have cited, an alien within the territory is a local subject of the Crown; and, being a subject of the Crown, he cannot be the subject of an act of State.

Mr. Justice Williams.—That assumes that your syllogism is correct.

Dr. Madden.—If the definition of a subject be true, then Stephen says there cannot be an act of State against a subject, and he can maintain an action against a wrong-doer. My final proposition relating to that is this—it follows from the denifition that an act of State must be ordered or ratified by Her Majesty. An act of State must be an act of a Sovereign State, and must be authorized by Her Majesty, who is the fountain of authority in this State. Supposing the Governor had been consulted, he had no authority; he could not give any command, or give any ratification of the act.

The Chief Justice.—It could not be exercised in a colony where the prerogative is excluded.

Dr. Madden.—It must be done by Her Majesty's Ministers. The Ministers here can't advise Her Majesty except through the Governor, and his authority is limited. There are no means for our Ministers advising the Queen. If it is an act of State policy, and the act of a Sovereign State, then it can only be done by the Imperial Ministers. It is said that the judgment of the Privy Council in Musgrave *v.* Pullido turned on a question of pleading. But the Privy Council dealt with the case on the merits, and dealt with the power of the Governor to make his act an act of State.

Mr. Smyth.—The Privy Council don't say that.

Dr. Madden.—They say he could not exercise an act of State unless he had the authority in his commission.

Mr. Justice Kerferd.—Do they not give cases where the Governor has the powers of the Sovereign.

Dr. Madden.—Yes. The case of the East India Company, where the charter gives to the company all the powers short of Sovereignty.

The Chief Justice.—Where is the charter to be found.

Dr. Madden.—In 13 Moore's Privy Council cases.

But again, with reference to Lowe *v.* Rutledge, in the course of his judgment, the Lord Chief Justice said:—

"A more plausible argument on the part of the defendants was this: It was "said, and I assume for the purposes of the argument, but for that purpose only, that "by a Canadian Statute an alien coming into Canada for the purpose of publishing a "work and publishing it there would not be entitled to copyright in the work so "published; and it was insisted that an alien coming into Canada could acquire only "such rights as are given by the law of Canada, and could not, therefore, be entitled "to copyright; and some cases were cited in support of this argument. On examining "these cases, however, they will be found to decide no more than this—That as to "aliens coming within the British colonies, their civil rights within the colonies depend "upon the colonial laws; they decide nothing as to the civil rights of aliens beyond "the limits of the colonies. This argument on the part of the defendant is, in truth, "founded on a confusion between the rights of an alien as a subject of the colony and "his rights as a subject of the Crown. Every alien coming into a British colony "becomes temporarily a subject of the Crown—bound by, subject to, and entitled to "the benefit of the laws which affect all British subjects. He has obligations and "rights both within and beyond the colony into which he comes."

It is observable that a statement like that coming from the learned judge, and so unhesitatingly given, would challenge attention in the House of Lords. Unless it was a true statement it would have been criticised.

Mr. Box.—If a friendly alien is a subject, why cannot he inherit land ?

Dr. Madden.—He is a subject protected by common law.

The Chief Justice.—Does the dictum go beyond this, that he is a British subject so far as alien friends are British subjects ?

Dr. Madden.—All alien friends within the territory.

The Chief Justice.—Does it mean that for all purposes an alien friend possesses the full rights of a British foreign subject ?

Dr. Madden.—As far as his liberty is concerned, he is entitled to the same protection as a natural-born subject.

The Chief Justice.—It is outside of the jurisdiction of the British Court this argument arises, you say ?

Dr. Madden.—That is the whole thing.

Mr. Justice Williams.—None gainsay for a moment that an alien friend has got the right of redress in the civil courts of the country he is in. But it is said that while an alien friend can most certainly sue in the civil courts of the country for a wrongful act, if that act is ratified by the Crown it then becomes a State act or an act of the Crown, so barring him from suing.

Dr. Madden.—But Mr. Justice Stephens says that if he is a subject of the Crown, the Queen cannot ratify any act.

Mr. Justice Williams.—The only doubt I have is upon your premise. Has an alien friend in a country for all purposes—for the purpose of a State act—the same position as a subject of the country ?

Dr. Madden.—That is what I am endeavouring to support now. What is the difference between a natural-born subject and an alien? The law with regard to their liberty and protection is equal. I submit, for the purpose which we are concerned in, there is no reason why the one is not entitled to the same privileges as the other. Then there is this important argument, that no case can be found in which an act of State has been resorted to upon an alien who is resident in the country. Every instance in which an act of State has been dealt with is that of a person who is outside the country, or who is there temporarily, never intending to reside there. This Chinaman comes to Victoria intending to make it his residence. There is only the one case wherein an act of State was committed upon a person resident in the country. It is the case of the Rajah of Tanjore, reported in 13 Moore's Privy Council cases. It is admitted that, under their charter, they had actually conveyed to them the right to declare war or peace. The Appeal Court decided in that case that what was done was an act of war, and it was done by the authority of Her Majesty on account of the delegation of power to the East India Company. Then it is said:—

"Was it a seizure by arbitrary power on behalf of the Crown of Great Britain "of the dominions and property of a neighbouring State, an act not affecting to justify "itself on grounds of municipal law; or was it in whole or in part a possession taken "by the Crown, under colour of legal title, of the property of the late Rajah of Tanjore, "in trust for those who, by law, might be entitled to it on the death of the last "possessor? If it were the latter, the defence set up, of course, has no foundation * *

"The Rajah was an independent Sovereign of territories undoubtedly small, "and bound by treaties to a powerful neighbour, which left him practically little power "of free action. But he did not hold his territory, such as it was, as a fief of the "British Crown or of the East India Company, nor does there appear to have been "any pretence for claiming it on the death of the Rajah, without a son, by any legal "title either as an escheat or as *bona vacantia*. It should seem, therefore, that the "possession could hardly have been taken upon any such grounds." Then the facts of the seizure are set forth, and the judgment concludes:—"The result, in their "Lordships' opinion, is that the property now claimed by the respondent has been "seized by the British Government, acting as a Sovereign power, through its delegate, "the East India Company; and that the act so done, with its consequences, is an act "of State, over which the Supreme Court of Madras has no jurisdiction."

It was held, therefore, in this case that there had been an act of State, and the defence had been made out. With these observations, I submit once more that the defence has not been made out.

Mr. Hodges.—Would the Court allow me to say one or two words. I desire to confine myself entirely to some of the answers made by the Attorney-General to-day. The Attorney-General relied, as I understand him, to establish the existence of this prerogative on certain proclamations relating to the Jews. He has relied upon

these as evidence in support of the prerogative, and I propose to show that these proclamations do not support any such prerogative. These proclamations related to the Jews, not to foreigners—not to aliens, but to Jews simply and absolutely. Apart altogether from the question whether they were foreigners or citizens, out they were to go. Hallam, in his "History of England," points out that a number of proclamations of the same class were made which have not been recognised since At page 236 of his first volume, Hallam, treating of the reign of Elizabeth, says:—

"It was a natural consequence, not more of the high notions entertained of "prerogative than of the very irregular and infrequent meeting of Parliament, that an "extensive and somewhat indefinite authority should be arrogated to proclamations of "the King in Council. Temporary ordinances, bordering at least on legislative "authority, grow out of the varying exigencies of civil society, and will, by very "necessity, be put up with in silence, whenever the constitution of the commonwealth "does not directly or in effect provide for frequent assemblies of the body in whom "the right of making or consenting to laws has been vested. Since the English con-"stitution has reached its zenith, we have endeavoured to provide a remedy by Statute "for every possible mischief or inconvenience; and if this has swollen our Code to an "enormous redundance, till, in the labyrinth of written law, we almost feel again the "uncertainties of arbitrary power, it has at least put an end to such exertions of "prerogative as fell at once on the persons and properties of whole classes. It seems "by the proclamations issued under Elizabeth that the Crown claimed a sort of sup-"plemental right of legislation, to perfect and carry into effect what the spirit of "existing laws might require, as well as a paramount supremacy, called sometimes "the King's absolute or sovereign power, which sanctioned commands beyond the "legal prerogative for the sake of public safety, whenever the Council might judge "that to be in hazard. Thus we find Anabaptists, without distinction of natives or "aliens, banished the realm; Irishmen commanded to depart into Ireland; the culture "of wood, and the exportation of corn, money, and various commodities prohibited; "the excess of apparel restrained. A proclamation, in 1580, forbids the erection of "houses within three miles of London, on account of the too great increase of the "city, under the penalty of imprisonment and forfeiture of the materials. This is re-"peated at other times, and lastly (I mean during her reign), in 1602, with additional "restrictions."

Then our history shows that up to this very time, including the reign of Elizabeth, the Jews occupied a very peculiar position, and appeared to be outside the pale of the law. Hume refers to these proclamations, and states how Queen Elizabeth even ordered her officers to go into the streets to cut down the swords of citizens which were more than a certain length.

The Chief Justice.—The disabilities of the Jews at that time are referred to in Sir Walter Scott's "Ivanhoe."

Mr. Hodges.—The account given in that novel does not appear to be in the slightest degree exaggerated. Hume refers to the Crown preventing the growth of wood, and to the case of a Jew who was ordered to pay a certain amount under pains of getting a tooth taken out every day until he did. When the seventh tooth was taken out the Jew paid the amount. There was, I think, an edict of Richard I. which prohibited Jews from attending his coronation, which is admitted to be illegal. So the one proclamation is as good as the other. With regard to an act of State, I submit that it cannot be exercised against any person who at the time the act is done is within the protection of the law of the country. In the judgment of Lord Cranworth, in Law Reports, House of Lords, vol. 3, English and Irish appeals, p. 113, it is stated:—

"But though the Parliament of the United Kingdom must *primâ facie* be taken "to legislate only for the United Kingdom, and not for the colonial dominions of the "Crown, it is certainly within the power of Parliament to make laws for every part of "Her Majesty's dominions; and this is done in express terms by the 29th section of "the Act now in question. Its provisions appear to me to show clearly that the privi-"leges of authorship which the Act was intended to confer or regulate in respect to "works first published in the United Kingdom were meant to extend to all subjects of "Her Majesty, in whatever part of her dominions they might be resident, including, "under the term 'subject,' foreigners residing there, and so owing to her a temporary "allegiance."

Mr. Justice Williams.—Lord Cranworth says there that the term "subjects" in that Act was meant to include foreigners.

Mr. Hodges.—Only foreigners resident within Her Majesty's dominions, and so owning her temporary allegiance.

The Chief Justice.—A subject under that Act is referred to.

Mr. Hodges.—No doubt; but if he was not a subject I presume the Court could not decide that he was. Then there is the case of Sherley, who was charged with treason. He could not be charged unless he was a subject, and he was a foreigner temporarily within the realm. It was decided in that case that an American in Canada was a British subject, as he owed allegiance to the British Crown. That brings me to the point that I desire to submit—that against a person within the protection of the law an act of State cannot operate. That is the foundation of the whole thing. Being within the protection of the law, he is within the protection of the courts of the country, and an act of State cannot operate against him.

The Chief Justice.—Within the protection of the courts of the country in which he is?

Mr. Hodges.—And the Crown cannot deprive the courts of their jurisdiction. I think it will be a difficult thing to find any case where a person has been within the protection of the law when the act of State was committed. The foundation of the whole thing is, that if the Court had power at the time the act was done to give that man redress, the Crown cannot take it away There is only one other question on which I propose to say a few words, and that is the construction of the Chinese Immigration Act. As I understand, it has been contended that because there is a prohibition against a ship coming with more than a certain number of Chinese, the Chinese cannot land. It is certainly to be observed that there is more than one duty imposed on the master of the ship, and only one on the immigrants. If the Court will look at the sixth section of the previous Act, which has to be read with this one, it will be found that the master has got to do several things with regard to the immigrant, and the only penalty with regard to the immigrant himself is contained in section 4. If the £10 is not paid, he is liable to a penalty. The Legislature apparently felt fully convinced that the poll-tax, and the big penalty imposed on the captain, were quite sufficient to prevent an influx of Chinese. Supposing the plaintiff in this case had landed and paid his £10, what could have been done to him? It could not be said that he had broken the law. It would be punishing the Chinaman for the fault of the captain if the penalty were imposed on him. By the Act, the penalty is imposed upon the captain entirely.

This closed the argument, and the Chief Justice intimated that the Court would reserve its decision.

MONDAY, SEPTEMBER 3, 1888.

The Judgment of the Court was given this day.

THE CHIEF JUSTICE'S JUDGMENT.

The Chief Justice said:—A Judge's order was made by consent of the parties that this action should be determined by the decision of the Full Court on the argument of the questions of law raised on the pleadings, subject to the right of either party to appeal from the decision of this Court to Her Majesty in Council. The plaintiff is a subject of the Emperor of China, and not a British subject; he arrived in the Port of Melbourne in the British ship *Afghan* on April 27th, 1888, and he was then an immigrant arriving from ports beyond Victoria within the meaning of the "Chinese Immigrants Statute 1865" and "The Chinese Act 1881." The *Afghan* carried 268 Chinese immigrants, including the plaintiff, being 254 more Chinese immigrants than she could lawfully under the said Statutes bring into the Port of Melbourne. The defendant is the Collector of Customs within the meaning of the last-mentioned Act. Previously to the arrival of the ship he had received instructions from the Commissioner of Trade and Customs as and being the responsible Minister of the Crown for Victoria charged and intrusted with the administration of the laws of Victoria relating to the Customs and immigration, that there was an apprehension on the part of Her Majesty's Government for Victoria that a large influx of Chinese into the colony was imminent, and that, in the opinion of the Minister and of the Government, such influx would be a danger and menace to the colony and to the public peace thereof, and to Her Majesty's subjects residing therein, and would be in a high degree detrimental to their interests, and that, in the opinion of the Minister and of Her Majesty's Government, it was for the advantage of Her Majesty's subjects residing in Victoria that such influx should be prevented, and no further Chinese other than such as were British subjects should be allowed to enter Victoria, and that the Minister and Her Majesty's Government had determined to refuse to permit any Chinese other than such as were British subjects to land or enter the colony. The plaintiff complained that although the master of the *Afghan* was ready and willing to pay to the defendant, as such Collector of Customs, in respect of the plaintiff the sum of £10, as provided in section 3 of "The Chinese Act 1881," the defendant refused to allow the plaintiff to land in Victoria, and hindered and prevented the plaintiff from landing in Victoria, and refused to receive the said sum of £10. The defendant admits the acts charged. He asserts that the instruction, opinion, and determination of the Minister and of the Government had been previously communicated to him by them, that the several acts complained of were done by him in obedience to such instruction and determination as such officer of Her Majesty's Customs by command of our Lady the Queen, that he subsequently reported his acts to Her Majesty's said responsible Minister, and that they were by him, and by Her Majesty's said Government, ratified and approved as being acts of State.

Upon these facts of the case, disclosed in the pleadings, and which are to be taken as admitted only as far as is necessary for the argument and determination of the questions of law raised by the pleadings, two grounds of defence, distinct and distinguishable from each other, have been relied on by the defendant. Before proceeding to consider the questions of law connected with these grounds, it will be convenient to notice an objection taken for the plaintiff at the outset of the argument. The defence on legal grounds to the action, in both its aspects, rests partly on the material allegation that the acts complained of were done in obedience to the instructions of Her Majesty's Victorian Government. But the pleadings are silent about any advice given by Her Majesty's Government to, or commands given to them by, the Governor of Victoria. And it has been argued that it is consistent with the allegations in the pleadings that the Governor was never advised in this matter by Ministers, and did not at any time authorize or ratify their act. The Attorney-General, in the course of a luminous and powerful argument, contended that, under the constitutional system of Victoria, the prerogatives and powers of the Crown of England might be considered indifferently to

be vested either in the Governor, as the representative of the Crown, or in the members of Her Majesty's Government for Victoria. If the latter hypothesis be accepted, the omission from the pleadings of a statement that advice had been given to the Governor would be, of course, unimportant. Upon the same hypothesis, indeed, the office itself of the Governor would appear to be superfluous for the purposes of government. But this view seems to me to involve a total departure from the analogy of the English form of government, and to be wholly opposed to the express provisions of Victorian law. In England all the prerogatives and powers of government are lodged absolutely in the Sovereign. The Sovereign's responsible advisers have no legal powers of government whatever vested in them. They have the right to advise the Sovereign, and it is their duty to obey, and to carry into executive act, the commands of the Sovereign, founded upon such advice. "The Constitution Act," following the English exemplar, creates and vests in the Governor certain powers, but none in his advisers. The Governor is appointed by the Sovereign, and he derives his constitutional powers from "The Constitution Act," to which the Sovereign has assented. He is, therefore, properly styled and regarded as the representative of the Crown, in his character as the depositary of his statutory powers. Victorian Ministers are appointed by the Governor. They have no legal powers of government whatever vested in them by "The Constitution Act." They have the right to exercise the function of advising the Governor, as the representative of the Sovereign, in the exercise of his statutory powers, and it is their duty to obey, and to carry out into executive act, the commands of the Governor, founded upon such advice. They are styled in these pleadings "Her Majesty's Government" for Victoria, and I think they are properly so styled. They are paid salaries out of Her Majesty's Victorian civil list, and, although they do not tender advice to, or receive commands from, Her Majesty, in person or directly, it is they and they alone who advise and act for the representative of the Crown in this Dependency of the Crown, and their executive acts which it is within the powers of the Governor to command to be done may properly be said to be commanded by Her Majesty as being the highest and ultimate source of all executive authority throughout the Queen's dominions. In this view of the legal relations existing between the Sovereign and her representative in Victoria and Her Majesty's responsible Ministers for Victoria, the difficulty that appeared to embarrass the argument will be found to disappear. Her Majesty's Government for Victoria are responsible to the Parliament of Victoria for the acts of the representative of the Crown in Victoria. The nature of the advice given by them to the representative of the Crown is to be inferred from those acts. The advice actually given is not announced except by the command or with the consent of the representative of the Crown. The Minister is privileged with respect to the advice given by him, and he cannot be compelled in a court of law to disclose it. The defendant's pleader appears to have exercised a wise discretion in not alleging the authority of the Governor for the acts of Her Majesty's Government. That authority will be presumed to have been given, and the allegation, if it were made, need not be proved; Buron *v.* Denman, 2 Ex., p. 190. If the allegation were made and could be traversed, the defendant might not be able to adduce evidence in proof of it. If no advice was in fact given in this case to the Governor, or if the acts done by the Victorian Government have not been in fact authorized or ratified by him, Her Majesty's representative is not without a constitutional remedy. But an act done by the responsible Ministers for Victoria in the ostensible discharge and within the apparent limits of their functions as Ministers must be considered for all purposes, so long as Ministers are allowed to hold their offices, as the act of the Crown in Victoria, and it is properly described as having been done by the command of Her Majesty.

The first defence is in the nature of a dilatory plea, and in effect denies the jurisdiction of this Court to entertain the action. The second defence claims to present an answer to the action on the merits. The first of these defences, which denies the jurisdiction of the Court, is founded upon the view that the act of the defendant, having been ratified and adopted by Her Majesty's Government for Victoria, is an act of State, and is consequently not cognisable by the municipal courts of Victoria. "The general principle of law was not, as indeed it could not, with any "colour of reason, be disputed. The transactions of independent States between each "other are governed by other laws than those which municipal courts administer. "Such courts have neither the means of deciding what is right nor any power of "enforcing any decision they may make." (Secretary of State in Council

for India *v.* Kamachee Boye Sahaba, 13 Moo., P. C., p. 75.) This defence admits that the original acts of the defendant in refusing to allow the plaintiff to land in Victoria, and in preventing him from landing in Victoria, were wrongful acts, and furnish a cause of action on a wrong to the plaintiff. It asserts that such acts were by the responsible Minister and by Her Majesty's Government of Victoria ratified and approved of as being acts of State. The act of adoption must be the act of the Sovereign power of the State which adopts the act of the alleged wrongdoer, or, which is the same thing, it must be the act of a person authorized by the Sovereign power as its agent or trustee to bind the adopting State. The act of State, in the sense in which the terms are used in the present case, may be considered to be either a challenge to war or an invitation to treat. The wrong complained of must, if reparation for it cannot be obtained in a municipal court, be the subject of a claim for compensation or redress against the Sovereign of the State of which the alleged wrongdoer is a subject. The Sovereign of that State, having adopted the act, must be prepared either to allow the claim, or to disallow it, and, if he disallow it, to support his disallowance by war or any other means at the command of the head of an independent State. A private dispute between the subjects of two countries may, in such a case, thus lead to war. The authorities which have been cited on this point show that no power short of that of the Sovereign, or of the agent or trustee authorized for that purpose by the Sovereign, can adopt an act done by a subject of the Sovereign to an alien so as to make that act an act of State and thereby oust the jurisdiction of the municipal courts. In Buron *v.* Denman, 2 Ex., p. 167, the acts of the defendant in concluding a treaty with the King of the Gallicas, and firing the barracoons of the plaintiff, and carrying away the plaintiff's slaves were ratified by the Secretaries of State of the Foreign and Colonial Departments of the Imperial Government. It was held that such ratification rendered the defendant's acts an act of State or an act of the Queen for which the defendant was irresponsible. In the case of the Secretary of State in Council of India *v.* Kamachee Boye Sahaba, 13 Moo., P. C., p. 22, it appeared that the East India Company, which was empowered under certain restrictions to act as a Sovereign State in transactions with other Sovereign States in India, had by its agent seized the property the subject of the suit. It was held that the seizure was an act of arbitrary power on behalf of the Crown of Great Britain by the East India Company, as trustee for the Crown of the dominion and property of a neighbouring State, an act not affecting to justify itself on grounds of municipal law; and that the act so done with its consequences was an act of State over which the Supreme Court of Madras had no jurisdiction. Is the allegation in the present case that the responsible Minister and Her Majesty's Government for Victoria have ratified and approved of the acts of the defendant in preventing the plaintiff from landing in Victoria equivalent to an allegation that Her Majesty has ratified those acts? Has Her Majesty's Government for Victoria the power to advise the Crown through its representative in Victoria upon a question of this kind, so as to make that an act of State which, without Her Majesty's sanction and authority express or implied, would not be an act of State? I am of opinion that these questions must be answered in the negative. Victoria, like the other self-governing British colonies, is a dependency of Great Britain. It possesses by Statute law very large and, in my opinion, almost plenary powers of internal self-government. But all the prerogatives and powers of the Sovereign are not vested by law in the Queen's representative in Victoria. Nor can all of them be the subject of advice to the Governor by the Queen's Ministers for Victoria. The prerogatives of war and peace, of negotiation and treaty together with the power of entering into relations of diplomacy or trade and holding communication with other independent States, to some one or all of which the power to do an act which shall constitute an act of State appears to be annexed, have not been vested in the Governor of Victoria by law express or implied, and it is not suggested on these pleadings that all or any of these prerogatives and powers have been super-added by Royal commission or otherwise to those conferred on the Governor by Statute law, so as to make the Governor of Victoria the trustee or agent of the Crown in the adoption of the act of an individual, and thus make the act the act of the Sovereign or an act of State. Even if such powers had been so super-added they would be exercisable by the Governor only as an agent or trustee of the Crown, and would not be the subject of responsible advice. The Ministers of the Crown for Victoria have not obtained the direct sanction of Her Majesty, and they could not by their own act in a matter of this kind bind the Crown. An English Minister could do so, because he acts for the

Crown in respect of all its prerogatives and powers. A Minister of the Crown for Victoria cannot do so, because he acts for the Crown in respect of such powers only as are vested by law in the Governor, of which the power to do an act of State does not appear to be one. We are of opinion for these reasons that the act of the defendant has not been made an act of State, and that the jurisdiction of the Court to entertain the plaintiff's claim is not ousted.

The second line of defence is of a different kind. It has been contended for the defendant that his act in preventing the plaintiff from landing in Victoria was not only an act authorized and directed by the responsible Minister of his Department, and afterwards adopted by Her Majesty's Government for Victoria, but that the act of the defendant was authorized by law as being an act done in exercise of an existing power or prerogative of the Crown of England to keep out or expel aliens at its discretion, and that this power or prerogative, or a power equivalent to it, had, so far as it may be exercised for the safety and protection of the people of Victoria, passed by law to, and had been vested in, the representative of the Crown for Victoria. If this view be sustained, the facts stated raise, not a dilatory plea, but a plea in bar, and are a defence to the action.

The plaintiff has failed, in my opinion, to answer the authorities relied on by the defendant to show that the right to prevent aliens from landing on British soil, and to remove them after they have landed, is an existing prerogative of the Sovereign of England. The great preponderance of authorities, both ancient and in recent times, is in favour of the defendant's view upon this question. The right is one that appears to be necessarily inherent in the Sovereign power of every civilized society occupying a territory with defined limits. It is a right not unfrequently put in force at this day in several of the States of Europe. Its exercise may be irritating to individuals who are affected by it, and may weaken the comity between States, but it is not deemed by international law to be a cause of war or a ground of claim for compensation. The right and the duty of guarding it are recognised in the kindred institutions of the United States of America.

"If any Government deems the introduction of foreigners or their merchandise "injurious to the interests of their own people, they are at liberty to withhold the "indulgence. The entry of foreigners and their effects is not an absolute right, but "only one of imperfect obligation, and it is subject to the discretion of the Government "which tolerates it. . . . . I am of opinion that every Government has the right, "and is bound in duty to judge for itself, how far the unlimited power of admission "and residence of strangers and immigrants may be consistent with its own local "interests, institutions, and safety."—"Kent's Commentaries on American Law," vol. 1, p. 37–8.

This right or prerogative has been undoubtedly exercised by the Sovereign of England, and its non-user in modern times in England is no evidence that the right itself has become extinct. Its continued existence on the other hand within the present century has been asserted by some of the most eminent English judges. The passing of the Aliens Acts affords no argument against the prerogative. These Acts appear to have been enacted mainly for the purpose of improving and enlarging the means of carrying out more effectually the purpose of the prerogative. An argument against the use of this prerogative might, perhaps, be found in the fact that England and also America have in our own times, in effect, denied to China the same right to exclude foreigners from its territory which the English Crown and the American Republic claim for themselves. But the doctrine of English and American law as to the existence of the right cannot be affected by the injustice or inconsistency of the English and American Governments in practically withholding from another country the recognition of a right which they claimed for themselves.

Except for the purpose of ascertaining the nature and high authority of this prerogative, and that it is one that is essential to the security and well-being of every human society, it is unnecessary, however, to consider whether the right to exclude aliens is, or is not, a continuing prerogative of the Crown of England. The question we have to determine in the present case is whether a power equivalent to this prerogative has, or has not, been vested by law in the representative of the Crown in Victoria, and can be exercised by the representative of the Crown upon the advice of his responsible Ministers. This part of the argument raises for the first time in this Court constitutional questions of supreme importance. We are called upon for the purpose of adjudicating upon the rights of the parties in this case to ascertain and determine what

is the origin and source of the constitutional rights of self-government belonging by law to the people of Victoria, and, if such rights exist, what is the extent and what are the limits assigned to them by law.

Imperial Statute law is admittedly one source of the public, as distinguished from individual, rights of every dependency of the British Crown possessing powers of internal self-government. I think it must be added that such public rights have no other source. Our attention has been called in the argument to the commission and instructions issued by the Crown to successive Governors in Victoria, and it has been suggested that the alleged defective powers conferred on the Governor by "The Constitution Act" have been supplemented by additional powers contained in those instruments. In my opinion, this suggestion cannot be entertained in a Court of law which is called upon to deal with and determine a question of constitutional law. The commission and instructions to the Governor are issued by Her Majesty upon the advice of Her Majesty's Imperial Ministers. The powers and commands contained in them are always revocable by the Sovereign. Before "The Constitution Statute" those instruments constituted almost the only source of the authority of government in Victoria. The Governor was then a mere agent of the Crown, and the officer on foreign service of the Department of the Secretary of State for the Colonies. As such agent and officer it was the Governor's single duty to exercise the powers from time to time given to him by the Crown together with the few powers conferred on him by the Act 13 and 14 Victoria, c. 59, in conformity with and subject to the orders from time to time communicated to him by the Secretary of State. Since "The Constitution Statute" the Governor retains for many purposes the same legal character of an Imperial agent or officer, and is subject to similar orders. He is paid a salary out of Her Majesty's Victorian civil list, and his services can be lawfully commanded by the Crown in matters affecting Imperial interests. The relations during peace or in time of war of foreign independent States to Great Britain, so far as they may be affected by the indirect relations of such States to this dependency of Great Britain, the treatment of belligerent and neutral ships in Victorian waters in time of war, the control of Her Majesty's military and naval forces within Victoria, the reservation of or assent to Bills passed by the Legislature of Victoria (a subject expressly excepted by "The Constitution Statute" from the operation of Victorian constitutional law), these and a variety of other questions by which Imperial interests may be affected, and with regard to which Victorian constitutional law does not prohibit interference by the Imperial Government, still form subjects upon which commands may be lawfully issued to the Governor by the Imperial authorities. With reference to all such questions, the Governor is to fulfil his instructions without being controlled and without a legal right to be assisted by the advice of Her Majesty's Ministers for Victoria. The expenses that may be incurred by the Governor in his character as an Imperial agent would in strictness be chargeable upon the Imperial and not upon the Victorian revenues. All such lawful instructions by the Crown to its agent are outside the sphere of the Victorian Constitution, and do not form a part of the public law of Victoria. By "The Constitution Act," certain powers are granted to and vested in the Governor as the appointee or representative of the Crown and the head of the Executive Government in Victoria. These powers constitute the sole basis of constitutional government in this colony, and in all other self-governing dependencies of Great Britain. They are not conferred by the Crown alone, but by an Act of the Victorian Legislature which the Imperial Legislature authorized the Crown to assent to. They cannot be taken away by the Sovereign. The exercise of them in accordance with "The Constitution Act" cannot lawfully be interfered with either by Her Majesty or Her Majesty's Imperial advisers. They cannot be regranted by Her Majesty so as to make them dependent on or revocable at the will of the Crown. The Governor in the exercise of those powers in and for Victoria is not an agent of the Crown, nor an officer of the Secretary of State for the Colonies. A new and a distinct authority is conferred upon him by law on his appointment; he is created, for all purposes within the scope of the Act of the Victorian Legislature, the local Sovereign of Victoria. This dual character of the Governor is not recognised in the Royal Commission and Instructions which have been brought before us, nor in the Letters Patent which since February 21st, 1879, have purported to make permanent provision for the office of Governor and Commander-in-Chief in Victoria. All these instruments have been stated to be the same in substance as the Commission and Instructions which were formerly issued by the Crown to the

Governor of New South Wales, and to the Governor of Victoria after separation from New South Wales and before "The Constitution Act" came into operation. The provisions contained in them would be legal and might be proper if they were communicated to a Governor who was only an agent of the Crown. Some of those provisions are now, in my opinion, void, as the powers they purport to convey have been already expressly or impliedly granted by statute law. Others are in my opinion illegal, as they are addressed to the Governor of a self-governing colony, and purport to give him instructions with reference to the exercise of powers which are vested in him by statute law, and which it is his duty to exercise only in the mode provided by that law. The following are instances occurring in these instruments of grants that appear to be void:—(1) The power to constitute and appoint judges and other officers (*a*). This power has been granted to the Governor in Council by section 37 of "The Constitution Act." (2) The power to convene and prorogue Parliament and to dissolve the Legislative Assembly (*b*). This power has been granted to the Governor by section 28 of "The Constitution Act." (3) The power to grant a pardon to an offender free or conditional (*c*). The power of free pardon is in my opinion vested in the Governor by "The Constitution Act" as and being a power reasonably necessary for the administration of criminal law in a self-governing community. The additional power of conditional pardon is vested in the Governor by "The Criminal Law and Practice Statute 1864," sections 318, 319. The following are instances of commands and authorities in the Governor's Commission, Instructions, and Letters Patent which are in my opinion illegal, and contravene the express or the implied provisions of the Statute law:—(1) The command to do and execute all things that belong to his office, according to orders and instructions given under the sign manual, or by order in Council, or by the Secretary of State (*d*). (2) The instruction to consult the Executive Council in all but excepted cases (*e*). (3) The authority to act in opposition to the advice given to the Governor by the members of the Executive Council, if in any case he deem it right to do so, and to report thereon to the Crown (*f*). (4) The commands and authorities relating to the regulation of the power of pardon in capital cases (*g*). (5) The instructions relating to the

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(*a*) Letters Patent, dated 21st February, 1879:
"VIII. The Governor may constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, "Justices of the Peace, and other necessary Officers and Ministers of the Colony as may be lawfully constituted or "appointed by Us."

(*b*) Letters Patent, dated 21st February, 1879:
"XI. The Governor may exercise all powers lawfully belonging to Us in respect of the summoning, proroguing, or "dissolving any Legislative body which now is or hereafter may be established within Our said Colony."

(*c*) Letters Patent, 21st February, 1879:
"IX. When any crime has been committed within the Colony, or for which the offender may be tried therein, the "Governor may, as he shall see occasion, in Our name and Our behalf, grant a pardon to any accomplice in such crime who "shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more "than one, and further may grant to every offender convicted in any Court or before any Judge or any Magistrate within "the Colony a pardon either free or subject to lawful conditions, or any remission of the sentence passed on any such "offender, or any respite of the execution of such sentence, for such period as the Governor thinks fit; and further may "remit any fines, penalties, or forfeitures due or accrued to Us."

(*d*) Letters Patent, dated 21st February, 1879:
"II. We do hereby authorize, empower, and command Our said Governor and Commander-in-Chief (hereinafter "called the Governor) to do and execute all things that belong to his said office, according to the tenor of these Our Letters "Patent and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such "Instructions as may from time to time be given to him under Our Sign Manual and Signet, or by Our Order in Our Privy "Council, or by Us through One of Our Principal Secretaries of State, and to such Laws as are now or shall hereafter be "in force in the Colony."

Commission, dated 10th April, 1884:
"II. And we do hereby authorize, empower, and command you to exercise and perform all and singular the powers "and directions contained in Our Letters Patent, bearing date at Westminster, the twenty-first day of February, 1879, "constituting the said office of Governor and Commander-in-Chief, according to such orders and instructions as Our "Governor and Commander-in-Chief hath already received, or as you may hereafter receive from Us."

(*e*) Instructions, dated 21st February, 1879:
"VI. In the execution of the powers and authorities granted to the Governor by Our said Letters Patent, he shall "in all cases consult with the Executive Council, excepting only in cases which are of such a nature that, in his judgment, "Our Service would sustain material prejudice by consulting the said Council thereupon, or when the matters to be decided "are too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which "it may be necessary for him to act in respect of any such matters. In all such urgent cases he shall, at the earliest "practicable period, communicate to the said Council the measures which he may so have adopted, with the reasons "thereof."

(*f*) Instructions, dated 21st February, 1879:
"VII. The Governor may act in the exercise of the powers and authorities granted to him by Our said Letters "Patent in opposition to the advice given to him by the Members of the Executive Council, if he shall in any case deem it "right to do so; but in any such case he shall fully report the matter to Us, by the first convenient opportunity, with the "grounds and reasons of his action."

(*g*) Instructions, dated 21st February, 1879:
"XI. Whenever any offender shall have been condemned to suffer death by the sentence of any Court, the Governor "shall call upon the Judge who presided at the trial to make to him a written report of the case of such offender, and shall "cause such report to be taken into consideration at the first meeting thereafter which may be conveniently held of the "Executive Council, and he may cause the said Judge to be specially summoned to attend at such meeting, and to produce

terms of appointment of judges, justices, and other officers (*h*). (6) The command not in any case to make it a condition of pardon or remission of sentence that the offender shall absent himself or be removed from the colony (*i*). The power to make this a condition of pardon or remission belongs to the Governor by Statute law, "The Criminal Law and Practice Statute 1864," section 318, and the exercise of such power, if it be advised by Her Majesty's responsible Ministers for Victoria, cannot, in my opinion, lawfully be prohibited by Her Majesty. No cause has contributed in nearly the same degree to the general imperfect understanding and the long conflict of educated opinion on the subject of the origin and source and the nature of Victorian constitutional law, and to the irregular and disturbed exercise of the functions of constitutional government in Victoria as the constant and still-continuing claim of the Imperial Government to interfere, by means of instructions, with the independence of the Queen's representative. Dishonour is done to the Crown when it is advised to make grants of powers that are void and to issue instructions that are illegal. Grievous injustice is done to the representative of the Crown who comes to the seat of his government misinstructed in his duties and powers, and is required to undertake obligations which he ought not, and cannot, and does not fulfil. The embarrassments and difficulties in the administration of the affairs of government that have sprung from the same cause, and the unregarded protests of one branch of the Victorian Legislature, are matters of Victorian public history affecting the whole people, of which a court of law may take cognizance (*k*). It is the duty of Victorian statesmen to protect the law of the Constitution from unlawful interference. It is the duty of a judge of this Court, in my opinion, when occasion requires, to declare that such interference is unwarranted by law, and that all instructions by Her Majesty or the Secretary of State to the Governor of Victoria not authorized by law are, even when they are not expressly forbidden by law, outside the law of the Constitution, and cannot be appealed to to explain, or add to, or detract from that law, or to restrict its free operation. Putting aside all such instructions, as I conceive that we are bound for the purpose of the present inquiry to do, we are compelled to the conclusion that in "The Constitution Act," as amended and limited by "The Constitution Statute," and in that Act alone, we must look for the legislative grounds of the self-governing powers of this people. If those powers are not to be found there, or cannot be ascertained and defined with reasonably sufficient certainty upon view of that Act alone, I think it must be conceded that they have no existence.

That some powers of self-government were intended to be created and have been created by "The Constitution Act" has never been questioned. That these powers,

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"his notes thereat. The Governor shall not pardon or reprieve any such offender unless it shall appear to him expedient "so to do, upon receiving the advice of the said Executive Council thereon; but in all such cases he is to decide either to "extend or withhold a pardon or reprieve, according to his own deliberate judgment, whether the members of the Execu- "tive Council concur therein or otherwise; entering, nevertheless, on the minutes of the said Executive Council, a minute "of his reasons, at length, in case he should decide any such question in opposition to the judgment of the majority of the "members thereof."

(*h*) Instructions, dated 21st February, 1879:
"XIII. All commissions granted by the Governor to any persons to be judges, justices of the peace, or other officers "shall unless otherwise provided by law be granted during pleasure only."

(*i*) Letters Patent, dated 21st February, 1879:
"IX. * * * Provided always that the Governor shall in no case, except where the offence has been of a political "nature unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the "offender shall absent himself or be removed from the Colony."

(*k*) An address to the Governor of Victoria, Sir Henry Manners-Sutton, was moved by Sir James McCulloch, and adopted by the Legislative Assembly on June 4th, 1868, with reference to a despatch of the Duke of Buckingham, the Secretary of State for the Colonies, to the Governor, dated January 1st, 1868. The following passage occurs in the address:— "Our attention has been directed to an official communication from the Secretary of State for the Colonies, published by "Your Excellency's authority, in which the Secretary of State, on the part of Her Majesty's Imperial Government, suggests "or directs that Your Excellency should not recommend the vote to Lady Darling to the Legislative Assembly except on "a clear understanding that the grant would be brought before another branch of the Legislature in a particular form. "Entertaining, as Your Excellency is aware we do, feelings of profound and devoted loyalty to Her Majesty and of attach- "ment to the Queen's supremacy over this portion of her Dominions, we are constrained to inform Your Excellency that "we regard this communication from Her Majesty's Imperial advisers as a violation of the constitutional rights of the "Legislative Assembly, and as a dangerous infringement of the fundamental principles of that system of responsible "government which has been secured to the people of Victoria by an Act of the Imperial Parliament. We inform Your "Excellency that no understanding upon this subject will be entered into with Your Excellency by us or by our authority, "and that we reserve for free discussion and final settlement within this Chamber the question of the form of the grant to "Lady Darling, and of all our other grants to the Crown."

The following resolution was passed by the Legislative Assembly on December 22nd, 1869. See "Parliamentary Debates," vol. 9, pages 2670-1:—"That the official communication of advice, suggestions, or instructions by the Secretary "of State for the Colonies to Her Majesty's representative in Victoria on any subject whatsoever connected with the "administration of the local government, except the giving or the withholding of the Royal assent to or the reservation of "Bills passed by the two Houses of the Victorian Parliament, is a practice not sanctioned by law, derogatory to the "independence of the Queen's representative, and a violation both of the principle of responsible government and of the "constitutional rights of the people of this colony." It does not appear that any notice was taken by the Imperial Govern- ment of either of these protests. The illegal claim of the Imperial Government referred to in the address has never been withdrawn. The practice condemned in the resolution remains unaltered.

apart from the powers of legislation, have operation and effect by means of the responsibility to the Parliament of Victoria of Ministers or servants of the Crown, for the exercise of the powers of the Crown in Victoria, is a further proposition that has never come within the range of controversy, legal or political. What is the extent of those powers, and what are the limits assigned to them by "The Constitution Act"? What are the powers vested by "The Constitution Act" in the representative of the Crown in Victoria for the exercise of which Ministers of the Crown are responsible to the Parliament of Victoria? Are those powers, together with that responsibility, limited to some only of the acts of government necessary for the administration of law, and of the domestic affairs of the people of Victoria? Or do those powers with consequent responsibility extend to all such necessary acts of government? Has "The Constitution Act" created a partial system of responsible government only, or has it created a complete organic system of responsible government co-extensive as regards all the functions of administration of affairs by Government, with the large powers of control and supervision which the Parliament of Victoria possesses in addition to its powers (section 1) "to make laws in and for Victoria in all cases whatsoever"? We have now to consider what is the true answer to give to these momentous questions. I believe that that answer may possibly depend upon the extent which may be permitted to the field of judicial vision. If we are bound to confine our inspection to "The Constitution Act" and "The Constitution Statute" alone, the answer possibly may be that the Legislature has created powers and responsibilities for their exercise in certain cases only, limited in number and so far disconnected with one another as to furnish ground for doubts whether we can safely conclude that the Legislature intended to establish in Victoria a general system of responsible government. But we are bound, in my opinion, in trying to arrive at the meaning of these Acts, and at an exact conception of their scope and objects, to consider the history and external circumstances which led to their enactment, and for that purpose to consult any authentic public or historical documents that may suggest a key to their true sense. The general rule that the Parliamentary history of an enactment is not admissible to explain its meaning has been not unfrequently departed from in cases where the framer of a Bill is known to have had special qualifications for his task. And there is authority for believing that English Judges of the present day might in such a case not refrain from consulting the authorized report of a speech in Parliament, even though they should be reluctant to admit it if presented for their consideration in argument in Court. (See *per* Bramwell, L.J., in The Queen *v.* Bishop of Oxford, 4 Q.B.D., at p. 550.) In the present case I think that, while we are bound to consult the few available public documents, and to regard the rules and practice of the Imperial Parliament so far as these have been embodied in "The Constitution Act," we are not forbidden to look at the authorized and authentic report of the words of the distinguished author of the Bill during the discussion in the Legislative Council on the second reading. And if, with the light thrown upon it from all these sources, we can regard "The Constitution Act" from the point of view from which its framers regarded it, I believe that we shall be led to the conclusion that it was the intention of the Legislative Council to provide a complete system of responsible government in and for Victoria, and that that intention was carried into full legislative effect with the knowledge and approval and at the instance of the Imperial Government by "The Constitution Statute" passed by the Imperial Parliament.

The form of both "The Constitution Statute" and "The Constitution Act" and the title and preamble and the subsequent provisions of "The Constitution Act," present on their face peculiarities which require explanation. Without some explanation, I believe that the real and full meaning and the true intention of the Legislative Council in passing "The Constitution Act" cannot be surely ascertained or confidently determined. The means of satisfactory explanation are greatly deficient. The measure was one that was to have a supreme and enduring influence upon the whole future of Victoria. To adopt the words used by Mr. Robert Lowe, a competent observer, in the House of Commons, it was a Bill "upon which would ultimately "depend the destinies of the noblest dependency of the British Crown" But the obscure and apparently disjointed clauses of the Bill itself, pregnant though they appear to be with deep but suppressed meaning, are almost the only authoritative source from which a part, and a part only, of the general design of the framers of this, the national charter of Victoria, can be ascertained. "*Incuriosi suorum*," "heedless of their own labors," is a descriptive term that must be applied, not in the original

reproachful sense, but in one full of regret, to the pioneers of Victorian legislation. They were so fully engaged in the great work of laying the foundations of law for a nation that had been suddenly called into existence, that they seem to have been unaware of the far-reaching consequences of their chief act of legislation, and to have made no effort to commemorate it or to commend their work by any enduring record to the understanding of the people of Victoria in the future. The community at the time was apathetic, and almost wholly uninformed on all political subjects. In this place and by the members of the profession of the law it is not, and I hope it never will be forgotten, that the foremost *longo intervallo* of the pioneers of Victorian legislation, foremost in capacity, in public spirit, and in unselfish devotion to exacting duties and to unremitting and stupendous labours, was he who afterwards as Chief Justice of this Court administered for twenty-nine years the general body of Victorian laws, most of which he had himself designed, prepared, and carried into legislative effect. The fact that Mr. Stawell drafted the Constitution Bill and carried it through the Legislative Council is a fact of which I feel that I am at liberty to take cognizance, and it is a fact which imposes on me and on every Judge who may with me allow himself to notice it a special duty to seek diligently until we find that of which the name of its author guarantees the existence, namely, a rational and consistent meaning and purpose in the whole and in all parts of the measure. The title of "The Constitution Act" is ambiguous. The "constitution" proposed to be established may mean a constitution of the Houses of Legislature, or a constitution of a system of government, or it may include both those meanings. The preamble also is obscure. It recites in terms from 13 and 14 Vict., c. 59, sec. 32, the authority which gave the Legislative Council jurisdiction to pass the Act. It then proceeds to recite that it is expedient to establish separate Legislative Houses, "and to vest in "them as well the powers and functions of the Legislative Council now subsisting" (so much had been authorized by the recited Act) "as the other and additional powers "and functions hereinafter mentioned." The district of Port Phillip was separated from New South Wales, and was erected into a separate Colony by the recited Act 13 and 14 Vict., c. 59, which was passed on August 5th, 1850. The powers and functions of the Legislative Council created for Victoria by that Act, and of the Legislative Councils authorized by the Act to be created in Van Diemen's Land, South Australia, and Western Australia, extended to the making of laws for the peace, welfare, and good-government of those Colonies respectively. They did not extend to allow of interference by the Legislative Council in any manner with the sale or other appropriation of lands belonging to the Crown, or of the revenue thence arising (section 14). By this Act, large powers of self-government, restricted, however, by limits placed on the legislative and appropriating functions of the Legislative Council, were conferred on all those Colonies. The Act itself suggested, by the recited section 32, an enlargement of those powers for all the Australian Colonies, including New South Wales. The Act was regarded by the Imperial Government as only the foundation "upon which might gradually be raised a system of government founded "on the same principles as those under which the British Empire had risen to greatness "and power." (*l*) Accordingly, communications were soon opened between the Imperial Government and the Government of New South Wales respecting the terms upon which larger powers of self-government should be conceded to that and to the other Australian Colonies. The principal term claimed by New South Wales was assented to by one Secretary of State for the Colonies, and was "cordially adopted" by another Secretary of State, the successor in office of the first. It was, that, in return for a civil list to be granted by the colony to Her Majesty, the administration of the waste lands of the Crown and the entire management of all its revenues should be surrendered to the Colonial Legislature. (*m*) "The same concession on the same "terms" was offered by the Imperial Government to Victoria "with no hesitation." (*n*.) The offer was readily accepted by Victoria, and "the additional powers and "functions" thus agreed upon were proposed to be enacted by two clauses in the Constitution Bill corresponding with sections 54 and 55 of "The Constitution Act." By the first of these clauses it was provided that it should be lawful for the Legislature of Victoria to make laws for regulating the sale, letting, disposal, and occupation of

(*l*) See despatch of Earl Grey to Sir Charles FitzRoy, dated August 30th, 1850.

(*m*) See despatch of Sir John Packington to Sir Charles FitzRoy, dated December 15th, 1852; and despatch of the Duke of Newcastle to Sir Charles FitzRoy, dated January 18th, 1853.

(*n*) See despatch of Sir John Packington to Lieutenant-Governor LaTrobe, dated December 15th, 1852.

the waste lands of the Crown within the Colony, and of all mines and minerals therein. By the second clause it was provided that all the consolidated revenue arising from taxes, duties, rates, and imposts levied by virtue of an Act of the Legislature, and from the disposal of the waste lands of the Crown under any such Act made in pursuance of the authority therein contained, should be subject to be appropriated to such specific purposes as by any Act of the Legislature should be provided in that behalf. It was beyond the power of the Legislative Council to pass, or of the Queen to assent to, a Bill containing either of these clauses. This fact was known to the Legislative Council, and the Bill was admitted by the Attorney-General to be one beyond its power to pass. (*o*) It was necessary that an Imperial Act should be passed repealing existing laws relating to the waste lands of the Crown before the Constitution Bill could become law. This was done, the Imperial Government having first altered some of the other provisions of the Bill relating to the reservation of and assent to Bills, by "The Constitution Statute," 18 and 19 Vict., c. 55, passed on July 16, 1855, by which Her Majesty was enabled "to assent to the Bill as amended of the "Legislature of Victoria to establish a constitution in and for the Colony of Victoria." "The Constitution Act" containing these new powers and functions gave plenary powers of self-government by legislation to the two Houses of the Victorian Legislature. The increased powers of the Legislature under the Act led to and necessitated the far larger change introduced by the same Act into the system of government in Victoria by the application to the enlarged functions of government of the new principle of responsibility.

It is due to the framers of "The Constitution Act" that we should remember the difficulties of the task they undertook. That task was to put into written words the unwritten law of the English Constitution. The English Constitution consists, as regards some of its functions that are in constant and most active operation, of practice established by long use and precedents founded on principles that are in many instances unsettled or disputed. Of the difficulty that must present itself to a draftsman's mind on the side of the law of the Legislature from this cause, the theoretical dispute still existing between the House of Commons and the House of Lords as to the right of control of taxation and finances is a striking illustration. A different and an additional difficulty would present itself in the attempt to give legal expression to the actual law of the English Constitution with respect to the principles of government in England. The English Constitution does not recognize an existing and by far the most powerful factor in the administration by Government of national affairs. The Privy Council of Her Majesty is the only advising body of the Crown known to the law. The Prime Minister, without whose authority the Privy Council cannot in fact be convened, is not a person known to the law. The Cabinet or acting committee of the Privy Council of the Sovereign and the responsibility of that body to Parliament are unrecognized facts. The framers of "The Constitution Act" may have thought this latter difficulty quite insurmountable. They adopted the curious and very hazardous expedient of attempting to enact in a written law, by means of allusions suggesting inferences rather than by express enacting words, the provisions not only unwritten but unrecognized by English law, which regulate and determine the formation and action and the conditions of existence of government in England. Thus we find in "The "Constitution Act" that mention is frequently made of the Executive Council, though nothing is said about its constitution. The Cabinet is not once mentioned. The words "responsible offices" occur once in a schedule [Schedule D, part 7]. The words "responsible officers" might be detected in the marginal notes, but we are bound on the present enquiry to bandage our eyes and not to see them. The object of establishing responsible government, which we might expect to find set forth in the preamble, is not there or anywhere stated. The nature of responsible government is nowhere described. The extent of its application is nowhere expressly declared. That it was the intention of the Legislative Council to establish by law a complete system of responsible government as an essential organic part of the self-governing scheme of the Victorian Constitution is a fact about which an historic doubt cannot be entertained. Mr. Stawell, the Attorney-General and draftsman of the Bill, addressing the Legislative Council on the second reading of the Bill, said, "I take it in the "present case that the main principles involved in this Bill are simply these—two

(*o*) See debate in the Legislative Council on the second reading of the New Constitution Bill, by Geo. H. F. Webb, assistant shorthand writer to the Council, page 66.

"Chambers, both elective, and a responsible government." (*p*) The system itself has been in full though obstructed operation in Victoria for all but the third part of a century. Nevertheless, we must now give answer to the question demanded of us, and say whether that intention has been expressed in "The Constitution Act," or whether the national life and history of Victoria from the first has not been based upon an illusion. In order to answer this question, we must examine the terms of "The Constitution Act" itself. Powers and functions of various kinds are created in the Governor by fifteen sections of the Act. (See sections 6, 8, 28, 32, 34, 36, 37, 38, 48, 49, 51, 53, 57, 58, and 59.) One of these powers is expressly vested in the Governor alone, namely, "the appointment of the officers liable to retire from office on political grounds" (section 37). The officers here mentioned are clearly responsible officers or Ministers. The means by which their responsibility to Parliament is secured are provided for in section 18, which requires that four of least of their number shall be members of the Council or Assembly. The officers filling the same offices after the coming of the Act into operation, or whose offices may be abolished under the power given to the Governor in section 48, are described in Schedule D, part 7, as "persons who may accept responsible offices and retire or be released therefrom on "political grounds." These provisions most plainly, in my opinion, though indirectly, give adequate expression to an intention of the Legislative Council that the principle of responsible government should be established by law. In contrast with this power of appointment of responsible officers which is vested in the Governor "alone," all other powers and functions are vested either in the "Governor" or in the "Governor "and Executive Council" (sections 49, 51, and 53), or in "the Governor with the "advice of the Executive Council" (section 37). The provisions in these last-mentioned sections appear to apply to cases where, in addition to the advice, assistance, and approval of the responsible Ministers, the nature of the power to be exercised seems to require that that exercise should be formally recorded or publicly announced. There is no indication in the Act that it was designed to create a single power or function in the Governor, except the power of appointing his Ministers, as a personal power to be exercised on his own individual judgment or discretion, or otherwise than in accordance with the advice of those whom he selects to advise and carry into act and operation, the constitutional exercise of the powers given to him by the Statute law as the appointee and representative of the Crown. The Imperial Government has never, I believe, even in the boldest of its attempts to interfere illegally with the Victorian Constitution, suggested that the Governor ought to exercise any of his statutory powers without receiving the advice of Her Majesty's Government for Victoria. It has only asserted for itself the right to disregard that advice, and to order the Governor, as its officer, to act in defiance of it. (*q*) I think that the rule of responsibility applies to every one (if to any) of the powers of the Crown created by Statute in the Crown's representative, the Governor, and that none of them can be lawfully exercised except through and by the advice or with the knowledge and approval of the responsible Ministers appointed by the Governor. What are those powers? Some of them are merely formal, and their exercise and the approval of Ministers would ordinarily be a matter of course. (See sections 8 and 32.) Others are of a very different nature. Thus the appointment to public offices (section 37), including the general control of the Public Service, is a power not only of the highest importance but of very large scope. Again, the power of convening and proroguing Parliament and of dissolving the Legislative Assembly (section 28) is one of large significance, and the exercise of it, undisturbed by any external influence, by the Ministers whom the Governor is pleased to retain in the service of the Crown as his advisers is a matter of moment to the whole community as well as to political parties and the movements of opinion in Parliament. Sections 57 and 58 indicate, in my opinion, more clearly than all the others the intended scope and the legal and actual extent of the principle of responsible government established by "The Constitution Act." It is from the powers of the Crown express and necessarily to be implied from these sections as well as from the powers of control over the Public Service, granted by section 37, that all the ordinary general functions of responsible government spring. From those powers the legal existence and the rightful exercise of those functions may, and, in my opinion,

(*p*) See debate on the second reading of the New Constitution Bill, by Geo. H. F. Webb, assistant shorthand writer to the Council, pages 68 and 69.

(*q*) See despatch of the Duke of Buckingham to Sir Henry Manners-Sutton, Governor of Victoria, dated January 1st, 1868.

must be inferred. It has been seen that the Legislature obtained by the Act not only the right to dispose by legislation of the waste lands of the Crown, but also the control, for the use and benefit of the people of Victoria, by means of appropriations for specific purposes of all the consolidated revenues derived from that and all other sources. This power covers, directly and indirectly, the whole field of Parliamentary action outside the field of general legislation. Section 57, adopting a rule of the House of Commons respecting its grants of money for the Public Service, gives to the Crown, in the person of the Governor, powers equally extensive in their field of operation, and theoretically even greater, than those which either or both Houses of Parliament can claim in theory over the sources and the application of the public revenues. By this section the Legislative Assembly is prevented from making a grant of the smallest amount to the Crown, or of imposing a burden of the lightest tax on the subject, until the Governor by message recommends the Legislative Assembly to do it. By section 58 the revenue appropriated by an Act of the Legislature is prevented from being issued and applied to the purposes to which it has been appropriated until a warrant under the hand of the Governor authorizing the issue has been directed to the Public Treasurer. In both cases, in the sending of the message and in the signing of the warrant, the Governor is guided by the advice of his responsible advisers. These express powers given to the Crown are in theory of great magnitude. They devolve in theory and in fact upon the Government peculiar and most important functions. The Government of Victoria, like the Government of England, in this way has the duty cast upon it of determining by an initial and provisional appropriation to what purposes the public revenues shall be applied, by what taxes they shall be raised or increased, and at what times and in what manner, after they have been appropriated by an Act of the Legislature, they shall be issued and applied. In the exercise of these functions, the Government of Victoria, like the Government of England, has to consider and determine beforehand what provisions must be made and what acts must be done for the proper administration of law and the prudent conduct of public affairs, and generally for the peace, the security, the safety, and the welfare of the people. We violate no rule of legal construction, in my opinion, in holding that the Government of Victoria possesses by virtue of "The Constitution Act," in the exercise of this the most proper function of a Government constituted as ours is, all the powers reasonably necessary for the proper exercise of this function. The rule of interpretation relied on by the plaintiff, "*expressio unius alterius exclusio*," is of limited application. It is not to be applied in construing any instrument where the general intention of the instrument appears to forbid its application. In cases where it is properly applied it does not operate to exclude powers that must be reasonably implied from the very words of the instrument by which express powers are created. (See *per* Lord Selbourne in Barton *v.* Taylor 11 App. Cas., at p. 207, and Price *v.* Great Western Railway Company, 16 M. and W. p. 244.) The common-law rule "*Quando lex aliquid alicui concedit, concedere videtur et illud sine quo res ipsa esse not potest*, on the other hand, is a rule which is founded on necessity, and is, therefore, of universal application. It is limited only by the necessity in which it has its origin. This rule justifies us, in my opinion, in holding that the Government of Victoria as constituted by "The Constitution Act" possesses, by virtue of that law, the power to do any act which it would be competent for the Legislature of Victoria to sanction, and which ordinarily is, or may under special circumstances at any time become, reasonably necessary to its existence as a body constituted by law or to the proper exercise of the functions which it is intended to execute. (See Doyle *v.* Falconer, L. R. 1, P.C., p. 328; Barton *v.* Taylor, 11 App. Cas., p. 197.) The question whether the power to do a particular act could ordinarily be, or might under special circumstances become, reasonably necessary for the Government to possess and exercise, would, I think, present a question of law to be determined by the Court. The question whether the power to do such act is in fact or has become reasonably necessary to exercise must always be determined by Her Majesty's Government, who are responsible, not to this Court, but to Parliament, for the exercise of the power as well as for the mode in which it has been exercised.

I will sum up the conclusions in which my mind abides after a careful re-examination of the vitally important questions which have been brought under our notice in the second division of this case. And I will first acknowledge that the Court is much indebted to the learned counsel on both sides, who have argued a case full of difficulties and involved in great obscurity with distinguished ability, and have given us the results

of their very extensive legal researches. I am of opinion, *First*, that "The Constitution Act" as amended and limited by "The Constitution Statute" is the only source and origin of the constitutional rights of self-government of the people of Victoria. *Secondly*, that a constitution or complete system of government, as well as a constitution of the Houses of Legislature, was the design present to the minds of the framers of "The Constitution Act," and that that design has found adequate though obscure legal expression in that Act. *Thirdly*, that the two bodies created by "The Constitution Act," the Government and the Parliament of Victoria, have been invested with co-ordinate and inter-related but distinct functions, and are designed, on the model of the Government and the Parliament of Great Britain, to aid each other in establishing and maintaining plenary rights of self-government in internal affairs for the people of Victoria. *Fourthly*, that the Executive Government of Victoria, consisting of Ministers of the Crown, are responsible to the Parliament of Victoria for the exercise of all the powers vested by "The Constitution Act" in the Governor as the representative of the Crown in Victoria; and that they, and they alone, have the right to influence, guide, and control him in the exercise of his constitutional powers created by "The Constitution Act." *Fifthly*, that the Executive Government of Victoria posesses and exercises necessary functions under and by virtue of "The Constitution Act" similar to, and co-extensive, as regards the internal affairs of Victoria, with the functions possessed and exercised by the Imperial Government with regard to the internal affairs of Great Britain. *Sixthly*, that the Executive Government of Victoria, in the execution of the statutory powers of the Governor express and implied, and in the exercise of its own functions, has a legal right and duty, subject to the approval of Parliament and so far as may be consistent with the Statute law and the provisions of treaties binding the Crown, the Government, and the Legislature of Victoria, to do all acts and to make all provisions that can be necessary and that are in its opinion necessary or expedient for the reasonable and proper administration of law and the conduct of public affairs, and for the security, safety, or welfare of the people of Victoria.

It now only remains to consider whether Her Majesty's Government for Victoria had the legal right to refuse to permit the plaintiff to land in Victoria and to prevent and hinder him from landing. In the view I take of the legal and constitutional powers and functions of the responsible Ministers of the Crown in Victoria, I think that this question should be answered in the affirmative. The right to exclude aliens is a right that must be considered to be inherent in the constituted Government of every independent State, and also, I think, in that of a *quasi*-independent State like Victoria. The exercise of this right is not forbidden to us by any rule of international law. If it were, it would have to be admitted that an act in contravention of such a rule and constituting a cause of war between the parent State of Great Britain and another independent State would be an act beyond the powers of the Government of this or any other dependency of the British Crown. It is not alleged in the pleadings in this case, nor has it been suggested in argument, that the exercise of the right to exclude Chinese aliens is a violation of the provisions of any of the treaties existing between Great Britain and China. It has been contended, but in my opinion unsuccessfully, that the exclusion of the plaintiff from Victoria by the act of Her Majesty's Government is a violation of a statutory contract right of the plaintiff given to him by the provisions of the "Chinese Immigrants Statute 1865" and "The Chinese Act 1881." I have had the advantage of reading the judgment of my brother Kerferd. I concur with the views he entertains upon this part of the case, and I desire, with his permission, to adopt his reasons as a portion of my own judgment. It appears to me to be beyond doubt that the exercise by the Government of Victoria of the right to exclude aliens is an act that may be necessary to be done in a variety of possible cases by the Government of Victoria for the security, safety, peace, or welfare of the people of Victoria. The facts disclosed in this case, and the further fact of the proximity of Victoria to the French convict settlement of New Caledonia, suggest that it is highly probable that it may be necessary in the existing circumstances of the present day to exercise this power in Victoria at any moment. The proof of the existence of a legal right to do the Act complained of by the plaintiff is completed, in my opinion, by the allegation that Her Majesty's Government for Victoria in the discharge of its constitutional function—a function, I will repeat, the exercise of which this Court has no jurisdiction to review or to question—did in fact form the opinion and determination that it was

necessary for the public peace that no further Chinese other than British subjects should be permitted to land in Victoria.

My decision is in favour of the defendant upon the questions of law raised on the pleadings, which constitute, in my opinion, a good defence to this action on the merits, and I am consequently of opinion that judgment in the action ought to be entered for the defendant with costs to be taxed. I have the misfortune, my sense of which I could not adequately express in words, to differ in opinion as to a part of this case from the majority of my brother Judges. The decision of the Full Court is in favour of the plaintiff, and judgment will accordingly be entered for the plaintiff, with damages, if any, to be assessed and costs to be taxed as provided in the Order.

MR. JUSTICE KERFERD'S JUDGMENT.

Mr. Justice Kerferd said—This was an action brought by Chun Teong Toy, an alien Chinese, against A. W. Musgrove, Collector of Customs. The statement of claim is as follows:—

"1. The defendant is and was, at all times material to this action, Collector of "Customs within the meaning of 'The Chinese Act 1881.'

"2. The plaintiff was an immigrant arriving from parts beyond Victoria within "the meaning of 'The Chinese Immigrants Statute 1865' and 'The Chinese Act "'1881.'

"3. The plaintiff, on or about the 27th day of April, arrived in Hobson's Bay "from parts beyond Victoria on board the ship *Afghan*, the said ship being a British "ship, and one George Roy was the master of the said ship within the meaning of "'The Chinese Act 1881.'

"4. The said master, George Roy, offered to pay, and was always ready and "willing to pay to the defendant as such Collector as aforesaid in respect of the "plaintiff the sum of £10, as provided in section 3 of 'The Chinese Act 1881,' yet the "defendant refused to allow the plaintiff to land in Victoria, and hindered and pre-"vented the plaintiff from landing in Victoria, and altogether refused and declined to "receive the said sum of £10.

"The plaintiff claims £1,000."

The defendant, in answer, pleads several pleas, the fourth of which only is material in the consideration of these proceedings, and is as follows:—"The plaintiff "was, at the time of the committing of the grievances in the statement of claim men-"tioned, a subject of the Emperor of China, and owed allegiance to him, and was not a "British subject, and that whilst the several Acts of Parliament of Victoria mentioned "and referred to in the 2nd paragraph of the statement of claim were in full force "and unrepealed, the plaintiff was a Chinese immigrant within the meaning of the "said Statutes, and as such immigrant had arrived in the Port of Melbourne in a "certain British vessel called the *Afghan*, of 1,439 tons measurement, which said "vessel had so arrived in the said port with 268 Chinese immigrants on board, being "254 more Chinese immigrants than under the said Statutes such vessel could lawfully "bring into the said Port of Melbourne. And the defendant further says that he had "received instructions, previous to the arrival of the said ship, from the Commissioner "of Trade and Customs, as being the responsible Minister of the Crown for the Colony "of Victoria charged and instructed with the administration of the laws of the said "Colony relating to the Customs and immigration, that there was an apprehension on "the part of Her Majesty's Government for the said colony that a large influx "of Chinese into the said Colony was imminent, and that, in the opinion of the "said Minister and of the said Government, such influx would be a danger and "menace to the said Colony, and to the public peace thereof, and to Her Majesty's "subjects residing therein, and would be in a high degree detrimental to "their interests, and that, in the opinion of the said Minister of Her Majesty's "Government, it was for the advantage of the said subjects so residing in the "said colony that such influx should be prevented, and no further Chinese other "than such as are British subjects should be allowed to enter the said Colony, and that

"the said Minister and Her Majesty's Government had determined to refuse to permit "any Chinese other than such as were British subjects to land or enter the said Colony, "and such instructions, opinions, and determination had been, before the committing "of the said grievances by the said Minister and Government, communicated to the "defendant, wherefore the defendant in obedience to such instructions and deter- "mination, as such officer of Her Majesty's Customs as hereinbefore mentioned, "by command of our Lady the Queen, refused to permit the plaintiff to land in the "said Colony of Victoria, and hindered and prevented him from so landing, and "wholly declined and refused to receive the said sum of £10 mentioned in the "4th paragraph of the statement of claim. And the defendant further says that "his said acts in so wholly refusing to permit the said plaintiff to land in "Victoria, and in so hindering and preventing him from landing, and in refusing "to receive the said sum of £10 as aforesaid were by him subsequently reported "and communicated to Her Majesty's said responsible Minister, and were by him "and by Her Majesty's said Government ratified and approved of as being acts "of State policy." The plaintiff, under the provisions of order 25, rule 2, of the "Judicature Act," objects that paragraph 4 is no defence, as even Her Majesty's said Minister or said Government could not legally prevent the plaintiff from landing. The short question we have to consider is whether paragraph 4 of the defence is an answer to the plaintiff's claim. Paragraph 4 may be conveniently divided into two parts, each of which raises a separate defence—the first part dealing with the Statute law on our statute books relating to the Chinese; and the second part involving the consideration of the constitutional powers conferred upon the Government of Victoria. Dealing first with the statutable provisions relating to the Chinese, it was admitted for the purposes of the argument that the master of the British ship *Afghan* brought 268 Chinese to the colony, that that number was in excess of the tonnage allowance under section 2 of "The Chinese Act of 1881," No. 723, and also that the master tendered, on behalf of the plaintiff, to the defendant as Collector of Customs, the sum of £10 for each and every of such 268 Chinese, alleged to be payable under the provisions of section 3 of the said recited Act, which the said defendant refused to accept under the circumstances mentioned in the plea. The plaintiff complained that he suffered wrong in being deprived of his statutory right, as he said, of being allowed to land in Victoria on payment of the £10, and, therefore, claimed damages. It was contended for the plaintiff that he could not be said to be illegally in the territory when he was willing to pay the £10; that the law as to the number of Chinese that were allowed to come in in any vessel only affected the master of the vessel; that no matter how the plaintiff got here, when he was ready to pay the poll-tax it ought to have been accepted; and, finally, that "The Chinese Act of 1881" did not prohibit and say that Chinamen shall not come into the Colony in greater numbers than one for every hundred tons of the ship's register, but that if a ship came into the Colony with a greater number than was therein specified the captain rendered himself liable to a penalty. It was further contended, on behalf of the plaintiff, that section 3, which provides—"Before any immigrant arriving from parts beyond Victoria shall be per- "mitted to land from any vessel at any port or place in Victoria, and before making "any entry at the Customs, the master of the vessel by which such immigrant shall "so arrive shall pay to the collector or other principal officer of Customs the sum of "£10 for every such immigrant, &c.," gave to every Chinese who thought proper to come to this country a right to land upon payment of the sum of £10. The answer to this part of the case is, in my opinion, to be found in the proper construction to be placed upon "The Chinese Act of 1881," No. 723, which appears in our Statutes under the heading of "Chinese Immigration Restriction." If section 3 could be taken by itself and construed as a separate legislative enactment dealing with the circumstances under which the Chinese should be permitted to land in Victoria, there might be some force in the contention of the learned Counsel for the plaintiff that he had a right to land upon satisfying the conditions of that section. I would say that the Act must be construed as a whole, the same as any other written instrument would be, and that we must ascertain from its provisions what was the intention of the Legislature in passing it. The provisions of "The Chinese Act 1881," which is to be read and construed with "The Chinese Immigrants Statute 1865," will, I think, show that it was the design of the Legislature to impose such restrictions upon Chinese coming into Victoria by sea as to prevent the possibility of their coming in large numbers at any one time, and to prevent what might be called a "Chinese immigration," by restricting the number

of Chinese that can come in any vessel to such an insignificant number as not to make it worth the while of any vessel carrying passengers only to bring them. Section 2 provides—"If any vessel having on board a greater number of immigrants (within the "meaning of the Act No. 259) than in the proportion of one such immigrant to every "hundred tons of the tonnage of such vessel shall arrive at any time in any port in "Victoria, the owner, master, or charterer of such vessel shall be liable on conviction to "a penalty of £100 for each immigrant so carried in excess of the foregoing limitation." Section 8 provides—"Any vessel on board which immigrants shall be transhipped "from another vessel and be brought to any port or place in this Colony shall be "deemed to be a vessel bringing immigrants into the said Colony from parts beyond the "said Colony and shall be subject to all the requirements and provisions of this Act, "and all immigrants so transhipped and brought to such port or place shall be deemed "to be immigrants arriving from parts beyond Victoria." Section 8 was evidently framed by the Legislature with the intention of guarding against any evasion of section 2 being attempted by transhipping Chinese passengers in Australian waters, because the vessel into which they are so transhipped is to be deemed a vessel bringing immigrants into the said Colony from parts beyond the said Colony, and is to be subject to all the requirements and provisions of the Act. Sections 5, 6, and 7 may be looked at as also showing that the Legislature intended that the stringent provisions of the Act should not be evaded, and, therefore, made provision by these sections for exemptions in certain cases. For example, Chinese who are British subjects are exempted. Chinese officials accredited to the Colony by the Government of China are exempted. The crew of any Chinese vessel are permitted to go on shore in performance of their duties in connexion with such vessel, but if one of them were to go on shore except in performance of such duties he would be liable to a penalty of £20. It is an ordinary rule of construction that "if authority is given expressly, "though by affirmative words upon a defined condition, the expression of that condi-"tion excludes the doing of the act authorized under other circumstances than "those defined: *expressio unius est exclusio alterius.*—Per Willes J." (*See* North Stafford Steel Company *v.* Ward, L.R. 3 Ex. 177, and "Broom's Legal Maxims," 5th ed., 653.) I would say that the proper construction to be placed upon the Chinese Statutes is that Chinese coming into this country must come in the manner prescribed by the Statutes, and that everything in respect of which a penalty is imposed by Statute, must be taken to be a thing forbidden, though it is not expressly prohibited by the Statute. If the Chinese do not come into Victoria in the way prescribed, they are prohibited from coming here by the Act. A good deal of argument was addressed to the Court that it would be placing a harsh construction upon the Statute to make the immigrants liable for the misconduct of the master in bringing them here. The master of the ship is constituted by "The Chinese Act, 1881," Section 3, the agent of the immigrants to pay the poll tax, and what is very significant with reference to these proceedings he must do this "*before making any entry at the Customs.*" This provision would indicate that it was the intention of the Legislature that the master of the ship should be met at the threshold, and if he could not satisfy the Customs authorities that he had complied with the provisions of "The Chinese Act 1881," he should not be permitted to enter his ship as being in port. It will be found that this provision fits in with the "Customs Act 1883," Sections 66 and 71, requiring the master of every ship to report his vessel in port. Both acts ensure that the Customs authorities shall be informed of the condition of the ship before she is allowed to use the port for landing her passengers and cargo. Can the Chinese immigrants dissever themselves from the master of the ship so as to be able to disavow his fraudulent acts, and yet take the benefit of those acts in bringing them here? The master, in bringing the passengers here, comes in their service to land them here, and he does so confessedly on the facts in this case in fraud of the "Chinese Act 1881." I am not aware of any authority for the proposition that a person may take the benefit of a fraudulent act committed in his service, even although it be without his knowledge or his authority. In the case of a ship running a blockade, where the owners of cargo were entirely innocent, and had no knowledge of the intention of the master to run the risk, it was held that the owners of the cargo were concluded by the illegal act of the master, although it might be done contrary to their wishes, and without their privity, yet as it was done in the service of the cargo, the owners of the cargo could not claim to be exempt from the illegal act of the master of the ship. (See Baltazzi *v.* Ryder, 12 Moore, P.C.C. 168.) Carriers of passengers stand no doubt on a different footing from carriers of goods as to their

rights under their respective contracts, but the legal principle that a man cannot take advantage of a fraud committed in his service would apply in both cases. "The prin-"ciple of public policy is this: *ex dolo malo non oritur actio*, no Court will lend its aid "to a man who founds his cause of action upon an immoral or an illegal act. If, from "the plaintiff's own stating, or otherwise, the cause of action appear to arise *ex turpi* "*causâ*, or the transgression of a positive law of this country, there the Court says he "has no right to be assisted." (Broom's Legal Maxims, page 739, 5th ed.) Fraud vitiates everything. In Foster *v.* Mackinnon, which was an action on a bill of exchange, the plaintiff was the indorsee and the holder for value before maturity, and without notice of any fraud. On the finding of the jury that the bill of exchange had been obtained from the defendant by fraud, the plaintiff, though perfectly innocent, could not recover. (L.R., 4 C.P., 704.) The plaintiff founds his claim upon the fact that he is here already and is willing to pay his £10, and he says it is immaterial that he was brought here by the fraudulent act of the master of the ship. I am of opinion that he cannot succeed. I should have been content to rest my judgment on the first part of the fourth plea, and say that the intention of the Legislature in passing the Statutes was to prohibit the Chinese from coming into Victoria except in the manner prescribed by the Act, and that the fraudulent act of the master of the *Afghan*, in bringing Chinese into the port of Melbourne otherwise than in the way provided for by the Act, would give no right of action to any Chinese on board the ship on the ground that he was not permitted to land. But it is possible that the judgment of this court may not be accepted by the parties. I therefore feel it to be my duty to express an opinion on the other branch of this case. It was stated by the learned counsel for the plantiff that in dealing with this case, they were treading on what was an unknown path to most of them. I am not aware of any decided cases upon the powers conferred under the system of responsible Government granted to the self-governing colonies, saving those of Dill *v.* Murphy (1 Moore, P.C.C., N.S., 487), and Taylor *v.* Barton (11 App. Cases, P.C. 197). The precise question now under consideration, however, did not arise in those cases, and as far as I have been enabled to search, there is no judicial decision on the points raised by the second part of the fourth plea. The opinions of learned text-writers were cited during the able arguments of counsel on both sides, but I would say that the extracts we were favoured with, valuable and weighty as they are, do not assist us very much in arriving at a conclusion upon the issue we have to determine, namely—What are the constitutional powers conferred upon the Government of Victoria ? The second part of the fourth plea briefly sets up, as an answer to the plaintiff's claim, that the act of the defendant in prohibiting the plaintiff from landing was an act of State, done by him under the authority of a responsible Minister of the Crown for the Colony of Victoria. And the defendant further says that his said acts in so refusing to permit the said plaintiff to land in Victoria were, by the said Government, ratified and approved of as being acts of State policy. I understand that it is the substance of this plea and not the technical form of it (which may be amended), that we have to consider. The Crown, during the argument, relied upon the plea being justified, on the ground that it was an act of State policy, or an act done under the exercise of the Royal prerogative. Within the British dominions there are a number of States, or Colonies, each having and exercising within its own territorial limits, and with regard to its own internal affairs, Sovereign power, and being for all such purposes an independent governing body. But any act committed by any one of such States or Colonies affecting a foreign power would be rightly regarded by such foreign power as an act of the British nation, and if the act were a *casus belli* it would have to be defended by the British nation. I do not think that the Government of Victoria can justify the act done with regard to the plaintiff as an act of State policy unless it had been previously authorized by the Queen upon the advice of Her Imperial advisers, or ratified by such authority. An act of State policy means an act done by the British nation to an alien who would have no cause of action in any Court within the British dominions in respect of such act. The plea of "*act of State policy*" ousts the jurisdiction of the Court when pleaded by competent authority. It was not contended that the act complained of in the Statement of Claim was so authorized or ratified. I am, therefore, of opinion that the plea that the act was an act of State policy is not any answer to the action. With regard to the second ground, that it was an act done under the authority of the Royal prerogative right of the Crown to exclude aliens, the question for our decision was narrowed down during the argument to a claim on behalf of the Crown that the Constitution Act, or the powers derived under it, must be interpreted as conferring all the prerogatives and powers necessary for the

administration of the law and conduct of public affairs in this colony, including the right to exclude aliens. On the other hand, the plaintiff denies that any prerogative other than those expressly specified in the Constitution Act 19 Vic. and the Governor's Commission, can be exercised here by responsible Ministers of the Crown. The plaintiff further denies the existence of the prerogative to exclude aliens, and says that if it does exist it has not been extended to Victoria. The issue lies in a small compass, and the determination of it must be sought for and found in an examination of the powers contained in the Constitution under which Victoria is governed. The Court takes judicial notice of the powers contained in the Constitution Act 19 Vic., and in all Acts of the Parliament of Victoria amending the same. I think it will also take judicial notice of the fact that Parliament is constituted by three branches of the Legislature—the Queen, the Legislative Council, and the Legislative Assembly—that the Governor represents the Queen, and in that capacity is the head of the Executive Government—and that Ministers of the Crown forming the Executive are responsible to Parliament. The Court will also take judicial notice of "the Law of Nations"—"the Law and Customs of Parliament"—"the privileges and course of proceedings of each branch of the "Legislature"—(Taylor on Evidence, 8th ed., vol. 1, p. 4) and that the privileges, immunities, and powers of both the Legislative Council and the Legislative Assembly have been defined to be powers held and enjoyed by the Commons House of Parliament of Great Britain and Ireland not inconsistent with the provisions of "The Constitution Act." (See Act No. 1, vol. 3, Vic. Statutes, p. 2395; and Dill *v.* Murphy, 1 Moore, P.C.C., N.S. 487.) The Constitution of Victoria was created by and under the authority of the Act 18 and 19 Vic., c. 55. The schedule to that Act is printed in our Statutes as 19 Vic., and section 60 provides that the Legislature of Victoria as constituted by that Act shall have full power and authority from time to time by any Act or Acts to repeal, alter, or vary all or any of the provisions of the said Act, and to substitute others in lieu thereof. A learned writer has described, and I think accurately, the Parliament of Victoria as being a subordinate yet a legislative and constituent assembly, having power to completely change the Constitution contained in the Act 19 Vic. "It is a 'subordinate' assembly, because "its powers are limited by the legislation of the Imperial Parliament; it is a consti-"tuent assembly, since it can change the articles of the Victorian Constitution." (Dicey's Law of the Constitution, 2nd ed., pp. 101 and 102.) Again, at page 103 the same learned author says: "The Colonial Legislatures, in short, are, "within their own sphere, copies of the Imperial Parliament. They are, within "their own sphere, sovereign bodies; but their freedom of action is controlled "by their subordination to the Parliament of Great Britain."* The power conferred by Section 60 has been largely availed of by the Parliament of Victoria. The Act 19 Vic. contained originally sixty-three sections; of these eighteen sections have been wholly repealed, and two sections have been partly repealed. On the other hand, a number of Acts moulding the Constitution, so as to give full effect to responsible government, have been passed by our Parliament under the powers of the Act 19 Vic. One Act I have referred to, the Act No. 1, declaring the privileges, immunities, and powers of the Legislative Council and the Legislative Assembly respectively to be those held, enjoyed and exercised by the Commons House of Parliament of Great Britain, not inconsistent with the provisions of the Constitution Act. Another Act of great importance is "the Officials in Parliament Act 1859," limiting the number of responsible Ministers who may sit and vote in Parliament, and dealing with other

* *Kerferd, J.*—The problem, which perplexed the minds of Statesmen forty years ago, of whether it would be possible to transplant a copy of the British Constitution in such of the dependencies of the Empire as had outgrown the form of Government which obtains in Crown Colonies, must, I think, so far as Victoria is concerned, be considered as having been successfully solved. I do not think that it can be denied that we have here in Victoria responsible Government as fully as it obtains in the mother country. The Legislative Assembly of Victoria is an exact copy of the British House of Commons, save as to the number of members, divisions being taken in lobbies, and the cloture standing orders. The same prerogatives are used and exercised by the Crown with regard to the proceedings in both the House of Commons and the Legislative Assembly. There is not a ceremony, procedure, or form, from the opening of Parliament down to a junior clerk tying and docketing a bundle of papers when attending a select committee, in which the ceremony, procedure, or form are not identical in both Houses; nor is there a privilege used, held, or enjoyed by the House of Commons which is not used, held, or enjoyed by the Legislative Assembly, modified, if at all, only to the extent necessary by the altered conditions under which they are brought into operation. Ministers of the Crown in the Legislative Assembly, when Parliament is in session, have that "bad half hour" when questions are put, the same as Ministers of the Crown in the House of Commons. The pulse of national life beats vigorously. Information is sought and the policy of the Government obtained with regard to every question which affects the welfare of the people. No matter which touches the people is too great for the attention of the House, and no matter is too small for its consideration if a wrong has to be righted. The Imperial Parliament is the supreme authority throughout the empire. The Victorian Parliament is the supreme authority in and for Victoria, subject only to the legislative powers of the Imperial Parliament.

matters. Since the Constitution Act, 19 Vic., came into operation thirty-three years have nearly run their course, and during that time thirteen Parliaments have been created, and twenty or more responsible ministries have been appointed. It is general knowledge that during that time most serious questions have arisen involving the consideration of the constitutional powers conferred by our Constitution upon the several branches of the Legislature. These questions have from time to time been determined by the unwritten law of Parliament, the *lex et consuetudo Parliamenti*. Again, the administrative acts of responsible Ministers (in the exercise of those discretionary powers of Government resting in the Royal Prerogative) have been frequently challenged with respect to such acts, and Ministers have had to stand or fall by the decision of Parliament thereon. I think it will be obvious, from this brief consideration of the constitutional powers which have been and are now actually exercised in Victoria, that the Constitution under which Victoria is governed rests on a wider basis than the actual terms of the Constitution Act, 19 Vic., would appear to indicate. If the plaintiff's contention were a sound one it would follow that the prerogatives forming part of the common law, which are separate from those in connexion with the Legislature, and which before and since the inauguration of responsible government have been enforced by this Court, have been so enforced illegally. For if the Crown is restricted to the use of those prerogatives mentioned in the Constitution Act and the Governor's Commission, then all other prerogatives must be deemed to be excluded. I can find no authority in support of such a contention, but I think there is some authority the other way. "No distinction can be drawn between the rights of the Crown "as regards prerogative in this country and in the colonies wherever Her "Majesty's dominions extend." (*In re* Bateman's Trust, L.R., 15 Eq. 355.) (See also *in re* Oriental Bank Corporation, Expte. the Crown, 28 Ch. D., p. 649). Assuming the decisions in these cases to be good law, and that the prerogatives forming part of the Common Law, applicable to the circumstances of this colony, were in force here before the passing of the Constitution Act, that Act must have contained express words before those prerogatives could be taken away. (See Weymouth *v.* Nugent, 3 Moore, P.C.C., N.S. 115; Attorney-General *v.* Constable, L.R., 4 Ex. D. 174; and Chitty's Prerogative, p. 33). It is one of the prerogatives of the Crown that it is never bound unless named in a Statute. The maxim *Expresio unius est exclusio alterius*, relied upon to support the plaintiff's contention, is not of universal application, but depends upon the intention as discoverable upon the face of the instrument. (See Saunders *v.* Evans, 8 H.L. Cases, 729). Now what was the intention of the Imperial Parliament in passing the Act 18 and 19 Vic. c. 55, of which our Act 19 Vic. formed the Schedule? Clearly to grant to the people of Victoria responsible government. A glance at the Act 19 Vic. will show that its provisions were intended to enable the Parliament called into existence to work out the necessary machinery for the purpose of giving full effect to the operation of responsible government, and that it was not intended thereby to restrict the Government to the use of the prerogatives mentioned, because there are prerogatives not mentioned which are absolutely essential to give life to responsible government. The plaintiff's contention limiting the prerogatives in force in Victoria to those specified in the Constitution Act 19 Vic. and the Governor's Commission, namely, the convocation, prorogation, and dissolution of the Assembly, the right to the royal minerals, the power to appoint Courts, and the prerogative of mercy, cannot in my opinion, be sustained. The system of responsible government would be utterly unworkable without the discretionary prerogative powers vested in the Crown, and which are not provided for by any Statute. I shall not attempt to describe what are termed the parliamentary prerogatives. Sir J. Erskine May, in his 9th edition, page 6, says, "The prerogatives "of the Crown in connexion with the Legislature are of paramount importance and "dignity." I would say that all the prerogatives necessary for the safety and protection of the people, the administration of the law, and the conduct of public affairs in and for Victoria, under our system of responsible government, have passed as an incident to the grant of self-government (without which the grant itself would be of no effect), and may be exercised by the representative of the Crown, on the advice of responsible Ministers. There are prerogatives of the Crown creating a right and duty of which the law must take cognizance although the law does not enforce the performance of them. (See Fry, J., in Attorney-General *v.* Tomline, 12 Ch. Div., 232). It was held in that case that there existed in the Crown the right and duty as part of the prerogative of the Crown to preserve the realm from the

inroads of the sea. The prerogative right to exclude aliens is one which the law must take cognizance of although the law could not enforce the performance of the duty to protect the people of this country from an influx of aliens. It was contended that the prerogative right to exclude aliens is part of the prerogative of war and peace. I do not think that it is, and I think that it will be found that the right to exclude aliens has been exercised by other nations of the world who have not been at war with the country whose subject has been expelled or excluded by them. It was also contended that this prerogative had been lost by desuetude. Some prerogatives, no doubt, have become obsolete by disuse, but those prerogatives have been where the Crown exercised power which had been surrendered to or acquired by Parliament. The prerogative of excluding aliens is a power in the Crown for the protection of the people from foreign aggression, and stands on a totally different footing from those prerogatives used in the internal government of the kingdom which may have been taken away by Parliament or lost by desuetude. It was argued that by the passing of the Chinese Acts the prerogative of excluding them altogether had been taken away. I doubt whether that would be so if the Chinese had come in conformity with the Chinese Acts, the Crown not being named therein. I am perfectly clear that it is not so when they come in fraud of those Acts. I have said that the Court will take judicial notice of the law of nations. Self-preservation is the first law of nations as it is of individuals. I do not desire to refer to the opinions of learned text writers on international law cited during the argument, but it seems beyond all question that every nation may exercise the right of excluding aliens without giving offence to the country to which those aliens belong. As between nation and nation, it appears to me that the Government of Victoria has kept well within the rights of the British nation in excluding the Chinese, subject, of course, to any treaty obligation of which no mention was made. The question as to whether the Government of Victoria can exercise such a power is a matter between this colony and the mother country. From an international point of view, the act of the Government of Victoria would be the act of the nation, and one for which the nation would have to bear any responsibility attached thereto—for example, the *Shenandoah* case. The Government for the time being is responsible for the peace, safety, and well-being of the community. So long as their acts are within the authority of law, this Court is not concerned as to the grounds of justification for the steps taken by them. That is a matter for Parliament. I would say that the Crown of Victoria, upon the advice of responsible Ministers, if they had reasonable grounds to apprehend that this country was likely to be over-run by the influx of a large number of aliens who were coming here, not for the purpose of passing through the country, but to settle here, and who might, in course of time, out-number and dominate over the people who have made this country what it is, or who might disturb the peace of the country by coming here, have the power to exclude such persons and prevent them from landing here. With regard to the contention that the prerogatives of the Crown could only be exercised on the personal authority of the Queen, the constitutional usage, which has now become a part of our constitutional law, is that the Royal prerogatives, with one exception, as far as I remember, namely, the right of Her Majesty to dismiss her Ministers from office, which the incoming Ministry must defend and be responsible for, can only be exercised upon the advice of the responsible advisers of the Crown, and any attempt to exercise those powers by the Queen, or by her representative without advice, would involve the resignation of her Ministers. We cannot learn, and have no right to ask in this Court, whether any advice, or what advice, has been tendered to Her Majesty. She is the head of the Government here, and the presumption would be, that whenever the discretionary powers of the Crown resting in the Royal prerogative have been exercised for the safety or protection of the people and for the good government of the country, and her responsible advisers continue in her service, that the prerogative has been properly exercised. The constitutional effect of this change in the manner of exercising the prerogative is to transfer the power of the prerogative from the Crown to the people, as represented by the Commons in Parliament, to whom Ministers, upon whose authority it is exercised, are responsible. I am, therefore, of opinion that the second part of the plea, if amended, as suggested, would also be an answer to this action.

MR. JUSTICE WILLIAMS' JUDGMENT.

Mr. Justice Williams said:—Having regard to what is stated in the judgment of the Chief Justice, it is quite unnecessary for me to notice the nature of the pleadings in this action further than to observe that the fourth paragraph of the defence raises two defences (1)—(which I place first merely for the sake of convenience and in order to dispose of it)—That the wrongful act complained of was done by the defendant to an alien, and was adopted by the responsible advisers of the Crown in and for the Colony of Victoria, thus, it is alleged, converted into an act of State. (2.) That the right or power to exclude aliens from the territory of Victoria is vested in the Governor of Victoria, to be exercised by him under and in accordance with the advice of his responsible Ministers; that in this case his responsible Ministers exercised the power so vested, and that the sanction or concurrence of the Governor to or with the exercise of that power is to be presumed from the fact that he has continued the Ministers who so exercised it in office as his responsible advisers. Upon this second line of defence it is important to note that the Attorney-General, at the outset of his argument, admitted that he relied upon no sanction, concurrence, or assent of the Governor other than that to be inferred from this continuance in office. These being the two lines of defence, I will, for the sake of convenience, deal first with that which may be shortly called the act of State defence. The answer to this is simply, that that which is called and relied on in the present case as an act of State is no act of State at all. A wrongful act done to an alien, if ratified by the Sovereign power, would undoubtedly become thereby an act of State, for which the alien could seek redress in the municipal courts of the Sovereign power. But this Colony is not a Sovereign power; as far as we are concerned, the Imperial Government alone occupies that position; nor is the Sovereign power vested in the Governor of this Colony; and to render the act complained of an act of State, either the ratification of Her Majesty's Imperial advisers would be required, or, if the Sovereign power were vested in the Governor, the ratification of the Governor. This principle is clearly established by the judgment of the Privy Council in the case of the Secretary of State for India *v.* Kamachee Boye (13 Moore P.C., p. 22). The result of the judgment in that case is stated at p. 86 in these words:—"The result, in their Lordships' opinion, is that the property now claimed by the respondent has been seized *by the British Government acting as a Sovereign power* through its *delegate* the East Indian Company, and that the act so done, with its consequences, is an act of State over which the Supreme Court has no jurisdiction" (the important fact in that case being the fact that the East India Company was *the delegate of the Sovereign power*). Even more forcibly and clearly is the same principle established by the judgment of Mr. Baron Parke (3 Knapp, pp. 343, 344), cited, approved of, and acted upon by the Privy Council in the case of Musgrave *v.* Pulido (5 Appeal Cases, pp. 109, 110). If the Governor of this Colony has the Sovereign power vested in him, it is clear that outside his commission there is nothing else which so vests it. But there is no such delegation or anything approaching to it contained in his commission. The Governor of this Colony is clearly not a Viceroy, as is commonly supposed, and the term Vice-Regal is inappropriate to the position he occupies. "He is merely an officer of the Imperial Government with a limited authority "from the Crown, and his assumption of an act of Sovereign power out of the limits "of the authority so given to him is purely void, and the Courts of the Colony over "which he presided could give it no legal effect." (Musgrave *v.* Pulido at page 110.) No person or body of persons in this Colony is the *alter ego* of the Sovereign; to no person or body of persons has there been a delegation by the Sovereign of the whole Royal power; and as this Colony is manifestly not a Sovereign power, but is only the Colony or dependency of a Sovereign power, no sanction or ratification can be exercised here which would have the effect of merging in an act of State the wrongful act of a subject to an alien, and so barring the alien from seeking redress in our Courts of Justice. The cases I have referred to are, I think, sufficient, to dispose of this branch of the defence, and it now remains to consider the other, and by far the more important. Have we in this Colony the right or power to exclude aliens from our territory? Is that power vested by law in the Governor of this Colony so as to be exercisable by his responsible advisers? I limit the question purposely in this way, for it is not pretended either that any such power is vested in the Governor by his commission, or

that, however it may have been vested, it has been exercised in any other way than through his responsible advisers. Upon this second line of defence lengthy and elaborate argument has been addressed to the Court, chiefly upon the points (1) as to whether the prerogative or right to exclude aliens ever existed in England; (2) whether, if it ever existed, it has not fallen into disuse; (3) as to the effect of non-user; (4) as to whether the legislation as regards Chinese in force in this Colony does not give members of that particular nationality a statutory right to enter the Colony upon compliance with the statutory conditions. All these questions are no doubt full of interest, and elaborate treatises might be written upon them. But I do not desire to decide more than is necessary; and if a decision upon one, and that the most important and substantial point in the case, decides this portion of the defence in favour of the plaintiff, it is manifestly unnecessary to express an opinion upon any other point, however interesting the expression of an opinion upon that other point might be. I will assume therefore, without offering any opinion thereupon, that the prerogative, or right referred to, did and does exist in England, that it has not there fallen into disuse, or that, if it has, such non-user does not affect or prevent its exercise there. But making all these assumptions in favour of the defendant and against the plaintiff, none of them affect the main and substantial question in the case, and the only question with which I am concerned, and that is this, whether, *under any law* in force in Victoria, the Governor, or the Governor with the advice of his Ministers, or Ministers, has or have the power expressly or impliedly to exclude aliens from our territory. Just as in regard to that branch of the defence which I have dealt with first we find no trace of a delegation of the Sovereign power to the Governor in his commission, so by the same instrument is there nothing approaching to a power to exclude aliens vested in that officer. If it exists, therefore, here at all, it must be by virtue of some law in force in Victoria; and unless it be by virtue of our "Constitution Act," there is no other law under which it can be contended that we get such a power, either expressly or by implication. Then, again, it has not been pretended, nor is it pretended, either upon the pleadings or in argument, that the Governor has exercised this alleged power personally, or by virtue of any authority the exercise of which is vested in him personally, but the position taken is, that the power claimed has in this case been exercised by Ministers with the sanction and concurrence of the Governor, signified by their continuance in office. Therefore, the one and only necessary point to be considered is this: Is the power claimed vested by any law in force in Victoria in the Governor, and is that power, if so vested, to be exercised through his Ministers? If I come to the conclusion that no such power exists in Victoria, then it is manifestly not only unnecessary for me to consider the other points to which I have referred, but also the point whether Chinese who comply with the statutory conditions have or have not a statutory right to be admitted into our territory.

I confess I have come to the conclusion at which I have arrived with great reluctance. I fully recognise the importance of our decision, and of its possible effect upon the future of this Colony. I do not hesitate to say that, if the conclusion at which I have arrived be a right one, we have no *legal* means of preventing cargoes of alien convicts, if they were sent here to-morrow, from landing on and polluting our shores. I have been for years, in common with, I believe, very many others, under the delusion (as I must term it) that we enjoyed in this Colony responsible government in the proper sense of the term. I awake to find, as far as my opinion goes, that we have merely an instalment of responsible government. It would have given me sincere satisfaction to have been enabled, in pronouncing my judgment, to have expressed my concurrence with the conclusion of the Chief Justice upon this point; but I have felt myself forced as a lawyer, construing our law as a lawyer, to differ from him on this most important question, namely, as to what is the system of responsible government which we have had granted to us in Victoria; or, to put it more concretely, does the system of responsible government granted to us, be its measure full or scanty, include the power or right to prevent aliens from landing on our territory? The answer to this question must depend on the construction placed upon our "Constitution Act." As I understand the judgment of the Chief Justice, he holds that, under that Act, so far as regards our internal affairs, and only so far as they are concerned, we have had granted to us a full and complete system or measure of responsible government. In this he holds to be included the right to prevent aliens landing on our shores, inasmuch as, in his opinion, the exercise of that right relates to the management of our internal affairs, and is a right which it may be necessary to exercise for the preservation of our own territory.

I do not, at the outset, think that it is clear that the right claimed to exclude aliens is not one which affects and concerns Imperial interests; in other words, I do not think it is clear that it relates solely to our own internal affairs and interests; but passing that by with an expression of doubt, undetermined for the present, I do not think we have the right or power claimed. The Governor, either with or without the advice of Ministers, has, as we have seen, no such authority conveyed to him by his commission; then in what law or instrument is the power alleged to be contained? All, as I understand, are agreed that, if it exists anywhere, it exists in the "Constitution Act," and that if it exists, it exists within the limitation to which I have just referred. Whether, therefore, we affirm that the power exists, or deny its existence, it is to a consideration of what has passed to us under the "Constitution Act" that we are driven. I do not hesitate to say that the phraseology of the Act is so vague and obscure in parts as to create grave doubts as to its meaning, where no doubt need have existed, and that a study of it leaves the impression upon one's mind that those who framed it, from the colonial point of view, were fearful of expressing too plainly, either what were the privileges and rights sought and thought to be obtained by it, or, on the other hand, from the Imperial point of view, of stating too bluntly what rights and privileges it was intended should not pass to the Colony under it.

Passing now to an examination of the "Constitution Act," what principles of construction should we apply, and, applying those principles, what privileges and rights, generally and briefly, pass to this Colony under it? If the object of the Act was to create *a* system of responsible government in Victoria, and if a system of responsible government was created by the Act, there can be no doubt that to the construction of the Act we should apply the principles—(1) that the grant of that system, whatever it may amount to, carries with it a grant of all such powers as are necessary to the existence of that system, and to the proper exercise of the functions inherent in or incident to that system (Barton *v.* Taylor, 11 Appeal Cases, p. 203); and (2) that whenever a law grants anything, it impliedly also grants that without which the thing granted could not exist (*quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa esse non potest*) (Barton *v.* Taylor, p. 207). Further, that to the construction of such an Act as the one now in question we should apply with caution another equally well known maxim—*Expressio unius exclusio alterius.* Now, to begin with, looking merely at the Act itself (which, in construing this or any other Act of Parliament, is the legitimate course), and not at despatches or speeches in the Imperial or any other Parliament (which, for the purpose of giving a legal construction to legislation, are, in my opinion, clearly valueless), it is, at the least, open to doubt whether it was *the* primary object of the Act to create even *a* system of responsible government in Victoria. If that was its primary object, then it is very singular that there is no mention whatever of so high or important an object in the preamble, though there is express mention of another, and certainly not more important object:—"Whereas it is expedient to establish in the said Colony separate Legisla-"tive Houses, and to vest in them as well the powers and functions of the Legislative "Council now subsisting as the other and additional powers and functions hereinafter "mentioned." I take leave, therefore, at the outset, to doubt whether, keeping strictly within the four corners of the Act, it was its primary object to create a system of responsible government. I think its primary object and intention was to do that which is stated in the preamble. But even if this be so, it may well be that, irrespective altogether of the preamble, the operative part of the Act creates a system of responsible government. If it does, then the principles or canons of construction to which I have referred apply to the existence and working of *the system so created*, but no further. In other words I am only at liberty to regard as incorporated in the Act, though not expressed, all such powers as may be necessary to the existence and working of *that* system, and without which the system so created could have no vitality. But there may be infinite varieties and infinite degrees of responsible government, and powers which may well be necessary to the existence, or working, or vitality, of one system may not be so as to another. We, therefore, find ourselves continually and on all sides driven back to this central point, what is the measure of government which has passed to us under our deed of grant (if I may so call it)? With what limitations is it surrounded? What powers are conveyed to us, and what not? I am of opinion that *a* system or *a* measure of responsible government is created by the Act. This I think may fairly be inferred from the somewhat loosely-worded provision in the latter part of section 37, "with the exception of

"the appointments of the officers liable to retire from office on political grounds, which "appointments shall be vested in the Governor alone." This evidently relates to the appointment of Ministers of the Crown in and for the Colony of Victoria, or, in other words, to the appointment of the Governor's responsible advisers. But to say that an isolated expression of this kind gives to this Colony the same rights and powers in regard to all colonial and local affairs, and applicable thereto, as the British Government possesses in regard to the affairs of Great Britain, is the enunciation of a proposition which is not only startling but positively unintelligible to me. We have certain powers, privileges, and rights *expressly* granted to us by the Act, and, mindful of the principles of construction applicable to an Act of this description, those powers, privileges, and rights, so expressly granted, carry with them all such other implied powers as are necessary to the existence, enjoyment, and use of those powers, rights, and privileges. But, as a lawyer, I protest against abusing these grand and beneficial principles to the extent of using them to create and call into existence a primary power, or to supplement or aid that which has no existence. Under "The Constitution Act," we are at first authorized to establish two Legislative Houses instead of one (Section I) that being, as I would again observe, the primary object of the Act as expressed in the preamble; and, also, by the same section, power is given to both Houses to make laws conjointly in and for Victoria, subject to Her Majesty's assent. Then, by section 28, the Governor (this expression by section 62, meaning the person for the time being lawfully administering the Government of Victoria, the word "alone" and the words "with the advice of the Executive Council," both of which expressions are found in another part of the Act, being omitted) is to convoke and to prorogue both the Council and the Assembly and to dissolve the Assembly. By section 35, power is given to the Legislature of Victoria to define its privileges, powers, and immunities within a certain limit. By section 36, it shall be lawful for *the Governor* to send back to the Council or Assembly for consideration any amendment which he may desire to be made in any Bill presented to him for Her Majesty's assent. Then comes section 37, by which power is given to "*the Governor with the advice of his "Executive Council"* to appoint to public offices, excepting Ministers of the Crown, whose appointments are vested in the "*Governor alone.*" By section 43, power is given to impose and levy duties of Customs. Then come sections relating to the handing over all revenues of the Crown to the Colony, and to the charging such revenues with payment of the civil list, &c. By section 54, power is given to Parliament to make laws for regulating the sale, disposal, letting, and occupation of waste lands of the Crown and of all mines and minerals therein. By section 55, power to appropriate the consolidated revenue. Then comes the well-known and much-debated sections, 56 and 57, by which it is provided that all Bills for appropriating any part of the revenue and for imposing any duty, rate, tax, rent, return, or impost shall originate in the Assembly, and may be rejected, but not altered, by the Council, and that no such Bill shall be originated in the Assembly which shall not have been *first* recommended by a message of "*the Governor*" to the Assembly. By section 60, power is given to Parliament to repeal, alter, or vary the Act, subject to certain limitations and conditions, and by section 61 power is given to the Legislature to alter the Electoral Act. I have now, I think, generally and briefly enumerated nearly all, if not all, the powers, rights, and privileges which are expressed as passing under "The Constitution Act," and I at once admit that all other powers which, though not expressed, are necessary to the existence, working, or functional life of the expressed powers, pass with them, but none others. Now, how can it be said that the power or right to exclude aliens from our territory is in any sense necessary to the exercise, enjoyment, or use of any of the powers, rights, or privileges expressed to be granted? It might be urged with far greater force that the exercise of the prerogative of mercy is appurtenant, or incident to, or inherent in the powers vested by "The Constitution Act." And yet I venture to think that the exercise of the prerogative of mercy does not pass to us under *that* Act. Whether it was purposely withheld or not is another matter. But, in my opinion, we have it not, as a part of our system of Government, so far as "The Constitution Act" is concerned; and except in so far as this power can be exercised here by virtue of secs. 318 and 319 of the "Criminal Law and Practice Statute 1864," and under the Governor's instructions, in every case calling for its exercise, recourse must be had to the Sovereign through the Sovereign's Imperial advisers. But, as it so happens, this prerogative may be exercised here, not by any law in force in Victoria, except in so far as it may be exercised by virtue of secs. 318 and 319 of the "Criminal Law and

Practice Statute," but by the instructions to the Governor as an Imperial officer. In the same way as I have directed attention to the expressions in " The Constitution Act" "The Governor," "The Governor alone," "The Governor with the advice of his Executive Council," and to the interpretation section (62), I desire here to call attention to the peculiar and significant phraseology used in sections 318 and 319 of the "Criminal Law and Practice Statute." By section 318 "*the Governor*" may grant a conditional remission of sentence, and "*the Governor in Council*" may make rules for the mitigation or remission, conditional or otherwise, of sentences, as an incentive to good conduct while undergoing sentence. By section 319 "*the Governor*" may extend mercy *conditionally* to an offender under sentence of death. The Governor's instructions upon this point read as follows:—" The Governor shall not pardon or reprieve " any such offender (an offender under sentence of death) unless it shall appear to him " expedient so to do upon receiving the advice of the Executive Council. But in all " cases he is to decide either to extend or to withhold a pardon or reprieve according to " *his own deliberate judgment, whether the members of the Executive Council concur* " *therein or otherwise.*" It would appear therefore that there is a *portion* of the prerogative of mercy vested in the Governor and not in the Governor in Council by the " Criminal Law and Practice Statute," and that there is an authority given to the Governor, as an Imperial agent of his Imperial principal, by the instructions, as to its further and fuller exercise. But there is no mention whatever of the exercise of such a power in " The Constitution Act," and, unless it can be dragged into "The Constitution Act" by one or other of the two principles to which I have already referred, it is not contained in that Act at all. For the reasons I have previously stated, this power cannot be created by calling in aid those principles; and if this power, the power to extend mercy, cannot be so created, most assuredly the power claimed to exclude aliens cannot. But the 3rd maxim, to which I have referred, and which I have suggested should be used with caution in construing an Act of this description, " *expressio unius exclusio alterius*," cannot and should not be discarded in the consideration of the question as to whether we get, under " The Constitution Act," either the one or the other of the powers to which I have referred. The Act is absolutely silent as to a conveyance or grant of either of these powers, and yet it does convey to us in express terms powers of certainly no greater magnitude. I have already enumerated what those powers, rights, and privileges are; but as somewhat *ejusdem generis* with those that I have mentioned as not passing, I may mention the power to convoke, prorogue, and dissolve Parliament, section 28, and the power to alienate Crown Lands and Crown minerals, section 54. These form the subject of express grant, and of course any powers or rights necessary to the exercise of those powers pass with the grant of them; but as regards the power of excluding aliens and of extending mercy there is not even the faintest suggestion in the Act. Therefore for this, and for the other reasons to which I have referred, I arrive at the conclusion, that under " The Constitution Act," we do not possess the power which forms the principal subject matter of the defence now under consideration. It is a power which possibly may have been withheld for the reason that its exercise here might cause complications between the Imperial Government and other nationalities. Being withheld, it leaves us in this most unpleasant and invidious position, that we are at present without the *legal* means of preventing the scum or desperadoes of alien nationalities from landing on our territory whenever it may suit them to come here. For the reasons I have given, judgment, in my opinion, should upon this argument be entered for the plaintiff.

MR. JUSTICE HOLROYD'S JUDGMENT.

Mr. Justice Holroyd said:—In this case we have to decide the questions of law raised by the pleadings, which are contained in the fourth paragraph of the defence, and in a condensed form may be reduced to two; namely, first, whether under the circumstances set forth in that paragraph Her Majesty's Ministers for Victoria could on behalf of Her Majesty lawfully exercise a right to exclude the plaintiff, an alien friend, from Victoria, as a part of the Royal prerogative; and, secondly, whether the act of preventing the plaintiff from landing in Victoria under those circumstances was an act of State policy, lawfully ratified by Her Majesty's Ministers for Victoria on behalf of Her Majesty, or, shortly, an act of State.

Each of these questions, it is obvious, may involve the discussion of several propositions. The fact of the plaintiff having arrived in Victorian waters on board a vessel which carried immigrants in excess of the proper number has only been introduced into the defence as a circumstance on which to found an argument in discussing those propositions.

Now, as to the first question, nobody has disputed the Attorney-General's proposition, that by international law every nation has the right of excluding foreigners from its territory, as well friends as enemies. But what we have here in the first place to consider is, by whom, according to English law, that right may be exercised as regards alien friends in the mother country, whether by the Crown or by Parliament. On this point the result of all the precedents and historical passages that have been cited to us may be very briefly summarised. The power to exclude aliens in time of peace, both by forbidding them to enter and by compelling them to depart the realm, has been claimed for the Crown as part of its prerogative down to quite modern times. Between the Conquest and the end of the sixteenth century, as we are informed by learned writers, it was exercised not unfrequently; although only one well-authenticated instance was mentioned to us, the expulsion of the Jews by King Edward the First; a somewhat unfortunate instance, considering the feelings by which the whole population, from the highest to the lowest, were then animated towards the Jews. On the other hand, it appears that, since the reign of Queen Elizabeth, this power has never been exercised by the Sovereign without the sanction of Parliament, unless the case of *re* Adam (1 Moo. P.C. 460) furnishes a solitary exception to my statement. In that case, Mr. Adam, an alien friend, had been banished from the island of Mauritius by order of the Governor and Council under instructions from the British Government; and it was held by the Judicial Committee of the Privy Council that by the law of the island an alien friend could be removed from the island by the Executive Government at its pleasure without having been convicted of any offence, unless he had procured the permission of the Government to establish his domicile there. The judgment of the Privy Council proceeded, to use the words of Lord Brougham, "upon the peculiar provisions of the French law, "which prevailed in the island," and would have been just the reverse if English law had prevailed there. According to the law of France, as it then stood in the island, the Executive Government had power to remove any alien not domiciled by its authority; and for this reason it was resolved that Mr. Adam could be lawfully deported. He was not removed by force, but went away under pain of being forcibly deported, which was the same thing. French prerogative, however, was not English prerogative; and the case of *re* Adam furnishes no precedent for ascribing to an English Sovereign a power which had been inherent in the Crown of France, and was still existent in the Mauritius as governed by French law. The judgment, in my opinion, points to a directly opposite conclusion. To put it in another form, the offence which the foreigner had committed by entering the island illegally could, by the French law of the island, be punished by the Sovereign, or his delegate, by deporting the foreigner. But, according to English law, no resident in the United Kingdom, whether native or foreigner, can be deported at the arbitrary will of the Executive for any offence alleged against him. For any offence he must be tried, and, if convicted, punished as the law prescribes.

That the power of excluding alien friends ever existed as a part of the perogative has been vehemently denied by statesmen and jurists of high authority, quite as illustrious as the advocates for its existence. To one class of foreigners, namely,

merchants, both in the *Magna Charta* of King John, and in that of the first year of Henry the Third (A.D. 1215 and 1216), free right of ingress and egress and of abiding and travelling from place to place in England, except in time of war, is accorded as one of the ancient and lawful usages of the realm. Probably this class of aliens was specially mentioned as the only one that specially needed protection, foreign merchants having suffered so much from King John's exactions; but that is only conjecture. In the charter of the following year a reservation is introduced, which rather countenances the authority of the Sovereign to deprive even merchants on occasion of the benefit of this old and excellent usage. The merchants are declared free to come and go, "*nisi publicè ante prohibiti fuerint*," "unless they shall have been "publicly prohibited beforehand." On a question of this kind I attach comparatively little importance to what was done or said before the close of the sixteenth century. Up to that time constitutional usage was quite uncrystallized; in fact, it had hardly begun to settle. Before then hundreds of precedents might be found, stretches of Royal authority unchallenged at the time, for acts which were afterwards discovered to be gross infringements of the privileges of Parliament or of the liberties of the people. But I am very much impressed with the fact that, for nearly three centuries, no British Sovereign has attempted to exercise the right of expelling aliens or of preventing their intrusion in time of peace by virtue of his prerogative; and no British Minister, not even the strongest advocate in theory for the plenitude of the Royal authority, has ventured in this matter to reduce his theory into practice. Whenever it has been found necessary to take measures of precaution with respect to aliens resident in the country or expected to arrive, a temporary Act of Parliament has been passed for the purpose. The Acts of 33, Geo. III., chap. 4, and 56, Geo. III., chap. 86, to which allusion has been made, are examples; and the Act 11 and 12 Vict., chap. 20, is another example. The Attorney-General argued that these two Statutes of George the Third recognised the right of the Sovereign to exclude alien friends, and he referred particularly to the 7th section of the Act 33, Geo. III., chap. 4, contrasting it with section 18. Section 7, abbreviated, enacts that whenever His Majesty shall think fit, for the safety of the kingdom, to direct that aliens other than merchants shall not be landed in the kingdom, or only landed at prescribed places, the master of any ship disobeying His Majesty's orders shall forfeit £50 for every alien landed in contravention of it. Section 18, abbreviated, enacts that it shall be lawful for His Majesty to direct aliens, with certain specified exceptions, when resident in the country, to reside in such district as His Majesty shall think proper. The suggested contrast rests in this, that in the one case disobedience to the direction of His Majesty is made punishable, and in the other that His Majesty is empowered to direct. Section 15, which contains, with respect to ordering the departure of aliens, provisions similar to those of section 7 with respect to prohibiting their intrusion, supports the Attorney-General's argument. The enactments of sections 7 and 15 are so framed that they would have been equally efficacious, even though without them His Majesty could not lawfully have directed that any alien should be kept out or expelled; but I believe, nevertheless, that the statesmen under whose auspices the Alien Acts of George the Third were passed did intend to recognise, so far as they could without distinctly affirming it, the prerogative of the Crown to exclude aliens from the United Kingdom; and that was the least that could have been expected from their openly expressed opinions. If, however, the Acts of George the Third recognise this power in the Crown, the Act chap. 20 of 11 and 12 Victoria does not, but the reverse. The first section of that Statute authorizes a Secretary of State in Great Britain, or the Lord-Lieutenant in Ireland, if he thinks it expedient, on certain information supplied to him, to direct, by order under his hand, that any alien, with the exceptions mentioned in section 6, shall depart the realm within a limited time; and the Act then proceeds to find means for enforcing the order. If the Crown had been supposed to possess the right claimed for it, either as to aliens in general or as to aliens other than merchants, the power conferred by the first section of 11 and 12 Vict., chap. 20, would have been wholly or partially unnecessary, and the section would have been framed in more guarded language, so as not to invade the prerogative. Upon the whole, I think that the right of excluding alien friends from the United Kingdom is now vested in the Parliament of the United Kingdom, and not in the Sovereign alone. I cannot say that as a part of the prerogative it has fallen into desuetude, for that would imply that it once legally existed as such; but, leaving its legal existence open to question, constitutional usage,

hardening with time, has excluded it from the prerogative. Just the same thing was decided by the House of Lords when Sir James Parke was created a life-peer by the title of Baron Wensleydale. It was established beyond dispute that the Sovereign had in former times created life-peers who by virtue of their creation assumed to sit and sat in the House of Lords. But it was resolved, nevertheless, that, although the Crown could still create life-peers, it could not entitle any person so ennobled to sit in a chamber of hereditary legislators, which, by constitutional usage extending over four centuries, the House of Lords had become.

Suppose now, to adopt the language of the Attorney-General, that the Sovereign right which every nation possesses to interfere with foreigners entering its dominions is under the English Constitution vested in the Queen. He then contends that, as regards local affairs, this branch of the prerogative is exercisable by the Queen's Ministers for Victoria; and he works out his conception in this way. The Queen's prerogative, he says, is active all over her Empire. Personally she cannot exercise this branch of it anywhere. Ergo, it must be exercised on her behalf in or for Victoria either by her Ministers for Imperial affairs or by her Ministers for Victoria. But responsible government has been established in Victoria, with Ministers responsible as to all local affairs; and thence it results that the right to advise the Queen as to such affairs has been taken away from the Imperial advisers of the Crown (that is, from Her Majesty's Ministers in the United Kingdom), and has been transferred by law to Her Ministers in and for Victoria. The exclusion of foreigners from Victoria, although it may involve Imperial consequences, is a local affair, inasmuch as the power to exclude them is necessary for the good government of the colony. The Queen must therefore exercise this part of the prerogative through her responsible Ministers in the Colony, either apart from the Governor, or by the Governor as the local repository of it. It must be assumed that the Queen or the Governor, as the case may require, has assented to what has been ordered by Her Majesty's Ministers for the Colony on her behalf, inasmuch as they have not been dismissed from office. I have pieced together different portions of the Attorney-General's address, but I think I have rendered his argument faithfully, and as nearly as possible in his own words. Speaking with great respect, the argument appears to me very subtle, but unsound.

At the outset, we must not be misled by abstract terms. No such thing as responsible goverment has been bestowed upon the Colony by name; and it could not be so bestowed. There is no cut-and-dried institution called responsible government, identical in all countries where it exists. Whatever measure of self-government has been imparted to the Colony, we must search for it in the Statute law, and collect and consolidate it as best we may. Nobody can have studied the development of self-government in the Australian Colonies without having observed the tentative and cautious manner in which British statesmen have proceeded in their arduous task. The impulse which has warmed them into action has always been supplied from the Colonies themselves. But we must not forget this, that it is the Parliament of the United Kingdom, guided by the statesmen of the mother country, that has granted to this Colony the whole measure of self-government which it possesses. It was the Parliament of the United Kingdom which authorized Her Majesty to give the Royal assent to the Constitution Act, and it is the intention of the Parliament of the United Kingdom, as disclosed in "The Constitution Act" of which it approved, that we must set ourselves to discover.

By the laws which "The Constitution Act" preserved in force, and by others which have since been passed by the Legislature of this Colony, and assented to by the Crown, the Governor has been authorized or commanded, either alone, or more usually with the advice of his Executive Council, to discharge a great number of duties, involving a wide administrative control. Admitting that all the incidents to that administrative control, by which I mean everything that is necessary for the use of the specific powers and faculties conferred, may be implied as given in with them, we are still driven back to the starting point. What are those specific powers and faculties? The power of excluding aliens is not one of them.

By "The Constitution Act" itself certain powers are conferred upon the Governor similar to some of those which in the United Kingdom the Queen enjoys as her exclusive privilege; notably that of proroguing the Council and Assembly and dissolving the Assembly, that of appointing any officers liable to retire on political grounds, and that of appointing with the advice of the Executive Council all other public officers under the Government of Victoria. Powers of this class having been

bestowed in express terms, we ought to presume, according to the ordinary rule of construction, that no others of the same class were intended to pass. The rule is not one of universal application; but in the present instance it should be rigidly applied, inasmuch as it is still a fundamental maxim that the Crown is not bound by any Statute unless expressly therein named, and, as a corollary, the Royal prerogative cannot be touched, except in so far as therein expressed. It is, moreover, conceded that the exclusion of aliens is not a local affair in its consequences, which might affect the whole Empire; and that circumstance furnishes an additional reason for not implying an intention on the part of the Home Parliament to vest in the Governor a power which his advisers here might recommend him to execute in a manner detrimental to Imperial interests. Except in so far as his position has been altered by positive enactment of the Home Parliament, or by some Statute passed here and assented to by Her Majesty, the Governor himself is the servant of the Crown, tied down by his commission and instructions. It is not pretended that he has been permitted by either to shut out or to remove aliens; and if no such authority has been distinctly vested in him by Statute, or delegated to him by the Queen, we may safely conclude that he does not possess it.

But then it has been argued, as I have already stated, that if the right of excluding alien friends from Victoria as part of the prerogative still resides in Her Majesty, and has not been vested in or delegated to the Governor, Her Majesty's Ministers for this Colony, passing by the Governor, can exercise it directly on her behalf, and must be deemed to have exercised it with her sanction, unless they are dismissed. I have not the slightest hesitation in denying this proposition. What is claimed by the Attorney-General for the Ministers of the Crown in Victoria, not in terms, but in substance, is this, that, if the prerogative as to excluding alien friends still exists, they can exercise it as regards this Colony at their uncontrolled discretion. Even were they on the spot, able practically to consult with the Queen in person, and so advise her, which they are not, yet, as she cannot dismiss them and appoint others, it would be perfectly immaterial whether she approved of what they did or not. The constitutional fiction, that Her Majesty approves of what Her Ministers have done because she does not dismiss them, cannot be applied to this case.

The practical application of the Attorney-General's theory might lead to some curious results. The main purpose of "The Constitution Act," as it is to be gathered from intrinsic evidence, was to constitute, in lieu of the Legislative Council then subsisting under the Act 13 and 14 Vic., c. 59, by which the district of Port Phillip had been erected into a separate Colony, separate Legislative Houses with enlarged authority and functions. The preamble recites that purpose, and no other. By "The Constitution Act" the Governor is not compelled to assent to any Bill on Her Majesty's behalf; and any Bill to which he gives his assent may within a limited time be disallowed by Her Majesty. Her veto cannot be contested, and, when she exerts it, she acts by the advice of her responsible Ministers at home. (See 5 and 6 Vic., c. 76., ss. 31, 32, 33, and 40; 7 and 8 Vic., c. 74., s. 7; 13 and 14 Vic., c. 59, ss. 12 and 32; 18 and 19 Vic., c. 55, s. 3.) As to the classes of Bills to which the Governor can only assent provisionally, their operation being suspended until the signification of Her Majesty's pleasure thereon, or to which he must absolutely refuse the Royal assent, he must be guided by the instructions which he receives from the Home Government. By his instructions the Governor is now explicitly prohibited from assenting to any Bill inconsistent with obligations imposed upon Her Majesty by treaty. Up to the present time the Legislature of this Colony never could, and cannot now, pass into law any Bill inconsistent with obligations imposed upon Her Majesty by treaty; for the Governor cannot lawfully assent in Her Majesty's name to any such Bill until his instructions are altered. I am speaking generally, and quite without reference to the treaties of Nan-king and Tien-Sing, of which I possess no copy; and I do not know what obligations are imposed upon Her Majesty by either of those treaties. But supposing any treaty now to subsist between the Crown and any foreign State, whereby Her Majesty is obliged to permit the subjects of such State in time of peace to enter Victoria upon due observance of any conditions imposed upon their entry by any Statute having legal force in Victoria, that treaty cannot be violated by colonial legislation. If Ministers here can dispense with the Governor, and act directly on Her Majesty's behalf, and in fact, against her will, they can, without resorting to legislation, lawfully break in her name a treaty which the Colonial Parliament has been restrained from breaking.

I come now to the second question, whether the defendant's act in preventing the plaintiff from landing was an act of State. It is admitted, of course, that his act was approved of by the Minister of Customs and his colleagues. This second question is quite distinct from the first, although partly depending on similar arguments. An act of State, according to Mr. Justice Stephen's definition, is some act injurious (by which I understand him to mean "hurtful" and not necessarily "wrongful") to the person or property of some one who is not at the time a subject of Her Majesty, and which has been done by a representative of Her Majesty's authority civil or military, and has been sanctioned by Her Majesty either by prior command or by subsequent ratification. If an action is brought by a foreigner in an English Court for an alleged wrong, and it is proved that the act complained of is an act of State, the Court is deprived of jurisdiction to inquire into it's legality, although the same act, if done to a British subject, might have given him a clear right of action. It is disputable whether an act of this description can be committed within Her Majesty's dominions. Mr. Justice Stephen thinks that it can. But, at any rate, it is essential to its character that it should be committed against one who is not at the time a British subject; and that it should be sanctioned by Her Majesty as head of the State, representing it in its relations with foreign powers. The Attorney-General contended that the exclusion of aliens from Victoria was a local matter, that Her Majesty's Ministers for the Colony were entitled to advise Her Majesty with regard to local matters, and that, as they had sanctioned the act, she must be supposed to have known of it and sanctioned it also. But, from its very nature, an act of State, in whatever place it may be done, must be an act of Imperial concern, of which the immediate consequences may fall upon the whole Empire. The wrong having been sanctioned by the Sovereign, or by the body in whom resides the supreme authority with regard to international relations, has been done by the State itself, and can only be redressed by war, if the State declines to afford satisfaction.

With respect to such an Act, Her Majesty's Home Ministers alone can advise her; Her Ministers for Victoria cannot, directly or indirectly; and necessarily, therefore, their knowledge cannot be accepted as her knowledge, nor their sanction as her sanction. How can Her Majesty sanction an act of State for Victoria, and repudiate it for the rest of the Empire; and if she cannot repudiate it for the rest of the Empire, how can it be called local to Victoria? Victoria is not a State by herself: she is only a component part of a great Empire.

Before quitting this branch of the subject, I would advert to the case of Buron *v.* Denman (2 Exh. 167), cited as establishing, as a conclusion of law, that when the knowledge of Ministers is proved, the knowledge of the Crown must be assumed. The action was tried at Bar, and Parke, B., summing up for the Court, told the jury, that if the Crown, with knowledge of what had been done, ratified the defendant's act by the Secretary of State or the Lords of the Admiralty, the action could not be maintained. From his summing up, as reported, but which may have been abridged in the report, he must, as it appears to me, have directed the jury not that they were obliged, but that they were at liberty to infer the Crown's knowledge of the act from the evidence of its having been known to and approved by two Secretaries of State and the Lords of the Admiralty, who in the due discharge of their duty would communicate it to the Sovereign; and the jury found that the Crown knew of the act. If the effect of the summing up in Buron *v.* Denman is what I understand it to be, then, notwithstanding that the knowledge of Ministers has been conclusively proved, or has been admitted, evidence might be received to show that the Crown did not in fact possess that knowledge. It is not therefore a conclusion of law that her Ministers' ratification is Her Majesty's ratification. It is only a presumption liable to be rebutted.

My judgment in this case is not affected by the legality or illegality of the presence of the plaintiff in the Port of Melbourne. But, as the point has been debated, and the judgment of others may be affected by it, I desire to express my views upon the construction of the "Chinese Act 1881." There can be no mistake about the object of the Legislature in passing that Act. They desired to diminish the influx of Chinese immigrants into this Colony, and this object they endeavoured to accomplish in two ways. In the first place, they limited the number of Chinese that might be carried on board any vessel into any port in Victoria in proportion to the tonnage of the vessel, allowing one immigrant only to every 100 tons. Secondly, they imposed on all Chinese immigrants, arriving in any vessel from parts beyond Victoria and desiring to land at any port or place in the Colony, a poll-tax of £10, to be paid by

the master of the vessel to the proper officer of Customs before permitting the immigrant to land or making any entry at the Customs. Breaches of both these enactments are punishable in the manner which the Act prescribes; but there is a significant and designed distinction between the two in respect of the persons on whom the liability for a breach is cast. The master of any vessel permitting any immigrant to land or escape from his vessel at any port in Victoria before payment of the poll-tax is liable to a penalty of £50 for each offence in addition to the amount of the tax. Any immigrant attempting to evade the tax is liable to a penalty of £10, or in default to twelve months' imprisonment unless the penalty be sooner paid. On the other hand, for every immigrant imported in excess of the tonnage limitation the owner master or charterer of the vessel is liable to a penalty of £100; but the immigrant, who is powerless to prevent either owner master or charterer from violating the law, is not liable to any penalty. The master who permits a Chinaman to evade the poll-tax, and the Chinaman who evades the tax, are equally offenders against the law. When a master brings into port more immigrants than the law allows, he is also an offender; but the Chinese immigrants in such a case are innocent passengers, and not offenders. They are legally here as far as they are concerned, although they may have been illegally brought here by others. If the poll-tax be paid, or legally tendered (for legal tender, when refused, is equivalent to payment), the Act permits the Chinese immigrant to land, and his landing is lawful, there being no other legal force, arising either out of prerogative or Statute, to restrain him. My judgment is for the plaintiff.

MR. JUSTICE A'BECKETT'S JUDGMENT.

Mr. Justice a'Beckett's judgment was read as follows:—

Having had the advantage of reading the judgment of my brother Holroyd, and agreeing with him that the right to exclude aliens is not exercisable in this country, and that their exclusion in the instance before us cannot be defended as an act of State; I think it unnecessary to repeat at length the reasons for coming to these conclusions, or to refer in detail to the Acts of Parliament and other documents already noticed by which they are supported. I confine my judgment to these two points, as they are sufficient for the decision of the case, and I will briefly state the grounds on which I proceed. Assuming that the right to exclude aliens subsisted in England as part of the Royal prerogative when our Constitution Act was passed, I can find nothing in the Act, or in the system of government which it originated, authorizing the exercise of this right by the advice of Ministers in Victoria. It was argued that the authority must be given because responsible government was given, as if the phrase "responsible "government" had a definite comprehensive meaning, necessarily including the power in question. The phrase has to my mind no such force. Responsibility may attach to persons having powers strictly limited, and its existence does not indicate the extent of the authority from which it arises. For this we must look to the terms in which the authority was conferred. That is to say, to the Act of Parliament establishing the system, and to the documents delegating powers to the Governor who administers it, to ascertain whether by express words or necessary implication the right to exclude aliens has been given. This is a question of legal construction in which we cannot be assisted by the speeches or despatches of statesmen; and, considered in this aspect, there seems to me to be little difficulty in answering it in the negative. The power is not expressly delegated, and the delegation of a power which might seriously disturb foreign relations with which we were not intended to interfere cannot reasonably be inferred. Treating this right of exclusion as a branch of the prerogative, unless it has been delegated to the representative of the Crown in Victoria, it is a matter on which it would be useless for Ministers in Victoria to tender him advice, and they cannot advise Her Majesty directly as to its exercise. Certainly they cannot exercise the prerogative for themselves. The implication of assent by the Crown from their continuance in office can only arise as to acts which Ministers can lawfully do as such. If they assume to exercise powers which are not vested in them, there

can be no legal implication of Royal assent. If Ministers, for instance, had engaged the Victorian navy in a war of their own making, the Court would not assume assent to this war by the Queen or by the Governor from the fact that they continued in office. The conclusion that the Government of Victoria has not the right to exclude friendly aliens in time of peace seems to me to dispose of the defence that the act complained of was an act of State, and therefore not actionable by an alien, on the grounds set forth in the case of "Buron *v.* Denman." An act of State must be something which it is competent for the State to do. In the case of a Sovereign State, no question as to its competency can arise; but it is otherwise with a Government entrusted with only limited powers, such as our own, and we have to consider whether the thing done was within its powers. If something done within its powers inflicted injury upon an alien, its being an act of State might debar him from redress in our Court, although conditions to the proper doing of the thing had not been observed; but, where the Court sees that the thing done was not within the powers of the Government under any conditions, it cannot be regarded as an act of State.

For these reasons, I think the plaintiff entitled to judgment.

MR. JUSTICE WRENFORDSLEY'S JUDGMENT.

Mr. Justice Wrenfordsley said:—Following the five judgments which have just been given by their Honors, I propose to confine the observations which I am left to make to the two questions of constitutional law, which appear to me to form the only grounds for a decision in this case. The facts, so far as they are material, can be very briefly stated, and I desire to refer to them. The plaintiff was an immigrant on board the British ship *Afghan*, a vessel trading between Hong Kong and certain ports in the Australian colonies. In the month of April last (1888) she arrived within the port of Melbourne, and she brought 268 Chinese to this colony. By the local Act of 1865, and the amending Act of 1881, the entry of Chinese had been made the subject of special legislation, and in fact, the *Afghan* brought 254 Chinese in excess of the tonnage allowance permitted to her under the local Acts. On the arrival of the ship at the port of destination, the defendent, in his official character as Collector of Customs, and acting, as it is said, under the sanction of the Government, refused to allow any of the Chinese to land, and this action has been brought against the defendant to recover damages by reason of that refusal. The fourth plea sets forth the further facts very fully. It states that the plaintiff was at the time of the committing of the grievances in the statement of claim mentioned, a subject of the Emperor of China, and owed allegiance to him, and was not a British subject, &c., &c., &c. That previous to the arrival of the ship, the defendant had received instructions from the Commissioner of Trade and Customs, as and being the responsible Minister of the Crown for the colony of Victoria, charged and entrusted with the administration of the laws of the said colony relating to the Customs and Immigration, that there was an apprehension on the part of Her Majesty's Government for the said colony that a large influx of Chinese into the said colony was imminent; and that, in the opinion of the said Minister of the said Government, such influx would be a danger and a menace to the said colony and to the public peace thereof, and to Her Majesty's subjects residing therein, and would be in a high degree detrimental to their interests, and that in the opinion of the said Minister and Her Majesty's said Government it was for the advantage of the said subjects, so residing in the said colony, that the said influx should be prevented, and no further Chinese other than such as are British subjects should be allowed to enter the said colony, &c., &c., &c. That the defendant, in obedience to such instructions and determination as such officer of Her Majesty's Customs as thereinbefore mentioned by command of Our Lady the Queen, refused to permit the plaintiff to land in the said colony of Victoria and hindered and prevented him from so landing and wholly declined and refused to receive the sum of £10 mentioned in the fourth paragraph of the statement of claim, &c., &c., &c. That his said acts, &c., &c., &c., were by him subsequently reported and communicated to Her Majesty's said responsible Minister, and were by him, and by Her Majesty's said Government ratified and approved of as being acts of State policy.

It was admitted, at the bar, that the acts complained of had not been ratified by any Order of Council, or by any sanction of the Governor. In considering the effect of this plea, it is required that we should ascertain what is the actual *status* of the Government of Victoria. It has been submitted on the part of the defendant, that the acts in question were done by Her Majesty's responsible Ministers for Victoria,

and that the prerogative right, now vested in the Crown, to keep out aliens, applies. It is not necessary to discuss the question, raised on behalf of the plaintiff, that if such a prerogative right was at any time vested in the Crown it has become obsolete. Speaking for myself, I am of opinion that the prerogative right of the Crown to keep out aliens does exist, although its exercise may, by the custom, or legislative action of modern times, be subject to the control of Imperial ministerial responsibility.

I now proceed to consider to what extent the general prerogative rights of the Crown have been either granted or lessened by the Act of Constitution. I am not aware of any authority to the effect that in a settled colony, like Victoria, the Act of Constitution carries with it powers outside or beyond the exact terms of the grant itself.

Victoria is a colony by settlement, and it is common knowledge that the settlers brought with them so much of the law of England as could be made applicable to local conditions.

In respect of all further privileges there is ample authority for saying that we must see what are the privileges bestowed by the grant or charter of Government.

The Imperial Act 18 and 19 Vic., cap. 55, enabled Her Majesty to assent to a Bill amended by the Legislature of Victoria to establish a Constitution in and for the colony of Victoria. The preamble refers to the 13 and 14 Victoria, cap. 59, which was an Act for the better government of Her Majesty's Australian colonies. By that Act Victoria became, for the first time, a separate colony. The preamble states that it was expedient that the district of Port Phillip, then part of the colony of New South Wales, should be elected into a separate colony, and that further provision should be made for the governmeut of Her Majesty's Australian colonies. The Act of Constitution is the local Act of 19 Vic. It was assented to by Her Majesty in Council (pursuant to the provisions of the Imperial Statute 18 and 19 Vic., cap. 55) on the 21st July, 1855, and came into operation on the 23rd November, 1855. It was included in the Imperial Act as Schedule 1.

The Imperial Act was accompanied by a despatch from Lord John Russell, who was then Secretary of State for Colonies, dated 20th July, 1855, and although the Act of Constitution to which he refers must be held to speak for itself, it is nevertheless useful to see what opinion was then expressed by that very constitutional Minister, when, as the head of the Colonial Office Department, he assisted as a Secretary of State to give this colony a separate and constitutional existence. "No "alteration," he says, "has been made in any of the provisions which are simply of a "local character." He adds: "It has been the conviction of Parliament that the "Legislature must itself be trusted for all the details of local representation. But the "responsibility for its introduction will rest, as it ought to do, with the members of the "Council by whom it was in all substantial points prepared and discussed." The Secretary of State then proceeds to deal separately with the proposals which appear to refer to the rights of the Crown. "But those portions of the provincial enactment "which controlled and regulated the future power of the Crown as to the reservation "and disallowance of colonial Acts, and as to the instructions to be given to Governors "respecting them, have been omitted by Parliament. Those portions were clearly "not of a local character, but regarded the connexion of the colony with the body of "the empire." These are very marked words. In the first place, he speaks of the provincial enactment, as distinguished from an Act of the Imperial Parliament. Next, he refers to the instructions to be given to Governors, and then he points to the connexion of the colony with the body of the empire. I do not see how that connexion, at all events in respect of external relations, could be maintained without a strict reservation of all Imperial or Crown rights.

The despatch included an intimation to the effect that the Governor would receive a fresh commission and instructions, amended in certain particulars, which the system of Government then introduced rendered it necessary to change. I have endeavoured to consider very carefully the several powers and provisions conferred by the Act of Constitution, and I fail to see that they go further than to provide for a perfect scheme of local government, limited to its internal relations. When I say a perfect scheme, I mean a system of responsible self-government, complete within itself, so far as representative institutions of a popular character can be said to be perfect. All the privileges of Parliament were to be defined, and all enabling powers incident to such a form of government were conferred. I do not see, however, that, by any rule of construction, the rights so given can be extended. On the contrary, the responsibility which was to be attached to the formation of the body which was to represent the executive power applicable to such a form of Legislature was left to the respon-

sible Council for the time being, and such a responsibility, or such a power, could not have included a discretion to deal with the external relations of the newly-formed community. I think that the then existing circumstances of the colony precluded the exercise of such an extraordinary power, seeing that the development of such a grant of local government must have required at the time that protection from all foreign influences which could only be obtained by the due reservation of prerogative rights.

It seems to me that the proper construction of the Act of Constitution is still further assisted by a reference to the amended instructions which have been issued to the Governor, and I refer more particularly to those which are now in force in this colony. But before I refer to the exact terms of the instructions I wish to point out what is the legal *status* of a Governor in a court of law. We must be careful not to confound what may be an expression of popular courtesy with a legal definition. Lord Brougham, in Hill *v.* Bigge (3 Moore, P.C., 465), and which is cited in the comparatively recent case of Musgrave *v.* Pulido, says — "If it is said that the Governor of a "colony is *quasi* Sovereign, the answer is, that he does not even represent the Sove- "reign generally, having only the functions delegated to him by the terms of his com- "mission, and being only the officer to execute his specific powers with which that "commission clothes him."

In order to meet an observation made in the course of the argument, I would add that, for the purpose of this decision, I deem a Governor to be an officer acting under express power from the Crown; and certainly, in the case of a colony possessing representative institutions, he only represents the prerogative of the Crown in respect of those instances which are directly included in the terms of his commission, and I do not find any enabling words in the commission to justify any other conclusion. He is an accountable officer, to act according to such instructions as may from time to time be given to him. By paragraph 7, he may act in opposition to the Executive Council, but subject to the obligation of reporting the grounds for so doing. Paragraph 9 is most applicable to this case, for he is not to give assent to any bill the provisions of which shall appear inconsistent with obligations imposed on the Crown by treaty ; nor any Bill of an extraordinary nature and importance, whereby the prerogative, or the rights of property of Her Majesty's subjects not residing in the colony, or the trade and shipping of the United Kingdom and its dependencies may be prejudiced. Then follows the power to use or exercise the prerogative right to pardon under the conditions which are mentioned. These expressions and exceptions suggest, as it seems to me, a clear and intended reservation of the rights of the Crown ; and certainly with respect to all external relations the power vested in the Crown is strictly preserved. If this view is incorrect, then I fail to see the substituted authority in which the prerogative right which is contended for in this case is now vested. As I have already intimated, I do not think it exists in Her Majesty's Ministers in this colony under any form of grant conferred by the Act of Constitution ; nor can it be said to exist in the Governor, who, as I have said, is an officer duly appointed by the Crown, and on whom rests the obligation of reporting to the Secretary of State any breach which may occur either of his instructions or in the exercise of the Act of Constitution. This view is well supported by authority. Mr. Chitty, in his work on the Prerogative, at page 34, says—"The Governor is substantially a "mere servant of the Crown, appointed by commission under the great Seal. The "criterion for his rules of conduct are the King's instructions under the Sign Manual." And so, with respect to the *status* of the colony ; the same authority, at page 32, proceeds to say—"In every question, therefore, which arises between the King and the "colonies respecting the prerogative, the first consideration is the charter granted to "the inhabitants. If that be silent it cannot be doubted but that the King's preroga- "tives in the colony are precisely those prerogatives which he may exercise in the "mother country."

In the case of the Lord Bishop of Natal (3 Moore, P.C., 148) Lord Westbury, as Lord Chancellor, said—"After a colony or settlement has received legislative "institutions, the Crown (subject to the special provisions of any Act of Parliament) stands in the same relation to that colony or settlement as it does to the United "Kingdom." Dwarris is also an authority on this subject. He says (page 909)— "Comparatively few of the Statutes passed in the colonies receive the direct confirma- "tion of the King. It is clearly understood that so long as the prerogative is not "exercised the Act continues in force under the qualified assent which is given by the "Governor in the colony on behalf of the King."

I arrive, therefore, at the conclusion that the status of this colony is of a much more limited character than is suggested by the words of the plea. In describing it, I adopt the language of Baron Parke, in Keilley *v.* Carson (7 Jur.). That case had reference to the powers of a House of Assembly in a settled colony, and in the course of his judgment he said, "They are a local legislature, with every power reasonably "necessary for the proper exercise of their functions and duties, but they have not the "same exclusive privileges which the ancient law of England had annexed to the House "of Parliament." And here I wish to repeat a question which I put once before during the progress of the arguments in this case. Let it be assumed that the Government of Victoria, in the exercise of the prerogative right which is claimed, did some act which ultimately proved to be against the comity of nations; and that the Imperial Government had to deal with it with diplomatic usage; and that an indemnity had to be paid. Who would pay it, this colony or the Imperial Government? I confess I see great difficulty of a practical nature, if the Government of this colony is to be held free to act in respect of the high prerogative power which is claimed; or to be at liberty, as a delegate of the Imperial Government, within the meaning of the case of the Secretary of State in Council for India *v.* Kamachee Boye Sahaba (13 Moore, P.C., 22) to pledge the Imperial Government to obligations of an international character. It seems to me, however, that, notwithstanding this view, that there does exist in this colony a form of Government, consistent with a full grant of representative institutions, limited, no doubt, in the application of prerogative rights, but possessing ample power with respect to all internal administration. I think it possesses the *droit public enterne*, and I use the expression in order to distinguish its legislative powers from the *droit public externe*. In other words, this colony did not as a State receive any recognition from the Imperial Government with respect to its external relations; nor could such a recognition take place under its existing connexion with the mother State; but I think that, for the purpose of all necessary intercourse with other countries, the rights of the Crown have been sufficiently reserved. In saying this, I express no opinion with respect to the fitness of this limited view of its Constitution and Government; to the obligations which may arise from the emergencies which are incident to all forms of Government.

I now wish to refer, very briefly, to the further question which has been raised by this plea to the effect that the acts done amounted in law to an act of State. In the much altered condition of this colony since the Act of Constitution, I can well understand that circumstances might, at any time, justify the exceptional action which is involved in an act of State. Mr. Justice Stephen, in his work on the criminal law of England, thus defines an act of State:—"It is an act injurious to the person, or to "the property of some person, who is not at the time of that act a subject of Her "Majesty, which is done by any representative of Her Majesty's authority, civil or "military, and is either sanctioned or ratified by Her Majesty." In view of the exceptional circumstances of this case, as set out in the plea, it may be that authority might be found to justify the action of the local Government, supposing that the act of the Government was a matter still existing for ratification by the Crown. I can understand many acts consistent with colonial policy which, although in a sense hostile to a foreign power, would nevertheless not be acts involving questions of peace or war. In saying this, I refer to acts done against illdoers as a class, and not to acts done as against a friendly State. I apprehend it would, in such a case, rest with that State to put its own interpretation on the meaning of the act complained of, as also to assert its own rights. And, with reference to the present case, such a State would doubtless take into consideration representations of a diplomatic character, which would have for their object to show the exceptional position of this colony; its vastness and material prosperity; its distance from the parent State; its isolation from European concerns; and the remote application of Imperial treaties to its external relations. I can imagine circumstances happening when such representations would be useful to this colony, but I am of opinion that they could only be made by the Imperial Government. I need not, however, pursue this subject further, because the act in question has not been in any sense ratified, or confirmed, by any competent authority; and it follows that, in my opinion, the plea, so far as it seeks to raise the constitutional question, has not been sustained.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

1888.

VICTORIA.

DEFENCE DEPARTMENT CORRESPONDENCE.

RETURN to an Order of the *Legislative Council*,
Dated 18th September, 1888, *for*—

A COPY of all Correspondence which has passed between Officers of the Civil Staff of the Defence Department, the Minister, and Secretary of Defence, and the Public Service Board with reference to Appointments, Transfers, Promotions, and Classification of Work in that Department, with the exception of the Correspondence referring to the appointment of the present Secretary of Defence.

(*The Honorable S. Fraser.*)

Ordered by the Legislative Council *to be printed, 16th October*, 1888.

Memorandum for the Hon. the Minister of Defence.

85/458.
No. 1935.

Public Service Board,
Melbourne, 21st February, 1885.

Before any steps can be taken to fill up the vacant office of Secretary of the Defence department, it is necessary that the requisite "professional" qualifications should be clearly laid down.

The Public Service Board would therefore be much obliged if the Hon. the Minister of Defence would state what qualifications are, in his opinion, *essential*, and what other qualifications it is desirable that the officer filling this position should possess.

By order, H. T. GOMM, Secretary.

[REPLY.]

From the Minister of Defence to the Secretary Public Service Board.

Defence Department,
24th February, 1885.

Memo.

Referring to your letter, No. 1935, I beg to state that, in my opinion, the following qualifications should be required in the Secretary of Defence:—

(1.) He should be an Imperial officer who has recently left the service.
(2.) His rank should not be lower than that of Major.
(3.) If possible, a Royal Artillery officer should be selected, as officers of that branch have much more experience with ordnance and other stores than Infantry officers.
(4.) He should write a fair hand, and have a knowledge of accounts.
(5.) It would be an advantage if he has filled the post of adjutant, brigade-major, or any equally responsible position, as he then will have obtained practical knowledge of the internal working of a force and of office work.

F. T. SARGOOD.

85/554
85 B./3359

Defence Department,
Melbourne, 5th March, 1885.

SIR,

I have the honour to forward herewith an appeal against my classification in the Public Service, and to respectfully request that you will be kind enough to transmit it for the favorable consideration of the Public Service Commissioners.

I have the honour to be, Sir,
Your obedient servant,
D. WINTON RAMSAY.

The Honorable Lieut.-Col. F. T. Sargood,
Minister of Defence, &c.

85/554.—Forwarded to the Public Service Board.—F. T. SARGOOD. 6/3/85. (447.)

85 B./3359.
GENTLEMEN,

Defence Department,
Melbourne, 4th March, 1885.

I have the honour most respectfully to submit this my appeal against the classification which has been awarded to me under the Public Service Act (No. 773).

2. You are probably aware that, at the time of the passing of this Act, I was engaged with the Honorable Lieut.-Col. Sargood in preparing the scheme for the re-organization of the Defence Forces of the colony.

3. Upon the sanction of Parliament being obtained to the scheme, the Defence department was formed, with Colonel Sargood as the Ministerial Head, and myself as Acting Secretary. This position, together with the Secretaryship of the Council of Defence, I occupied until recently, when Mr. Drysdale was appointed.

4. When Mr. Commissioner Couchman inspected the department I held these two positions, and when Mr. Commissioner Irving called to inspect I had just been relieved of a portion of these duties (by Mr. Drysdale) from no fault, so far as I am aware, of my own, but simply from the fact that no single officer could cope with the immense amount of work which the two positions entail.

5. You are, no doubt, cognizant of the fact that the drafting of the Defence organization scheme was a work of no mean magnitude, and this, with the direction and control of a department for twelve months, would surely entitle me to a considerably higher classification than that of a 4th class officer.

I would also submit that my present duties are in no way inferior in quality or quantity to those performed by the undermentioned officers, who are all placed in the 3rd class, viz.:—

Mr. J. H. Symonds, Police department.
Mr. W. Kemp, Treasury department.
Mr. W. H. Smith, Treasury department.
Mr. L. H. Hart, Education department.
Mr. E. J. D. Guiness, Law department.
Mr. W. H. Agg, Law department.
F. Scurry, Public Works department.

7. In mentioning these names, I wish it to be distinctly understood that I have no desire to depreciate or detract from the valuable services of these officers, but, in view of the fact that you have expressed your willingness to rectify any errors in the classification which may have occurred, I respectfully submit that my classification should be at least equal to theirs, and trust that you will grant favorable consideration to my request.

I have the honour to be, Gentlemen,
Your most obedient servant,
D. WINTON RAMSAY.

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85 B./3358.
85/563.
SIR,

Defence Department,
4th March, 1885.

I have the honour to forward herewith a letter addressed to the Public Service Commissioners upon the subject of the classification awarded to me under Act 773, and I shall feel obliged if you will transmit it to the Board for consideration.

I have the honour to be Sir,
Your most obedient servant,
H. MACKAY.

The Hon. the Minister of Defence.

Forwarded to the Public Service Board.—F. T. SARGOOD. 6/3/85.

[ENCLOSURE.]

GENTLEMEN,

4th March, 1885.

In asking you to re-consider your action in placing me in the lowest class of the Public Service, I think it well to state that I base my appeal on the following grounds :—

1. That you have placed in the 3rd and 4th classes persons in other departments who perform work precisely similar to mine.

2. That you have placed in the 4th class persons who perform what many would consider less important work.

I attach to this letter a list of officers who have been so classified. The description of their duties is taken from the return published in accordance with the Act; and as each officer furnished his own statement, it is not probable that the duties set forth therein are in any instance understated. I have not a word to say in disparagement of the duties of any particular officer whose name is given in the list to which I refer, but I think that if their classification is maintained you ought in justice to alter mine for the better. My contention is that a person entrusted with correspondence, *i. e.*, the writing of letters and minutes, performs duties at least equal to, if not more important than, a person who registers papers or copies or despatches letters. In many departments boys are entrusted with the latter class of work, and, as might be expected, do it quite as well as their elders. On the other hand, letter and minute writing is usually held to be something more than a mere mechanical performance.

You are aware of the fact that this department has been established for a little over twelve months. During the greater part of this period the correspondence of the department has been entrusted to two persons—Mr. Ramsay and myself. As the establishment of the new Defence Force necessarily involved a large amount of clerical work, Mr. Ramsay was fully occupied with his duties as Acting Secretary to the department and to the Council of Defence, and the bulk of the general correspondence therefore fell to my share. As a consequence, not only had I to attend at the office early and late, but I was further compelled

week after week and month after month, to take home every evening a bag full of papers, and give up the time, which I could otherwise have devoted to study, to work which I ought not in justice to have been expected to perform. For this additional work I have never received one penny, nor, indeed, reward of any kind, unless it be the classification which I now complain of.

My duties since I entered the department have been—

(*a*) To draft and write letters, minutes, &c.
(*b*) To deal with and conduct all correspondence with rifle clubs, &c.
(*c*) To perform the duties of shorthand-writer.

When I left the Treasury to undertake these duties, I was led to believe that they were more important than any I had been previously engaged upon. Yet, at that time, I was familiar with a great deal of the work in the three branches of the Treasury, and was thoroughly conversant with the duties relating to the collection of revenue.

Since I left that department, two persons junior to me in length of service, and with less experience, have been offered and have accepted the appointment of Receiver and Paymaster, and their work has been placed in the 4th class. I mention this simply to show that if I had had any idea of the relative value which would be placed on the two kinds of work (correspondence and the collection of revenue), I should certainly not have agreed to a transfer to this department, as I should, in the ordinary course of events, have had a prior claim to either of the appointments referred to

I can say with truth that, in a new department like this, where the work is increasing, not decreasing, far more of the details are left to my discretion and judgment than would be the case in a long-established department, where everything is mapped out and clear.

I now ask you to do me the kindness to re-consider my case, and to deal justly with me, irrespective of any such consideration as length of service or salary, in appraising my work.

I have the honour to be, Gentlemen,
Your obedient servant,
H. MACKAY.

The Public Service Commissioners.

Name of Officer.	Duties given in Classification List.	Page of List.	Classification.
List 1.			
J. L. E. ...	Writes letters under direction of Inspector-General and Examiners ...	407	4th
W. H. S. ...	Drafts letters; assists chief clerk, &c.	399	3rd
R. P.	Writes letters	408	4th
D. C. N. ...	Writes letters and *précis*	408	4th
H. O. B. L. ...	Writes letters relative to appointments of teachers	408	4th
A. B.	Writes letters for Secretary for Lands, Surveyor-General, &c.	423	4th
W. B. C. ...	Writes letters and keeps records of inward correspondence	451	4th
P. C.	Assists in correspondence and other clerical work	491	4th
List 2.			
C. H. S. ...	Records Orders in Council *re* appointments; notes abstract of Inspectors' reports on teachers.	408	4th
B. P.	Endorses letters received with abstract of contents; enters same in registers; distributes papers, &c., &c.	408	4th
F. A.	Copies and despatches outward letters; supplies schools with franked envelopes, &c.	409	4th
H. F. O. ...	Registration and separate indexing of all correspondence; charge of papers when dealt with, &c.	410	4th
J. W. C. ...	Opens letters at head office; makes *précis* of letters for entry in registers ...	423	4th
W. A. B. T. ...	Assists in opening and registering correspondence	489	4th

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[Memorandum.]

85/613.
No. 3031.

Public Service Board,
Melbourne, 6th March, 1888.

The Public Service Board has noted the qualifications which the Minister of Defence considers necessary and desirable for the Secretary of the Defence Department, as stated in his letter of the 25th February. The Board is prepared to state that there is no one now in the Public Service duly qualified for the appointment.

The Board does not consider that, under these circumstances, Section 74, Act 773, gives the Board any power of selection among persons outside of the Service; but if the Minister of Defence will furnish to the Board the testimonials of the person whose name he desires to submit to the Governor in Council, the Board will consider whether it can give the necessary certificate.

The applications received are returned herewith.

I also forward those addressed to the Board direct.

I have the honour to be, Sir.
Your most obedient servant,
J. M. TEMPLETON, Chairman.

The Honorable the Minister of Defence. (3028.)

From the Minister of Defence to the Chairman Public Service Board.

Defence Department,
March 11th, 1885.

Sir,

As requested in your letter, No. 3031, I enclose herewith six testimonials just received from Major-General Downes.

I may add that this officer has for seven and a half years been Commandant of the South Australian Forces, and is, in my opinion, the most suitable of the several candidates who have sent in applications,

In view of the heavy work thrown upon this department, I shall be glad if the Public Service Commissioners can, without delay, furnish me with the necessary certificate, in order that an Order in Council may be at once passed appointing Major-General Downes.

I have the honour to be, Sir,
Yours respectfully,
F. T. SARGOOD.

[MEMORANDUM.]

From the Secretary of Defence to the Public Service Commissioners.

8681.
No. 1427.

Defence Department,
Melbourne, 7th October, 1885.

85/3143. By the direction of the Honorable the Minister of Defence, the accompanying letter from Mr. Ramsay, with regard to his position in this department, is forwarded for the information of the Public Service Commissioners.

M. F. DOWNES, M.-G.

Mr. Ramsay's case has been fully considered, and his duties have been assigned to the 4th class, Clerical Division. Put this away with appeal papers.—J. M. T. 15/1/86.

Ordered.—Say that the work performed both by Mr. Drysdale and Mr. Ramsay was placed in the 4th class of the Clerical Division. Mr. Ramsay could now be raised in classification only in accordance with the principles of the Public Service Act, *i.e.*, by seniority and merit.—T. C. 22/1/86.

[ENCLOSURE.]

85/3143.
SIR,

Defence Department,
Melbourne, 3rd October, 1885.

Adverting to our interview on Wednesday last, I have now the honour, in accordance with your request, to address you upon the subject of our conversation.

1. You were kind enough on that occasion to inform me that, as soon as arrangements could be made for transferring Mr. Drysdale to another department, it was your intention to reinstate me in my former position as chief clerk.

2. With regard to my present classification, which was also referred to, I beg to submit the following statement:—

(*a*) This department was examined for classification by the Public Service Board on two separate occasions, first by Lieut.-Col. Couchman, and afterwards by Major Irving.

(*b*) When Col. Couchman made his inspection, I held the position of Acting Secretary and Chief Clerk, and at the time when Major Irving examined the department Mr. Drysdale had just been appointed.

(*c*) It would appear, then, that the rating given to me was based upon Major Irving's inspection only, seeing that Mr. Drysdale, who took my place, received a 3rd, and I a 4th class.

(*d*) Had Mr. Drysdale been appointed, say, one week after Major Irving's inspection, I think it may be assumed that the 3rd class would have been conferred upon me; and in view of the fact that he is now about to be transferred to another department, and I am to revert to my old position of Chief Clerk, I respectfully submit that I may fairly ask the Public Service Board to base my classification upon the inspection of Col. Couchman, and grant me the step.

3. In conclusion, permit me to take the opportunity of again thanking you for your kindness in promising me my promotion, and of assuring you that it will always be my endeavour to so discharge my duties as to merit your entire approval.

I have the honour to be, Sir,
Your most obedient servant,
D. W. RAMSAY.

Honorable Lieut.-Col. F. T. Sargood, M.P., C.M.G., &c.,
Minister of Defence.

From Major-General Downes, Secretary of Defence, to the Honorable the Minister of Defence.

85/3702.
No. 1923.
SIR,

Defence Department,
Melbourne, 8th December, 1885.

I have to express my thanks to you and the Government for the steps taken to increase my pay as Secretary of Defence, consequent upon the Imperial Government withholding my pension while in the service of the Victorian Government.

If, however, the Imperial Government should see fit to alter their present decision, and allow me my pension, I shall hold myself bound, if such is the wish of the Government, to revert to the original scale of salary.

I have the honour to be, Sir,
Your obedient servant,
M. F. DOWNES, Major-General, R.A.

Paymaster to file.—F. T. S.

86/444.
86/2002.

SIR,

Melbourne, 27th February, 1866.

I have the honour most respectfully to bring under your notice an inaccuracy in the return of persons employed in the Public Service on the 31st December, 1885, published in the *Government Gazette*, No. 22, of the 22nd inst. In the return I am shown (*vide* consecutive No. 13, page 583) as being in receipt of £500 per annum, and in the 3rd class. I would take the liberty of reminding you that before entering the Defence department I was in a position, in the Victorian Railways, superior to the maximum of the 3rd class of the Public Service, and I only consented to enter the Defence department on the condition that I should start in the 2nd class. This matter was under your notice some time ago, when I was informed that my agreement with the Government would be carried out, and I was granted the increment which I was entitled to as a 2nd class officer. My salary on the 31st December was £520, and not £500, as shown on the return. I presume it is only necessary to draw attention to this matter to have it corrected; but if allowed to stand unchallenged, complications might arise hereafter. Apologising for troubling you,

I have the honour to be, Sir,

Your obedient servant,

The Secretary of Defence.

W. M. CAIRNCROSS.

Referred to the Public Service Commissioners.—M. F. DOWNES, Major-General, S. of D. 2/3/86.
459.

Mr. Cairncross was not classified under Act No. 160. He was placed in the 3rd class of the Clerical Division under Act No. 773, the work in which he was employed having been assigned to that class by the Board. The Board is not aware of any provision in the Public Service Act which will admit of a salary higher than £500 per annum being paid to Mr. Cairncross so long as he is employed upon work assigned to the 3rd class.

By order,

H. T. GOMM, Secretary.

B. 2002/2293

4/3/86.

As Mr. Cairncross's duties as Controller of Stores are of a very important nature, and such as would be in the Imperial Service only given to an officer of high relative rank, perhaps the Public Service Board may, upon consideration, be disposed to alter their classification in this instance. If this is done, the contract made by the late Government with Mr. Cairncross would be carried out without further difficulty.

M. F. DOWNES, M.-G., S. of D.

499.

9/3/86.

From the Secretary of Defence to the Secretary Public Service Board.

No. 349
2823/86

Defence Deppartment,

SIR,

Melbourne, 3rd April, 1888,

I am directed to draw your attention to Minute from this office, No. 499, of 9th ult., upon a letter of Mr. Cairncross, Controller of Ordnance Stores, respecting his classification.

The Minister will be glad to learn the decision of the Commissioners respecting the matter in question.

I have the honour to be, Sir,

Your obedient servant,

For M. F. DOWNES,

S.P. 3629

T. A. DRYSDALE.

Reply that the Board does not consider that any change in the classification should be made.—
J. M. T. 6/4/86.

No. 250.

GENTLEMEN,

2nd March, 1886.

I have the honour to point out to you a mistake in the salary attached to my name, page 583 of the Supplement to the *Government Gazette* of the 19th ultimo. The column is headed, "Emoluments as reported by Permanent Heads on 31/12/85."

When the proof was submitted to me for correction, I altered the salary from £600 to £900, in accordance with Appropriation Act 1885-86, page 51. This correction has been overlooked, and £600 re-inserted.

I shall feel obliged if you will have the goodness to cause the necessary correction to be made in your records.

I have the honour to be, Gentlemen,

Your obedient servant,

The Public Service Commissioners.

M. F. DOWNES, M.-G.

[REPLY.]

86/515.
No. 2453.

Public Service Board,

SIR,

Melbourne, 8th March, 1886.

In reply to your letter of the 2nd inst., I have the honour, by direction, to inform you that in all cases where the salary reported to the Board was either higher or lower than that legally payable under

Act No. 773, and the Regulations made thereunder, the Board caused the amount to be corrected. On reference to the Regulations under sec. 41, sub-section 1, of Act No 773, you will see that the salary legally payable to the Secretary of Defence is £600.

I have the honour to be, Sir,
Your obedient servant,
H. T. GOMM, Secretary.

Major-General Downes, Defence Department.

From Controller of Stores to the Secretary of Defence.

86/977.
3629/86.

Ordnance Stores, St. Kilda-road,
Melbourne, 6/5/1886.

SIR,

I have the honour most respectfully to request that you will kindly procure for me an interview with the Public Service Commissioners, in order that I may consult them regarding the position I hold as an officer of the Public Service and my classification.

I have the honour to be, Sir,
Your obedient servant,
W. M. CAIRNCROSS.

Chairman Public Service Board.—Will you kindly grant the interview requested?—M. F. DOWNES, M.-G., S. of D. 6/5/86. (855.)

From Controller of Stores to the Chairman and Members of the Public Service Board (per favour of the Secretary of Defence).

4190/86.

Ordnance Stores, St. Kilda-road,
Melbourne, 29th May, 1886.

MR. CHAIRMAN AND GENTLEMEN,

I have the honour most respectfully to submit the following statement, in connexion with my application to be included in the 2nd class of the Public Service, as originally intended when I was transferred from the Railway department.

At the time your Board prepared your classification, the Ordnance Stores were in a state of transition, and I was, unfortunately, absent from duty through illness, otherwise I could have shown the Board that my appointment was made in anticipation of the arrival of large quantities of very valuable war material from England, and of the Ordnance Branch assuming a much greater importance than obtained at the moment of the classification; and that such increased importance has been fully realized I think will be seen from the attached table of comparison, which I have prepared for the consideration of your Board.

The work and importance of the Ordnance is still on the increase, and, in addition to the Military, Club, and Cadet work, the Naval branch will be brought into the general store system on the 1st July next, and for which I have just completed a set of equipment ledgers.

In conclusion, I would again urge the re-consideration of the matter.

I have the honour to be,
Mr. Chairman and Gentlemen,
Your most obedient servant,
W. M. CAIRNCROSS.

From Controller of Stores to the Chairman and Members of the Public Service Board.

86 B./4190.

Ordnance Stores, St. Kilda-road,
Melbourne, 29th May, 1886.

TABLE comparing the Ordnance Branch at date of Classification with its position a year subsequently, viz., on the 1st January, 1886 :—

Force to supply and provide for, &c.	1st January, 1885.	1st January, 1886.
Militia and V. Artillery enrolled	2,456	4,377
Members of Rifle Clubs	2,000	3,700
Cadets	400	2,420
Mounted Rifles	*Nil*	1,004
Total	4,856	11,501
M.-H. Rifles in the colony belonging to the Military branch ...	3,670	11,370
	12 months ending Dec., 1884.	12 months ending Dec., 1885.
Ammunition (small-arms) issued to the above	1,536,225 rounds	3,401,555 rounds

Value of shipments received from England during the last 12 months, £139,304.

W. M. CAIRNCROSS.

Forwarded for the favorable consideration of the Public Service Board.—M. F. DOWNES, M.-G., S. of D. 31/5/86.

The Board will further consider Mr. Cairncross's classification when the department is being examined as to the staff necessary.—H. T. G. 4/6. 4373/86. S.P. 5712

From the Secretary of Defence to the Secretary Public Service Board.

No. 632.
P.P. 4190—5712/86.

Defence Department,
Melbourne, 1st July, 1886.

SIR,

Adverting to previous correspondence with reference to the claim of Mr. W. M. Cairncross, Controller of Stores, to be classified as a 2nd class officer (which claim was based on the agreement made with him when he was transferred from the Railway department to the Defence department by the late Minister of Defence, and afterwards ratified by the Cabinet on the 11th September, 1885), I have now the honour to direct the attention of the Public Service Board to the fact that Mr. Cairncross was transferred under authority of sec. 23, Part I., of the Act 289, "Public Works Statute 1865," which Statute secures to railway officers certain privileges when entering the Public Service.

I shall be glad if the Board will be good enough to re-consider the present classification of the Controller of Stores, whose duties, as I have previously pointed out, are very onerous and of a highly responsible nature, and are carried on by him with much energy and ability. I may further add, that to replace Mr. Cairncross in a position so extremely technical would be very difficult indeed.

I have the honour to be Sir,
Your obedient servant,
M. F. DOWNES, Major-General.

From the Secretary of Defence to the Public Service Board.

No. 804—86/1715.
6834/86.

Defence Department,
Melbourne, 5th August, 1886.

GENTLEMEN,

I have the honour to forward herewith an appeal from Mr. H. V. Heinbockel of this department against his classification under the Public Service Act, and would recommend it to your earnest consideration.

I would also urge upon you to remember that when the officers of the Defence department were classified, early in 1884, the department was but newly instituted, and the work of the various officers had not been regularly apportioned, and, further, that the work to be done in the department has very largely increased since those days, and must inevitably grow.

I consider that it was a very great misfortune to the department that it was classified at that particular time, when in an embryo state, whereby it appears to me that some of its officers have been classified in too low a grade, as if they performed far inferior work to what they have really to do.

Under the circumstances, I shall be much obliged if the Board will, in justice to the officers of the department as well as to the department itself, reconsider the whole of the classification under the light of the present time instead of that of 1884.

I have the honour to be, Gentlemen,
Your obedient servant,
M. F. DOWNES, Major-General.

86/1715.
86 B./6934.

[ENCLOSURE.]

Defence Department,
August 2nd, 1886.

SIR,

I have the honour to request your consideration of the following statement, in connexion with my classification under the present Public Service Act.

The Defence department was visited early in 1884, and the Commissioners, acting upon the work then being performed, classified my work as 5th class. Against that decision I did not appeal, as the office being, in the expressed opinion of both the Paymaster and the visiting Commissioner, in a transition state, and the duties of the employés not definitely apportioned, I, acting upon the advice of my seniors, determined to wait until it could be clearly seen what form and proportions the work of the department would assume before urging my claims for a higher classification.

I would present the following figures to show the marked increase in work which has since taken place. In 1882–3 the number of accounts dealt with was 1,050; in 1883–4, the number was 1,500; in 1885–6 (not yet complete), the number already exceeds 5,200. The expenditure for 1882–3 and 1883–4 was £69,000 and £80,000 respectively. The amount voted for 1885–6 was £191,000. The annual advances in 1884 was £1,500; the amount of the advances under the control of the Paymaster in July, 1886, was £9,687. The last figures show comparatively the number of direct payments made by cheque in the office.

It will thus be seen how the work in existence at the date of my classification has increased, and I would now beg to draw attention to work which has been developed since Act No. 777 (Special Appropriation, Sec. 7) came into force on the 1st July, 1884:—

1. The system of Militia payments is by no means devoid of complications, requiring a knowledge not only of the system of government accounts, but also of the Military regulations respecting pay, and it should be borne in mind that for the correctness of these payments the clerk checking them is responsible.
2. The necessity of keeping the accounts of the office under the various heads of the Special Appropriation, as well as of the annual Estimates, and the charging of such accounts to their proper subdivision and item (numbering no less than 98) require an amount of experience and care which might fairly entitle such work to be classed as responsible rather than routine, as the correction of an error made in charging an account would necessitate passing a transfer claim through the Treasury.
3. The collections of the department, which in 1883–4 were very small (averaging £70 per month), have since developed to such an extent that over £20,000 has been paid into the

two Trust Funds of the department during the two past years. The preparation of receipts, entering of payments and compilation of the returns required by the Audit Act in connexion with these Funds, now form part of my duties.

In conclusion, I would, therefore, respectfully contend that such work as charging and registering accounts, preparing reimbursement and adjustment schedules, keeping ledgers of receipt and expenditure, checking general and pay accounts, and making out vouchers and cheques for office payment, might fairly, in a department with a large annual expenditure, be rated as 4th class; and I would respectfully submit that, if this contention be correct, it is scarcely just that I should suffer in status because the work of the office was in an embryo state when it was classified, and request that if my claims to a higher grading appear equitable you will be good enough to submit my case for the consideration of the Public Service Commissioners.

I have the honour to be Sir,
Your obedient servant,

The Secretary of Defence. HY. V. HEINBOCKEL.

Reply that the Defence office will be again inspected, and the Board will then determine the number of officers of the several classes to be employed. Point out to the Secretary of Defence that this will not affect the classification of the present officers, whose promotion to a higher class will be made in accordance with the provisions of section 35 of the Public Service Act.—J. M. T. 7/8/86.
6415/86.

86/2324.
8621/86. Ordnance Stores, St. Kilda-road.
GENTLEMEN, Melbourne, October 2nd, 1886.

I have the honour most respectfully to request that the Public Service Board would receive this my appeal to be classified in the 4th class of the Public Service instead of the 5th class; and, in explanation of the appeal not being sent in previously, I would state that it was held back, as I supposed the Public Service Board would again visit this branch, and that I could then ask them to re-consider the matter. I would point out that my duties are those of Chief Clerk in the Ordnance Stores, and they are of a very important character, requiring great technical knowledge of the nomenclature of Military stores; great care and accuracy have to be exercised in the preparation of the numerous returns; and I have to supervise the work of the other clerks in the branch. I am under the impression that the classification of the position I fill was fixed by the Board under a misapprehension of the duties I had to perform, and I feel certain the Board will see that such is the case if they will kindly look into the matter.

I have the honour to be, Gentlemen,
Your most obedient servant,

To the Public Service Board. JOHN J. F. LAHIFF.

Referred to the Secretary of Defence.—W. M. CAIRNCROSS, Controller of Stores. 5/10/86.

Referred for the consideration of the Public Service Commissioners.—M. F. DOWNES, M.-G., S. of D. 6/10/86.

Mr. Lahiff's classification has been fixed, and he can only be placed in a higher class by promotion, in accordance with the provisions of section 35 of the Public Service Act 1883.

B.8621/3763. By order, H. T. GOMM, Secretary.
7/10/86.

To C. of S. for information.—D. W. RAMSAY, *pro* Secretary. 8/10/86. O. 86/516.

Mr. Lahiff to note.—W. M. C. 9/10/86.

Noted and returned.—JOHN J. F. LAHIFF. 9/10/86.

Returned to the Secretary.—W. M. C. 11/10/86.

10046/86. Defence Department, Victoria Barracks,
SIR, 1st September, 1886.

Having heard that Mr. Massey, of the Registrar-General's Department, has resigned, or is about doing so, I venture to remind you of our conversation some few weeks ago, on the occasion of Mr. Hayes being nominated by the Public Service Board to a vacancy which had occurred in that department. Mr Harriman's words at the time were as follows:—"Tell Mr. Gomm that I shall be delighted if he can send you to my department." If you remember, I also informed you that Col. Brownrigg told me that neither he nor the Commandant wished to stand in the way of my being transferred to another department.

I have the honour, Sir, to again apply for any vacancy occurring in the Registrar-General's department.

I have the honour to be, Sir,
Your obedient servant,

The Secretary Public Service Board. CHARLES H. TOCKNELL.

87/542
1684/87.

Ordnance Stores, St. Kilda-road,
Melbourne, February 24th, 1887.

SIR,

I have the honour again to respectfully beg that the Secretary will please make further representations to the Board *re* my classification in the Public Service, and to request that the Board visit the Stores, and inspect the work I am performing. I have noted the Board's Minute on correspondence 86/2324, stating that my classification having been fixed promotion to a higher class can be only obtained in accordance with Sec. 35 of *The Public Service Act 1883;* but as the Board have not entertained my previous letter, asking that an inspection by the Board be made of my work, and see whether I should be placed in the 4th class or have to remain in the 5th class, I presume it is impossible therefore for the Board to see the grievance under which I am labouring. It is needless for me to give details again of the various duties I have to perform, as a reference to correspondence 86/2324, and dated the 2nd October, 1886, will be sufficient, I presume. I may lastly state that certain officers in the Public Service, whom I am not personally acquainted with, and who have had great opportunites in seeing the classes of many of the officers in the Public Service, have expressed their astonishment at the class in which I am placed, considering the nature and responsibility of the various duties which I have to perform. I trust, therefore, under these circumstances, that the Secretary will use his utmost endeavours to induce the Board to pay a visit to the Ordnance Stores (at their convenience), and inspect my work.

I have the honour to be, Sir,
Your most obedient servant,
JOHN J. F. LAHIFF.

To the Secretary of Defence.

Forwarded to the Public Service Board.—Undoubtedly much discontent exists among the employés at the Ordnance Stores—especially the labourers—at their classification, and I shall be glad if the Board can make it convenient to visit the stores and inspect the nature of the work done there, which has increased much, both in amount and importance, since their previous visit.

M. F. DOWNES, M.-G., S. of D.
25/2/87.

It is pointed out that there is no provision for re-classifying Mr. Lahiff's duties.

By order, H. T. GOMM, Secretary.
4/3/87.

B.1684/371.

O. 87/145.—To C. of S.

Mr. Lahiff to note.—W. M. C. 8/3/87.

Noted.—JOHN J. F. LAHIFF.

Returned to Secretary.—W. M. C. 9/3/87.

Section 27, Act No. 773.

No. 5574.

Public Service Board,
Melbourne, 8th June, 1887.

The Public Service Board certifies that the appointment of a 2nd class officer is necessary in the Ordnance Stores, a branch of the Defence department, by the re-classification of the duties performed by the Comptroller of Stores, and it is expedient, under the provisions of Section 27, Act No. 773, to transfer as soon as possible to 2nd class duties William Macgregor Cairncross, an officer in the Defence department (Ordnance Stores Branch), whose present work has been classified by the Board as 3rd class; the Board accordingly names the said William Macgregor Cairncross for such transfer.

J. M. TEMPLETON,
T. COUCHMAN,
M. H. IRVING,
} Members.
H. T. GOMM, Secretary.

Forwarded to the Honorable the Minister of Defence. (5295)

No. 159.

Defence Department,
Melbourne 18th July, 1887.

Submitted to His Excellency the Governor in Council by the Minister of Defence.

The Public Service Act, No. 773, Section 27.

The Governor in Council, having received the attached certificate from the Public Service Commissioners, has been pleased to approve of the transfer of William Macgregor Cairncross to 2nd class duties, under the Act No. 773, from the 1st July, 1887.

JOHN NIMMO,
For the Minister of Defence.

In Ex. C., 18/7/87.—H. B. L.

Approved by the Governor in Council, the 18th July, 1887.—ROB. WADSWORTH, Clerk of the Executive Council.

From the Secretary of Defence to the Secretary Public Service Board.

10332/87.
No. 1253.—87/2503.
SIR,

Defence Department,
Melbourne, 1st October, 1887.

In forwarding the attached letter from Mr. H. V. Heinbockel for the consideration of the Public Service Board, I desire to draw attention to the exceptionally low grading of the positions in the Paymaster's branch, which branch consists of one 3rd class officer and two 5th class.

The Paymaster's staff shows no increase from the time this Department was a sub-branch of the Treasury, and the work has both in nature and quantity largely increased, as the following statement clearly indicates:—

Annual expenditure, 1883–4		£80,000
Annual expenditure, 1886–7—		
Special Appropriation	£116,144	
Defence Department, General Appropriation	47,340	
Defence Vote, Public Works	63,350	
Receipts, Sale of Stores, Ammunition, &c.	5,473	
		£232,307

It would appear from the above that the duties of Mr. Heinbockel should not, in fairness to him, be gauged upon an estimate of the work formed when the department was in a transition state.

I have already, in my letter of the 5th August, 1886, favorably recommended this application, and I should be glad if the Board will be good enough to take it into their favorable consideration.

I have the honour to be, Sir,

Your obedient servant,

M. F. DOWNES, Major-General.

87/2503. [ENCLOSURE.]

87 B./10332
SIR,

Defence Department,
23rd September, 1887.

I would most respectfully request that the question of grading the work I am performing in the Paymaster's branch may be brought under the notice of the Hon. the Minister of Defence, with a view of its being again submitted to the Public Service Board.

Last year, in reply to a letter, in which I stated the particulars of my case at length, and which you kindly forwarded with a favorable recommendation to the Board, it was stated that the re-classification of certain duties in this office would be undertaken shortly. Since then nothing has been done in the matter, and, as I have been long at the maximum of the 5th class, the accident of my work being graded at a time when, as the examining member of the Board stated, "the department was in a chaotic state," has proved a serious financial detriment to me. The grounds on which my application is based were fully stated in my previous letter, and I hope they may be considered sufficiently strong to warrant an investigation of the peculiar circumstances in which I have been placed at the hands of the Public Service Board.

Forwarded with my No. 804 of 5.8.86.

I have the honour to be, Sir,

Your obedient servant,

The Secretary of Defence. HY. V. HEINBOCKEL.

87/2605 [REPLY.]
No. 9297.
SIR,

Public Service Board,
Melbourne, 7th October, 1887.

Referring to your letter of the 1st instant, No. 1253, forwarding the application of Mr. Heinbockel for re-classification, I have the honour, by direction, to inform you that his request cannot be complied with. I am to point out, however, that if the position were raised Mr. Heinbockel would not benefit unless he were entitled to promotion by seniority and merit.

I have the honour to be, Sir,

Your obedient servant,

The Secretary of Defence. (10332.) H. T. GOMM, Secretary.

87/3149

Ordnance Stores, St. Kilda-road,
December 7th, 1887.

With reference to my previous applications for a re-classification in the Public Service, I shall deem it a favour if the Secretary will kindly submit correspondence 86/2324, of the 6th October, 1886, and 87/542 of the 25th February, 1887, for the perusal and consideration of the Honorable the Minister of Defence; and in doing so, I should like to point out more particularly the Minute of the Board informing me that there is no provision in the Act for re-classifying my duties, therefore I presume giving me to understand that, in consequence thereof, although the Board may be aware that the duties which I am

performing are those of a 4th class officer, I am debarred from any consideration in the matter, and as this is a case of very great importance to me I shall be glad if the Honorable the Minister of Defence will kindly give it his favorable consideration.

I have the honour to be, Sir,
Your most obedient servant,
JOHN J. F. LAHIFF.

The Secretary of Defence.

Forwarded for the favorable consideration of the Secretary of Defence.—W. M. CAIRNCROSS, Controller of Stores. 9/12/87.

The Minister has considered the correspondence to which Mr. Lahiff alludes, but is unable to interfere with the decision of the Public Service Board, as noted thereon.—M. F. DOWNES, M.-G., S. of D. 15/12/87.

Mr. Lahiff to note.—W. M. C. 19/12/87.

Noted.—JOHN J. F. LAHIFF. 19/12/87.

From the Secretary of Defence to the Secretary Public Service Board.

No. 1542.
Defence Department,
14th December, 1887.

SIR,

With reference to your circular of the 9th instant, I have the honour to inform you that one 5th class officer in this department (Mr. Fahey), who is over the age of 60 years, and who has been seriously ill for the last four months, will be unable to continue in the Public Service after the 31st current. It will, therefore, be necessary to make a fresh appointment to the Paymaster's branch.

Mr. Heinbockel, a 5th class officer, is next to the Paymaster. This officer has thirteen years' seniority, has passed all his examinations, matriculated at the University, and has always been most favorably reported upon by the Paymaster. Considering the large number of the accounts (amounting to about £232,307 annually), and the diversity of them, would it be too much to ask that one of the junior officers should be of the 4th class? Otherwise, I see nothing to prevent the Paymaster finding himself some day with two last-joined boys as his sole assistants.

If your Board would favorably entertain this proposition, I should recommend that Mr. Heinbockel be promoted to the 4th class, and that a junior 5th class clerk should be appointed, *vice* Fahey.

For some time to come this would be a saving to the department, as it would be—

One 4th class at	£210
One 5th „	80
	£290

Instead of—

Two 5th class at £200=£400.

I may mention that the above suggestion has the appproval of the Honorable the Minister of Defence.

I have the honour to be, Sir,
Your obedient servant,
M. F. DOWNES, M.-G.

[REPLY.]

87/3333.
No. 13463.
Public Service Board,
Melbourne, 30th December, 1887.

SIR,

I have the honour, by direction, to acknowledge the receipt of your letter of the 14th instant, No. 1542, stating that Mr. Fahey, of your department, will be unable to continue in the service after the 31st instant, and to inform you that the Board thinks a new appointment must be made to the 5th class upon the retirement of Mr. Fahey. I am to add that promotion can only be made in accordance with the provisions of section 35 of the Public Service Act.

I have the honour to be, Sir,
Your obedient servant,
FRANCIS REDDIN, *pro* Secretary.

The Secretary for Defence. (14068.)

From the Secretary of Defence to the Secretary Public Service Board.

No. 449.
24th February, 1888.

SIR,

In forwarding the attached formal application for the appointment of a 5th class officer in the room of Mr. John Fahey, who retires this month, I take the opportunity of expressing the hope that, taking into consideration the fact that a junior is now applied for, the Board will see their way to promote Mr. Heinbockel to the 4th class.

Mr. Heinbockel has been nearly 13 years in the service, and is very highly recommended by the Paymaster of the Naval and Military Forces.

He is thoroughly conversant with all connected with the accounts of the Forces, which are, owing to the various elements introduced, more intricate than ordinary accounts,

The work of the department has very largely increased since its formation, and I think the Paymaster should be assisted by a 4th class officer and a 5th class junior, so that in the event of his falling ill one of a more responsible rank than 5th class might be in a position to take charge.

As Mr. Heinbockel has such a thorough knowledge of this particular work, I am decidedly of opinion that he, if promoted, should remain in his present office.

I have the honour to be, Sir,
Your obedient servant,
M. F. DOWNES, M.-G.

[REPLY.]

88/592.
No. 1918.
SIR,

Public Service Board,
Melbourne, 2nd March, 1888.

With reference to your letter of the 24th ultimo, No. 449, I have the honour, by direction, to inform you that the Board sees no sufficient reason for increasing the number of 4th class clerical officers in the Defence department.

I have the honour to be, Sir,
Your obedient servant,
H. T. GOMM, Secretary.

The Secretary of Defence. (1730.)

88/572.
1939/88.
SIR,

Victoria Barracks,
25th February, 1888.

I have the honour to request your attention to my application for a transfer, dated 1st December, 1886, and your reply thereto, dated 3rd December, 1886, wherein you informed me that the Public Service Board had determined to appoint a junior 5th class officer to the vacancy I then applied for, but that my application was still on the Register of Applicants for a transfer.

I now, again, beg most respectfully that you will submit this my application for a transfer to the Customs Department on the next vacancy occuring for an officer of the 5th class.

I have the honour to be, Sir,
Your obedient servant,
CHARLES H. TOCKNELL.

The Secretary Public Service Board.

I shall be glad if Mr. Tocknell's request can be granted. He has served with credit for twelve years, and is anxious to have a higher class of work than that on which he is now employed.

M. F. DOWNES, S. of D. 29/2/88.

Secretary Public Service Board.

Is he recorded for transfer?—H. T. G. 6/3.

Yes.—"To Registrar-General's or Registrar of Titles' Office."—F. R. 7/3/88.

Inform and say that it will receive attention.—H. T. G. 7/3. (2087/88.)

SIR,

Defence Department,
26th March, 1888.

On leaving the department, I am anxious to make a short representation with reference to the classification of the officers of this department, alluding more especially to Mr. Ramsay, who performs the work ordinarily given to a Chief Clerk, and to Mr. Heinbockel, the Assistant to the Paymaster, and his representative during his absence, and I trust that if you favorably view their case you will endeavour to assist them.

These officers are undoubtedly dissatisfied with their classification, as it was not made at a time when their work could be accurately estimated, and they have never lost any opportunity of making their appeal, but hitherto I regret without success.

The department was classified in 1884, when in embryo, and the Public Service Commissioners have not, as far as I am aware, made any further examination of the work carried on in the office. More than two years ago they expressed their intention to me of making a further examination.

As you are well aware, the responsibilities of the department are steadily increasing. The Cadet Corps have been much developed, the Mounted Rifles and Rifle Volunteers have sprung into existence since my arrival, and the work has increased in variety in all directions, and will probably still increase.

I may add that I have never heard any complaint from any source of the manner in which the departmental work is carried on, though correspondence has to be kept up with very various bodies and individuals.

This I attribute to the zealous and careful manner in which all the officers of the department have worked together, and mutually helped one another; and I should be very glad if the Public Service Commissioners would again examine the work, and determine if the classification of some of the officers should not be somewhat increased.

I have the honour to be, Sir,
Your obedient servant,
M. F. DOWNES, M.-G.

The Honorable the Minister of Defence.

[This letter was sent to the Chairman of the Board by the Minister of Defence.]

88/1011.
MEMORANDUM.

Defence Department,
Melbourne, 20th April, 1888.

I would beg to request the Secretary of Defence to be good enough to forward the attached application to the Public Service Board.

HY. V. HEINBOCKEL.

3518/88.
No. 1011.
SIR,

Defence Department,
Melbourne, 20th April, 1888.

I have the honour to request that my name may be registered as an applicant for transfer to the Crown Law department.

I have the honour to be, Sir,
Your obedient servant,
HY. V. HEINBOCKEL.

The Secretary Public Service Board.

Forwarded for the consideration of the Public Service Board.—ROBERT COLLINS. 20/4/88.

Will the Secretary for Defence be so good as to inform the Board whether there is any objection to the transfer of Mr. Heinbockel.

By order, H. T. GOMM, Secretary.
23/4/88.

B. 3518/682.

The work in the Paymaster's branch of this department has increased so much that it would prove a serious inconvenience, more especially at this time of the year, when the new Estimates have to be framed, if Mr. Heinbockel, who gives great satisfaction in the discharge of his duties, should be transferred to another department.

The office is so undermanned, that I could not recommend the transfers of officers well accustomed to the work, and whose work can be trusted, to be replaced by others new to the office, and who, in the discharge of their duties, would require such supervision as the Paymaster, Mr. Thompson, could not possibly find the time to give.

ROBERT COLLINS, S. of D.
26/4/88.

No. 601.
GENTLEMEN,

Defence Department,
10th May, 1888.

I have the honour to request that Mr. Heinbockel and Mr. Mackay, 5th class clerks in this department, be promoted to the 4th class, for the following reasons:—

1. In the case of Mr. Heinbockel, his duties are to assist the Paymaster, and the work has so much increased in that branch (as may be seen from the fact that the accounts passed in the year 1883-4 numbered only 1,500, while at the end of the present financial year there will be upwards of 7,000) that he is unable to attend to any other work in the department.

2. He is so capable an officer, and now so accustomed to the work, that he could not be transferred without serious inconvenience to the head of the branch (Mr. Thompson), who would be unable to carry out his duties efficiently with two new 5th class clerks to assist him. It is evident that clerks in this class are for the most part inexperienced. To assist Mr. Thompson I require a thoroughly experienced clerk; Mr. Heinbockel is such, and, in the event of any transfer of this officer, which might occur on promotion, I could not consent to the appointment of an inexperienced clerk in his place. For these reasons, I consider him entitled to promotion in the department on account of merit. As the regulations for the Public Service state seniority and merit as the claim for promotion, I would point out that whereas seniority is a matter of fact, merit is a matter of opinion, and the permanent head of a department is supposed to be a judge in that respect.

3. With regard to Mr Mackay: So far has the work increased in this office, that it has for some time been found necessary to separate the duties relating purely to correspondence from those dealing with finance; and when my predecessor was in office the duties of correspondence were carried out entirely by Mr. Ramsay and Mr. Mackay. Mr. Ramsay was a 4th class officer, and, having the great advantage of being in the department from the time it was created, always rendered valuable assistance. Mr. Ramsay having resigned, Mr. Mackay is the only officer with the necessary experience to discharge satisfactorily the duties given up by the former. Any stranger coming here could not for some time be of as much service to me as Mr. Mackay, and I should be in the position of having to look to the junior officer to have the work of the branch carried out. For these reasons, I wish Mr. Mackay to have the vacant appointment conferred upon him.

I would also call your attention to a comparison of the cost of the clerical work in this department under such an arrangement, with the cost as it was some short time ago, although, of course, the duties remain the same:—

Salaries in February, 1888—

Mr. Ramsay	£290	0	0
Mr. Fahey	200	0	0
Mr. Heinbockel	200	0	0
Mr. Mackay	*200	0	0
Total	£890	0	0

* And allowance of £20 as shorthand-writer.

Salaries after promotion of Messrs. Heinbockel and Mackay—

Mr. Mackay	£210	0	0
Mr. Heinbockel	210	0	0
Two 5th class clerks	160	0	0
Total	£580	0	0

or a difference of £310 for the first year, and it would take several years before the increments accruing on promotion would equal £890.

I have the honour to be, Gentlemen,

Your obedient servant,

The Public Service Commissioners. ROBERT COLLINS.

88/1242 [REPLY.]

No. 3686/4334. Public Service Board,

SIR, Melbourne, 14th May, 1888.

I have the honour, by direction, to acknowledge the receipt of your letter, No. 601, of the 10th instant, and to inform you that the Board has no desire to transfer any officer at present in the Defence department.

Promotions cannot be made except under section 35 of the Public Service Act, by seniority and merit, of which the Public Service Board is made the judge.

I have the honour to be, Sir,

Your obedient servant,

The Secretary for Defence. H. T. GOMM, Secretary.

From the Secretary of Defence to the Secretary Public Service Board.

No. 633. Defence Department,

SIR, 17th May, 1888.

I have the honour to request that you will be good enough to forward, for my perusal, the correspondence which took place between this department and the Public Service Board on the subject of the classification of the civil staff previous to my appointment as Secretary of Defence.

I have the honour to be, Sir,

Your obedient servant,

ROBERT COLLINS.

From the Secretary of Defence to the Secretary Public Service Board.

No. 652. Defence Department,

21 May, 1888.

Mr. Jennings, 5th class clerk, having now entered on his duties in this department, I beg to withdraw for the present my application for a 4th class clerk.

ROBERT COLLINS.

No. 688. Defence Department,

SIR, 18th May, 1888.

I have the honour to bring under the notice of the Board the unsatisfactory classification of the work performed by Mr. Heinbockel in this department.

The work of the Paymaster's branch has so much increased since the establishment of the department, and is in itself of such importance, that I consider Mr. Thompson should have more skilled and experienced assistance than that which should be expected from a 5th class clerk.

On perusing the classification list of the Public Service, I find that in the Accountant's branch of several departments, which have a smaller expenditure than this one, while the head of the branch is always a 2nd or 3rd class officer, he has either one or two 4th class officers to assist him, and, in view of this fact, I contend that the responsibility of the officers of my department, who perform precisely similar duties, is not sufficiently recognised.

Mr. Thompson, the Paymaster, has been unable to take any leave of absence since he undertook the duties of his present office. Should he at any time be on leave, or be absent through illness, the only officer that could immediately carry on his duties would be Mr. Heinbockel.

Mr. Heinbockel is a particularly able young officer, and a good accountant. I am of opinion that his work should be classified in the 4th class, in consideration of the fact that I must look to him for the performance of the Paymaster's duties in any absence of Mr. Thompson.

I have the honour to be, Sir,

Your obedient servant,

ROBERT COLLINS.

The Secretary Public Service Board.

[No official reply received.]

88/1406.
No. 4488/4979.
SIR,

Public Service Board,
Melbourne, 30th May, 1888.

Referring to your letter of the 17th instant, asking for the return of the correspondence respecting the classification of the civil staff of the Defence department, I have the honour, by direction, to request that you will be so good as to furnish a reference to the correspondence in question.

I have the honour to be, Sir,
Your obedient servant,
H. T. GOMM, Secretary.

The Secretary of Defence. (4979.)

Reference to correspondence given, 6/6/88.

88/1635.
No. 5700/5829.
SIR,

[REPLY TO No. 663 ANTE.]

Public Service Board,
Melbourne, 20th June, 1888.

In compliance with the request contained in your letter of 17th ultimo, No. 633, I have the honour, by direction, to forward herewith the correspondence which took place between your department and the Board respecting the staff of your office, and I am to request that it may be returned as soon as possible.

I have the honour to be, Sir,
Your obedient servant,
H. T. GOMM, Secretary.

The Secretary for Defence. (5829.)

6513/88.
No. 898.
SIR,

Defence Department,
Melbourne, 30th June, 1888.

I have the honour, by direction of the Minister, to forward for the consideration of the Board the attached letters of Messrs. Heinbockel and Mackay, representing their claims for re-classification.

The case of these officers is peculiar, as this department was a new department, and it was impossible to accurately judge the nature of the duties required from these officers at so early a stage as that when the examination took place and on which the classification was based.

There has been a great increase not only in the work but in the importance of the duties of the officers of this department, and the re-examination of the work, promised some time ago by the Board, has not yet been made.

The Minister would be glad if, considering the special circumstances of these cases, the Board would further inquire into them.

I have the honour to be, Sir,
Your obedient servant,
ROBERT COLLINS.

The Secretary Public Service Board.

[ENCLOSURE.]

88/1695.
SIR,

Defence Department,
Melbourne, 23rd June, 1888.

All the representations made to the Public Service Board by General Downes and Captain Collins with regard to the pay and classification of the civil staff of this department having proved of no avail, I desire to bring formally under your notice the manner in which my present classification has been maintained.

I came here from the Treasury in December, 1883, as a correspondence clerk and shorthand-writer. The Public Service Commissioners were appointed early in the following year, and Mr. T. Couchman was the first member of the Board to pay us a visit, with the object of examining the work. He came, I think, in May or June of 1884, but, at any rate, on a Saturday morning. I remember that I had just come into the correspondence room to get some papers for the Minister. Mr. Couchman stopped me near the door, and asked me a question about my work. Seeing what he had come for, I turned and walked over to the fireplace where he was standing. I answered the question, and he asked me a few more, and began to set down in his note-book the answers I gave. While he was writing, the Minister sent for me, and I had to leave the room. I presume Mr. Couchman was satisfied, for he did not trouble me again, although the whole affair—questions and answers—did not occupy five minutes. However, the information obtained by Mr. Couchman on that occasion appears to have been the basis of my classification. Those few answers were evidently considered sufficient data for arriving at a just estimate of my duties.

The second Commissioner (Professor Irving), who visited the department for the purpose of classifying its officers, did not come till late in the same year—about October or November, 1884. Shortly before this an addition had been made to the staff, in the person of Mr. T. A. Drysdale, who, as an old Customs officer out of employment, undoubtedly had strong claims on the Service Government. It was, however, I believe, recognised from the first that the appointment of Mr. Drysdale as chief clerk was only a temporary measure, and that as soon as a suitable vacancy should occur he would be transferred to the Customs. Mr. Ramsay and myself did not think that the Commissioners would allow the temporary stay of Mr. Drysdale to influence their views of our work, as we knew they were fully aware that we had been in the department from the time it was established, and that while we were drawing low salaries we were called upon to perform duties which were very highly paid in other departments. However, these considerations did not weigh with them in the slightest degree, for when their first classification list was made public, early in 1885, Mr. Ramsay's duties were placed in the 4th class and mine in the 5th.

Here let me state that Mr. J. M. Templeton, the Chairman of the Board, has never visited the head office of this department for the purpose of inquiring into the duties of the persons employed in it. I am aware that in practice (no doubt for the sake of convenience) two members often exercise the functions of the whole Board. But in so delicate a matter as the classification of the Public Service, where the well-being of some thousands of men and women was concerned, the Legislature wisely determined that the duty of setting a value on each person's work should not be left to the judgment of one or even two members of the new Commission. Sections 21 and 23 of the Public Service Act, which impose on the Board the duty of examining and classifying work, do not say that a majority of the Board shall do this, but that the Board shall do it, and I presume that there are three Commissioners under the Act.

When the classification list was published, Mr. Ramsay and I formally protested against the decision of the Board, and, in addition to writing letters, we appeared personally before the Commissioners. Messrs. Templeton and Couchman heard my case. I feel bound to say that Mr. Templeton treated me with courtesy, but it was not in any sense a judicial inquiry. I was allowed to call no witnesses in support of my case. My own statements were taken for what they were worth, and in the eyes of the Board, apparently, they were worth nothing. One remark made by Mr. Couchman during the hearing of the appeal is worth setting down here, because it shows what a peculiar view he took of his duty as a classifier. In reply to an observation of mine, that Mr. Ramsay, having been acting secretary of the department, and I, senior clerk in the correspondence branch at the time of his visit, we should have been classified as the persons actually performing those duties, he said—"Oh! but if the Board had given higher classification, on this account, to Mr. Ramsay and yourself, your seniors in other departments would have had reason to complain that they had not been given the opportunity of doing the work allotted to you." Now, whether the Legislature sufficiently recognised the importance of senior officials not being passed over on the creation of new departments I cannot pretend to say; but this I do say, there is no mention in the Public Service Act that the Board is to be guided by such considerations. The Act distinctly says that they shall value the work a person is found to be doing.

After a short conversation, the Chairman told me that he proposed to visit the Defence department shortly, to look into the work, and that they would reserve their decision in the meantime. The appeal was heard on the 7th of October, 1885, but from that day to this I have never learnt what decision they arrived at in my case. Neither verbally nor by letter, did they inform me that my classification would not be altered. All that I saw bearing on the matter was a newspaper paragraph, to the effect that certain (very few) appeals had been allowed. My name was not in the list of successful appellants. I concluded, therefore, that either my protest was dismissed, or that they had deferred their decision until opportunity offered for the new examination of the work which they had spoken to me of.

In April of the following year, Mr. Drysdale, whom I have mentioned in the early part of this letter as temporarily holding the position of chief clerk, was transferred to the Customs. Mr. Ramsay then resumed his old position of chief clerk, and I, in addition to my own, took the work which he relinquished, as well as a portion of the work which had been performed by Mr. Drysdale. From the early part of that year (1886) up to his departure from the colony in March last, General Downes frequently pointed out to the Board that, in his opinion, the classification of the civil staff of this department needed revision; but all his efforts in our behalf were fruitless. In one case, the Commissioners replied that there was no provision for re-classifying a certain person's duties; in another, that the classification was fixed, and the applicant must wait his turn for *promotion* under section 35 of the Act; and, in a third, that even if the duties were placed in a higher class, the person then performing them (who had joined the department shortly after it was created) would not receive any benefit unless he were entitled to promotion on the score of seniority and merit. Here I must point out that the Commissioners, in sending these answers, showed that they were confounding two very different things, viz., classification and promotion. So far as my knowledge goes, all the personal applications addressed to the Board, as well as the letters of the permanent head, referred to the classification of duties, and no word was said about promotion.

Letters sent to the Board from 4th March, 1885, to 26th March, 1888.

With regard to the contention that there is no provision under the Act for re-classification, it is sufficient to say that the Legislature, in omitting such a provision, did not, at any rate, take away from the Board the power to alter the classification of any person where justice required it. And in the case of an officer of this department, the Commissioners have tacitly admitted that they possess this power, for, although they have not considered it necessary to examine the work at the head office since 1884, they thought it their duty to visit the Ordnance Stores last year, and, in addition to making some minor changes, altered the classification of the Controller from the 3rd to the 2nd class. It has been stated that the latter alteration was the result of the ordinary appeal made by the Controller, when the Board put his duties in the 3rd class in 1885. The statement is true in a sense, but yet, to any one unacquainted with the course of affairs in this department, it is misleading. During the period extending from 1885 to 1887, Mr. Cairncross appealed not once but several times without success, and it was not till June of last year, *i.e.*, long after all other Civil Service appeal cases had been disposed of, that the Board consented to re-classify his duties. Their certificate authorizing his transfer to the 2nd class, "in consequence of the re-classification of his duties," bears date the 8th of June, 1887. It is only fair to Mr. Cairncross to say that, when he left the Railway department to take charge of the Ordnance Stores, the Minister gave him a promise that he should begin his new duties with the minimum pay of a 2nd class officer, and that he should receive the increments fixed in Schedule 2 of the Public Service Act. The Board, having put his duties in the 3rd class, refused to ratify this agreement, and the Minister, in order to keep faith with the Controller, had to put the amount of the increment on the Estimates of Expenditure for 1885-6 and 1886-7.

In concluding this letter, I wish it to be clearly understood that I have never asked, and do not now ask, for promotion; but I claim the higher classification to which I am entitled, and which the Board has withheld from me. Mr. Drysdale's short stay in the department should not have been allowed to affect my classification, but in any case, when he was transferred to the Customs and I resumed my old duties, I surely became entitled to the pay of the class in which the Board had put those duties when they were performed by another person.

If it be objected that Mr. Drysdale's classification was based on the work which he performed before the first Secretary of Defence was appointed, I reply that from the time he entered the department as chief clerk until the date of his transfer to the Customs there was no material change in his duties. Until the arrival of General Downes, in April, 1885, the Minister (Lieut.-Colonel Sargood) combined in his

own person the offices of both Minister and Secretary; and it was not until long after the arrival of General Downes, when the Government had, from motives of economy, reduced Mr. Drysdale's pay to the minimum of the 3rd class, that we became aware of the classification awarded to the latter. (See the letter of the Public Service Board, No. 398, of 26th January, 1886.)

In view of all these facts, therefore, I formally claim the pay of the 4th class from the 16th of April, 1886, being the date of Mr. Drysdale's departure, when I resumed duties which the Board had put in that class.

I attach, for your information, a note which I have received from General Downes on the subject of my claim.

I have the honour to be, Sir,

Your obedient servant,

Sir James Lorimer, K.C.M.G., Minister of Defence. H. R. MACKAY.

6513.

Military Staff Office,
Adelaide, 13th June, 1888.

DEAR MR. MACKAY,

Please excuse delay in replying to yours, but I was away in the North last week.

In reply, you are probably aware that I more than once urged the Civil Service Board to re-examine the work done by officers in the Defence department, because at the time (previous to my arrival) that it was classified by the Board the department was in embryo, and it appeared to me that the Board could therefore hardly get a right estimate of the work of the officers therein.

When Mr. Drysdale left, Mr. Ramsay took the principal part of his duties, and you took Mr. Ramsay's as well as some of Drysdale's. Both these officers were in the 4th class.

Whenever Mr. Ramsay was absent, once, I think, for a month or more from illness, you performed all his duties, and most entirely to my satisfaction—and it was always my intention, should Mr. Ramsay have had to leave while I was head of the department, to have recommended you to succeed him.

Yours very truly,

M. F. DOWNES.

27B.—6513. [ENCLOSURE.]

88/1694.

Defence Department,
June 27th, 1888.

SIR,

As it appears that the re-classification of this department, as far as regards the Clerical Division, is not to be undertaken by the Public Service Board, I trust I may be excused in drawing attention to the injustice which this course involves upon those officers who were appointed to the department at its inception, and who have borne the heat and burden of the day in carrying into effect a law of Parliament necessitating a totally new departure in the management of the Military Forces of the colony.

To judge the case from its true standpoint, it will be necessary to refer to the earlier part of the year 1884. At that time the few clerks who had been chosen for the clerical staff of that branch, which has become the Defence department, held a position singular and unique. The foundations of the routine of a new State office were being laid by clerks working at low rates of pay. A portion of the staff which had controlled the old Military system, indeed, remained, but remained on sufferance, and with the knowledge that, in the new order of things, no part was assigned them. It was at this stage that the Public Service Commissioners came to classify the department, the old routine by which the "Local Forces" has been conducted was being swept away, the lines upon which the new system was to be conducted had not been decided, and yet a classification of duties was arrived at and fixed by the Board. In other departments, the lines between which an officer's duties lay had, in course of years, been clearly defined—the responsibility appertaining to such duties had found its level, and the determination of that responsibility was of no comparative difficulty. But the case of the officers now under your control was widely different. The very requirements of the Act were not complied with. "The permanent head shall furnish a return." The permanent head of the department, at the date this return was furnished, was the Under-Treasurer, and it was neither signed nor forwarded by him. The officer who signed the statement of duties was Captain Fahey, and his remark, when the work of the Paymaster's branch was under review by the examining Commissioner, may well be quoted to show what data for the work of classification were afforded—"I do not know myself what I am doing, Major Couchman, but I do know that I shall be out of this in a few months." Captain Fahey's duties received no classification, but my work in the same branch was graded as 5th class. After the classification came the time granted for appeal. I was then, as now, convinced that the classification put upon my work was not only unjust, but illegal—firstly, because the return detailing my duties was not forwarded by the permanent head; secondly, because, under the circumstances and date of the inspection of my work, I should have been shown as a clerk in the Treasury department; and lastly, because my work was never inspected by the Board, nor by a majority of the Board. Acting upon the advice of my superior officers, I determined, however, to wait till my duties had time to allow their importance to be judged before forwarding an appeal to the Board against a decision which must have been founded mainly on conjecture. The history of my fruitless efforts since that time is probably, in great part, known to yourself. The heads of this department have stated that the original mis-classification of my duties was injurious to the office as well as unjust to myself, but without inducing the Board to remedy its defect. In other cases in the Defence department the injustice of the first classification has been admitted and remedied, but no investigation of my case has been attempted or made. The letters which have been forwarded to the Board by General Downes and Captain Collins will afford ample proof that my statements of the under-grading of my duties are not exaggerated; and, in the face of these letters, it is surely a matter for grave complaint that the Board has thought fit to deny the few minutes that an investigation of a case so strongly recommended to them would have required. My transfer to another department, where my duties would be more commensurate with my pay, is refused because of the value of my services, and yet these services are to receive no recognition at the hands of the department utilizing them. I appeal to you,

Sir, therefore, as the Minister of this department, to obtain, under Clause 92 of Act 773, an inquiry into the working of this office by the Board, so that an opportunity may be afforded me of obtaining a personal inquiry into my case. Such a power is conserved you by the Act, and its exercise may do much to remove the anomalies of classification which were, perhaps, inseparable from the peculiar constitution of the department in 1884.

I have the honour to be, Sir,
Your obedient servant,

The Hon. Sir J. Lorimer, K.C.M.G., Minister of Defence. HY. V. HEINBOCKEL.

88/1803.
No. 6012/3928.

Public Service Board,
Melbourne, 5th July, 1888.

Sir,

I have the honour, by direction, to advise you of the issue of the Board's certificate for the transfer of Mr. Edward George Jennings, an officer of your department, to the Treasury department in the office of the Public Service Board.

I have the honour to be, Sir,
Your obedient servant,

The Secretary Defence Department. (3928.) H. T. GOMM, Secretary.

[No action taken.]

Certificate to fill Vacancy by Promotion or Transfer.

88/1804.
No. C./1606.

Public Service Board,
Melbourne, 5th July, 1888.

Section 34, Act No. 773.

The permanent head of the Defence department having reported that a vacancy has occurred on the staff for a 4th class officer, *vice* D. W. Ramsay resigned, the Public Service Board certifies that it is expedient to fill such vacancy; and as the requirements of the Service necessitate the transfer of Francis Reddin, now in the Treasurer's department, the Board recommends that the said Francis Reddin be transferred to fill the vacancy.

J. M. TEMPLETON, Member.
H. T. GOMM, Secretary.

Forwarded to the Honorable the Minister of Defence. (3928.)

Cancelled.—(Sd.) H. T. G. 29.8.88.

[No action taken in this matter.]

Defence Department,
9th July, 1888.

Sir,

I have seen the document signed by a member of the Board, which recommends the transfer of a 4th class clerk from his own office to this department, on the ground "that the requirements of the service necessitate it." This would appear to be the only answer I am to receive to my letter of 23rd June, in which I asked for a settlement of my claim for higher classification from April, 1886, and which the Minister sent to the Commissioners with a recommendation that they should visit the department and again examine the duties of the officers in it. Putting aside the fact that they have not replied to the statements contained in my letter or to the request of the Minister, it is due to myself to point out that one of the members of the Board has put his signature to a printed form of recommendation which, while no doubt correct in the main for ordinary Civil Service transfers, is both incorrect and misleading in the present instance. It is beyond dispute that, owing to recent changes in the staff, I am the only person now left here conversant with the course of administration in Defence matters from the creation of the department in 1883 up to the present time. It is, therefore, simply preposterous to say that the requirements of the Public Service are met by the transfer from the Board's office of a clerk who, in taking up new duties, will have everything to learn, and who must perforce depend on the man whom he supplants for information and advice on the simplest matters of detail.

The events of the past few months have shown me that, in defiance of the spirit of the Public Service Act, no claims, no qualifications, are suffered to weigh for one instant with so-called seniority.

Much good was expected from the working of the Act, framed, as it was, on the lines of the great measure which India owes to Macaulay and Trevelyan, and which gave her a Civil Service that Englishmen can still point to with pride. It is painful to think that our Act has been so far wrested from its true purpose as to have become an instrument for degrading and humiliating those it was designed to protect.

A system which subordinates all higher claims for advancement in the service to seniority—or the number of years a man has sat at his desk and drawn the pay of the State—is surely far from perfect. In any other calling in life a man's advancement depends, in a great measure, on his natural fitness and aptitude

for the duties entrusted to him, but in our Civil Service all promotion has become a mere mechanical process. A very safe process, no doubt, if men were machines, and not living, breathing beings. But, while Nature continues to fashion men in her own cunning way, with as marked a difference in their minds as in their bodies, one may well doubt whether, under the mechanical system, the State is likely to get the best service in return for the money which it disburses as wages.

It was my intention to write this letter for your private perusal only, but, as it is probably the last that I shall send you on the matter, I should like it to be shown to Sir James Lorimer. It rests with him to say whether the Governor in Council shall be asked to sanction the transfer which the Board has recommended. But, while Parliament permits me, for a good and sufficient reason, to draw the pay of the 4th class, and I am found competent to perform the duties entrusted to me, I think that the humiliation involved in this transfer should not be inflicted on me.

I am, Sir,
Your obedient servant,

Commander R. M. Collins.

H. R. MACKAY.

88/1858. [REPLY TO 898 ANTE.]
No. 6057.—88/6513.

Public Service Board,
SIR, Melbourne, 9th July, 1888.

I have the honour, by direction, to acknowledge the receipt of your letter of the 30th ultimo, No. 898, forwarding communications from Messrs. Heinbockel and Mackay, representing their claims for reclassification.

I have the honour to be, Sir,
Your obedient servant,

The Secretary for Defence. (6513.)

FRANCIS REDDIN, *pro* Secretary.

88/2393.
No. 7185.—88/3928.

Public Service Board,
SIR, Melbourne, 30th August, 1888.

With reference to the vacancy for a 4th class officer in your department, I am directed to inform you that the Board has cancelled its certificate for the appointment of Mr. F. Reddin to the position in question, and has decided to transfer thereto Mr. Frank Savage, of the Chief Secretary's department. The necessary certificate is accordingly forwarded herewith.

O. in C. authorizing transfer of F. Savage, No. 183, 10/9/88.

I have also to inform you that the Board has issued its certificate for the transfer of Mr. E. G. Jennings, of your office, to the Chief Secretary's department.

I have the honour to be, Sir,
Your obedient servant,

The Secretary for Defence.

H. T. GOMM, Secretary.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

ALFRED GRAVING DOCK.

RETURN to an Order of *the Legislative Council*,
Dated 16th October, 1888, *for*—

A RETURN showing—

(1.) The internal length of the Alfred Graving Dock at the top and on the floor.
(2.) The internal transverse width of the dock at the top and on the floor.
(3.) The length and width of the largest vessel the dock will accommodate.
(4.) The minimum depth of water (low-water spring tides) at the entrance to the dock.
(5.) The average depth of the channel from Hobson's Bay to the dock at low-water spring tides.

Ordered by the Legislative Council *to be printed, 30th October, 1888.*

RETURN SHOWING THE DIMENSIONS AND ACCOMMODATION, ETC., OF THE ALFRED GRAVING DOCK, WILLIAMSTOWN.

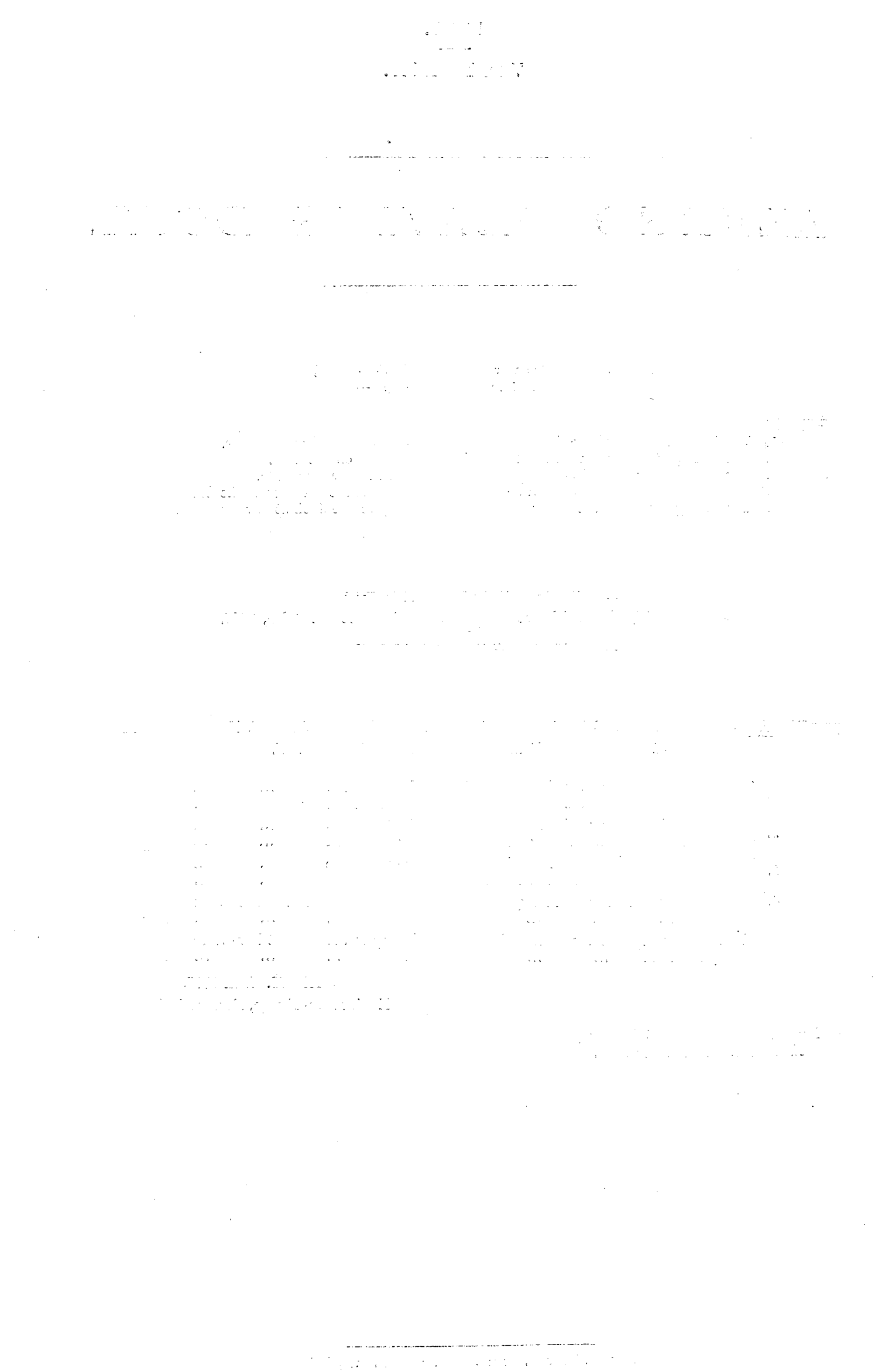
		Feet.
1.	The internal length of the Alfred Graving Dock, at the top	479
	The internal length of the Alfred Graving Dock, on the bottom	459
2.	The internal transverse width of the Dock, at the top	97
	The internal transverse width of the Dock, on the bottom...	55½
3.	The length of the largest vessel the Dock will accommodate	479
	The width of the largest vessel the Dock will accommodate	72
4.	The minimum depth of water (low-water spring tides), at the entrance to the Dock	23
5.	The average depth of the channel from Hobson's Bay to the Dock at low-water spring tides	24

ALEX. WILSON,
Engineer-in-Charge, Ports and Harbors.

Department of Trade and Customs,
Melbourne, 12th October 1888.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

C 6.—[6d.]—4498.



1888.

VICTORIA.

LICENSING ACT CONVICTIONS.

RETURN to an Order of the *Legislative Council*,
Dated 31st October, 1888, *for*—

A RETURN showing particulars of all convictions under the 98th section of the *Licensing Act* 1885, distinguishing between the first, second, and third offences, and showing the penalties in each case, also showing the names of all persons declared "disqualified" under the said section, and the period of disqualification, and the names of any such disqualified persons (if any) to whom a licence has been subsequently granted.

(*The Honorable James Service.*)

Ordered by the Legislative Council *to be printed, 11th December, 1888.*

RETURN showing particulars of all convictions under the 98th section of the "*The Licensing Act* 1885," distinguishing between first, second, and third offences, and showing the penalties in each case, also showing the names of all persons declared "disqualified" under the said section, and the period of disqualification, and the names of any such disqualified persons (if any) to whom a licence has been subsequently granted:—

Particulars of Convictions. Numbers.			Penalties. Amounts.			Names of Persons Disqualified.	Period of Disqualification.	Names of any such disqualified persons (if any) to whom a licence has been subsequently granted.
First Offence.	Second Offence.	Third Offence.	First Offence.	Second Offence.	Third Offence.			
			£	£				
597	60	Nil.	2,510	525	Nil.	Nil.	Nil.	Nil.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

C 7.—[6d.]—6067.

1888.

VICTORIA.

ALFRED GRAVING DOCK.

RETURN to an Order of the *Legislative Council*,
Dated 4th December, 1888, *for*—

A RETURN showing—Estimate of the Cost of Lengthening the Alfred Graving Dock to 550 feet.

(*The Honorable W. A. Zeal.*)

Ordered by the Legislative Council *to be printed, 11th December, 1888.*

The Inspector-General of Public Works reports that the Estimated Cost of increasing the length of the Alfred Graving Dock, making it 550 feet long on the floor, using concrete backing, and including a rudder-well, would be about £32,000.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

C 8.—[6d.]—6066.

1888.

VICTORIA.

CENTENNIAL INTERNATIONAL EXHIBITION.—RECEPTION COMMITTEE.

REPORT

OF THE

SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL,

TOGETHER WITH THE

PROCEEDINGS OF THE JOINT COMMITTEE OF THE LEGISLATIVE COUNCIL AND THE LEGISLATIVE ASSEMBLY.

Ordered by the Legislative Council *to be printed, 28th August, 1888.*

By Authority:

ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

D 1.—[6d.]—2048.

EXTRACTED FROM THE MINUTES.

TUESDAY, 10TH JULY, 1888.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced the receipt of the following Message from the Legislative Assembly :—

MR. PRESIDENT—

The Legislative Assembly acquaint the Legislative Council that they have appointed a Committee, consisting of seven Members, to join with a Committee of the Legislative Council for the purpose of making all the necessary arrangements for the reception of the Members of the Parliaments of Australasia who may visit Melbourne on the occasion of the opening of the Centennial International Exhibition, Melbourne, and request that the Legislative Council will be pleased to appoint an equal number of Members to be joined with the Members of this House ; five to be a quorum.

M. H. DAVIES,
Speaker.

Legislative Assembly Chambers,
Melbourne, 10th July, 1888.

CENTENNIAL INTERNATIONAL EXHIBITION—RECEPTION COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That, in compliance with the request of the Legislative Assembly, a Committee be appointed consisting of seven Members, to join with the Committee of the Legislative Assembly, for the purpose of making all the necessary arrangements for the reception of the Members of the Parliaments of Australasia who may visit Melbourne on the occasion of the opening of the Centennial International Exhibition, Melbourne ; such Committee to consist of the Honorables James Balfour, Sir William J. Clarke, Bart., N. FitzGerald, F. Ormond, J. Service, J. Williamson, and W. A. Zeal ; five to be the quorum, and that the Committee have power to meet on days on which the Council does not sit ; and further, that the Committee meet in the first instance in the South Library, on Wednesday, at eleven o'clock a.m.

Question—put and resolved in the affirmative.

TUESDAY, 28TH AUGUST, 1888.

CENTENNIAL INTERNATIONAL EXHIBITION—RECEPTION COMMITTEE.—The Honorable J. Balfour brought up a Report from the Select Committee of the Legislative Council, together with the Proceedings of the Joint Committee of the Legislative Council and the Legislative Assembly.

Ordered to lie on the Table and to be printed.

REPORT.

THE SELECT COMMITTEE of the Legislative Council appointed to join with a Committee of the Legislative Assembly for the purpose of making all the necessary arrangements for the reception of the Members of the Parliaments of Australasia visiting Melbourne on the occasion of the opening of the Centennial International Exhibition, Melbourne, has the honor to report as follows:—

1. That your Committee, as far as it possibly could, made every effort in its power to promote the comfort and pleasure of the Members of the Parliaments of the other Colonies of Australasia who visited Melbourne on the occasion of the opening of the Centennial International Exhibition.

2. That your Committee has great pleasure in reporting, that it received assurances from many of the public men who came to Melbourne that they fully appreciated the efforts that had been made for their entertainment during their stay in this Colony, and your Committee would take this opportunity of expressing its opinion, that the bringing together of such a large number of the Members of the Parliaments of Australasia must be productive of an immense amount of good in the future.

3. That your Committee received great assistance in its efforts to entertain its guests from several gentlemen; and have had great pleasure in placing on record its high appreciation of those efforts in the following resolutions, which were unanimously adopted by your Committee:—

(1.) That this Committee desires to express its high appreciation of the great courtesy displayed by R. Speight, Esquire, and his brother Commissioners, in arranging for the conveyance to Ballarat and Sandhurst of the Parliamentary visitors from the other Colonies, and for the special provision made for their comfort whilst travelling on the Victorian Railways.

(2.) That the Chairman of the Railways Commissioners be requested to convey to the Traffic Manager of the Victorian Railways, and all the officials directly engaged in the conveyance of the Parliamentary visitors to Ballarat and Sandhurst, the thanks of this Committee for their efforts to promote the comfort and pleasure of the ladies and gentlemen who travelled by the special trains on the occasions referred to.

(3.) That the thanks of this Committee be tendered to the Mayor of the City of Ballarat for his kindness in making such perfect provision for the reception of the Parliamentary visitors on the occasion of their visiting that city.

(4.) That the thanks of this Committee be tendered to the Mayor of the City of Sandhurst for his kindness in making such perfect provision for the reception of the Parliamentary visitors on the occasion of their visiting that city.

(5.) That this Committee desires to express its extreme satisfaction at the manner in which the Chairman has carried out his duties.

(6.) That the thanks of this Committee be heartily accorded to the Clerk of the Legislative Assembly, Mr. G. H. Jenkins, and the other officers of Parliament, who assisted the Chairman so satisfactorily in the discharge of the duties.

PROCEEDINGS OF THE COMMITTEE.

WEDNESDAY, 11TH JULY, 1888.

Members present:

Council:	Assembly:
The Hon. N. FitzGerald	Mr. Bosisto
F. Ormond.	McIntyre
	Officer.

The Clerk read the extract from the Votes and Proceedings, referring to the appointment of the Committee.

Mr. McIntyre was called to the Chair.

The Chairman informed the Committee, that the Honorable the Premier had promised to provide for all reasonable expenditure in connection with the reception of Members of Parliament from other colonies, and stated what had been done, informally, to date.

The Committe deliberated.

Resolved—That Mr. G. H. Jenkins, Clerk of the Legislative Assembly, be asked to act as Secretary to the Committee.

Mr. Jenkins having attended, accepted the appointment, and handed in a letter from the "Federal Coffee Palace Company, Limited," submitting a list of accommodation which they could provide, together with the charges thereof.

The Secretary stated that he had telegraphed to the Clerks of the several Legislative Assemblies of the other colonies to ascertain the probable number of Members of each Legislative Assembly who would visit Melbourne; and was requested by the Committee to telegraph in like terms to the respective Clerks of the several Legislative Councils for similar information.

Resolved—That the offer of the Federal Coffee Palace Company, Limited, for £150 per week be accepted; and the Secretary was further requested to secure additional accommodation at the "Old White Heart Hotel."

Resolved—That the next meeting be held as soon as some idea can be obtained of the numbers likely to attend from the other colonies.

The Secretary was further requested to communicate with the Commissioners of Railways, with a view of arranging trips to Healesville, Ballarat, and Sandhurst.

Committee adjourned.

THURSDAY, 26TH JULY, 1888.

Members present:

MR. MCINTYRE, in the Chair;

Council:	Assembly:
The Hon. Sir W. J. Clarke, Bart.	Mr. Bosisto
F. Ormond	Reid.
James Service.	

The Chairman informed the Committee of the various arrangements that had been made for the reception of Members of Parliament from other colonies since the last day of meeting, and gave particulars of the accommodation secured for them.

The Committee deliberated.

A letter from the Traffic Superintendent of Victorian Railways was read, stating that arrangements had been made to dispatch a special train from the Spencer-street Railway Station on Saturday, the 28th inst., at 1 o'clock p.m., for Albury, for the purpose of conveying Parliamentary visitors from Queensland, &c., from Albury to Melbourne; and further stating that the usual trains leaving Melbourne at 2.55 and 4.55 respectively, would enable members of the Reception Committee to proceed to Albury to welcome the Parliamentary visitors from other colonies, and return with them by special train.

The Committee deliberated.

Resolved—That the Chairman and such members of the Reception Committee as can, proceed to Albury by either of the trains; and that notice be sent to absent members, acquainting them with such arrangements.

Ordered—That cabs be in waiting at Spencer-street on arrival of the train.

The Committee deliberated.

Resolved—That the Chairman see Mr. Blyth, and arrange the programme of engagements, so that there may not be any clashing between the Committee and the Exhibition authorities.

Resolved—That the Chairman have power to make all necessary arrangements, and incur necessary expenditure.

Committee adjourned.

THURSDAY, 16TH AUGUST, 1888.

Members present:

MR. MCINTYRE, in the Chair;

Council:	Assembly:
The Hon. Sir W. J. Clarke, Bart.	Mr. Officer.
F. Ormond	
James Service	
W. A. Zeal.	

The Chairman stated the several arrangements that had been made to secure the comfort of visitors from other colonies to the opening of the Melbourne Centennial Exhibition.

The Chairman read the following letter which he had received from the Hon. J. Inglis, Minister of Public Instruction, New South Wales:—

"Menzies Hotel,
13th August, 1888.

"MY DEAR MR. MCINTYRE—

"We cannot leave without expressing to you our grateful sense of your great courtesy and your unwearied efforts to make the welcome to your visitors worthy of your great colony, and the best traditions of the hospitality of our race. Personally, I am under obligations to every one of your representative men I have met for the extreme cordiality of their welcome and their many kindnesses, and if you will convey to all and sundry, to whom in the hurry of departure I may not already have sent acknowledgments, my own thanks and the thanks of every visitor from the mother colony for the brotherly feeling you have shown, and for the noble hospitality you have so munificently displayed, you will add yet another to the list of my obligations. I am pleased to be able to congratulate you and the colony on a perfect *succès d'estime*, as everything connected with the opening of the Exhibition has been, and that it may work out good results in the strengthening of federal feelings, in the perfecting of amity and concord, in the widening of mutual sympathies, and in the enfranchisement of our common commerce, is the hope and friendly wish of

"Yours very truly,

"JAS. INGLIS."

The Committee deliberated.

The following resolutions were agreed to by the Committee:—

(1) That this Committee desires to express its high appreciation of the great courtesy displayed by R. Speight, Esquire, and his brother Commissioners, in arranging for the conveyance to Ballarat and Sandhurst of the Parliamentary visitors from other colonies, and for the special provision made for their comfort whilst travelling on the Victorian Railways.

(2) That the Chairman of the Railways Commissioners be requested to convey to the Traffic Manager of the Victorian Railways, and all the officials directly engaged in the conveyance of the Parliamentary visitors to Ballarat and Sandhurst, the thanks of this Committee for their efforts to promote the comfort and pleasure of the ladies and gentlemen who travelled by the special trains on the occasions referred to.

(3) That the thanks of this Committee be tendered to the Mayor of the City of Ballarat for his kindness in making such perfect provision for the reception of the Parliamentary visitors on the occasion of their visiting that city.

(4) That the thanks of this Committee be tendered to the Mayor of the City of Sandhurst for his kindness in making such perfect provision for the reception of the Parliamentary visitors on the occasion of their visiting that city.

(5) That the Secretary be authorized to forward copies of the foregoing resolutions to the several gentlemen mentioned therein.

(6) That the Chairman be authorized to certify to all expenditure that has been incurred on behalf of the Committee.

The Chairman brought under notice of the Committee certain correspondence addressed to him by the Hon. Lieut.-Col. Sargood, M.L.C., in regard to his having been appointed Chairman of the Joint Committee, and, having made a statement respecting the matter, read the following letters:—

"Centennial International Exhibition,
"Melbourne, July 11th, 1888.

"DEAR MR. MCINTYRE,

"I met the Hon. Mr. Ormond, who informed me that the first meeting (over which you presided) of the Joint Committee of the Houses for the entertainment of our visitors was held to-day. Talking over with him the question of the appointment of a permanent Chairman for such Joint Committee, I mentioned to him the steps that have already been taken, namely, that some few weeks since, when the matter was under consideration by the Exhibition Executive Commissioners, it was felt that, for many reasons, it would be very desirable to get Mr. Service to agree to accept the position of permanent chairman, as his long public service, and the intense interest he has taken in Federal matters, as also his ability as a public speaker, were recognized as good reasons for feeling that he would be a worthy representative of the colony. I accordingly saw Mr. Service, non-officially, and after some little hesitation he consented to act if requested. I then saw Mr. Gillies and several members of the Ministry, and also several members of both Houses, who all concurred in the same view. This I communicated to Mr. Service, and probably a knowledge of this fact was the reason of his not being present at the meeting to-day, as he might fancy that his presence might hamper the Committee in the free discussion of the subject. I need hardly say that Mr. Service has

ample leisure and means to discharge the duties well, and I cannot but think that his election by the Joint Committee would give great satisfaction to the public generally. I thought it better that you should know what has transpired, and perhaps it would be well for you to read my note to your Committee at its next meeting.

"Yours truly,

"F. T. SARGOOD,
"Executive Vice-President.

"J. McIntyre, Esq., M.L.A."

"Centennial International Exhibition,
"Melbourne, August 14th, 1888.

"DEAR MR. MCINTYRE,

"I imagine that you must have been as much surprised as I was to learn from the papers, that 'strained relations' existed between us. As I acted in my official capacity as Executive Vice-President when writing to you on the 11th July, I felt it due to the Executive Commissioners to lay the facts before them which lead up to the letter in question. A copy of the memo. read by me, I enclose through which you will at once see that, at the time of writing, I was in utter ignorance of the fact of your having been elected to the position of Chairman of the Joint Committee. Had I been aware of the fact, it is needless to assure you, that the letter in question would never have been written; and I beg you will accept my apology for my apparent want of courtesy. Let me also heartily congratulate you on the very satisfactory manner in which you carried through the entertainment of our Parliamentary guests. On all hands I hear nothing but unstinted praise of your excursions.

"Yours truly,

"F. T. SARGOOD,
"Executive Vice-President.

"J. McIntyre, Esq., M.P."

(COPY.)

Memo. in reference to Letter written by the Executive Vice-President to J. McIntyre, M.P.

Centennial International Exhibition.

In April the Ceremonial Committee had under consideration the desirability of appointing a Reception Committee to receive and entertain guests arriving from other colonies and foreign parts, and, in anticipation of a large number of Members of Parliament being present at the opening, it was suggested by me, as Chairman of the Ceremonial Committee, that it would be desirable if the Government would consent to the appointment of a Joint Committee of the two Houses, whose special duty it would be to receive and entertain the Parliamentary visitors. The Ceremonial Committee approving the suggestion, I was requested to see the Government upon the matter. I accordingly discussed the question with several members of the Ministry and of both Houses. I also saw the Premier, who approved of the idea. During these interviews the question of a suitable Chairman came up. As it was felt that this would be a large Federal gathering, there appeared to be a consensus of opinion that the Honorable James Service, who has taken so keen an interest in the Federal movement would be very suitable to act. At this time the larger scheme of banquets and concerts had not been thought of. Neither had it occurred to the Committee that the visitors would wish to visit any of our goldfield cities. With the consent of the Premier, I consulted the Honorable Mr. Service as to his willingness to accept the position of Chairman, if ordered, and, after some little hesitation, he consented. No further steps were taken by me, as I understood that the Premier would follow the matter up. A Joint Committee was appointed in due course, and I heard nothing more of the matter until the afternoon of the first meeting of the Committee, when the Honorable Mr. Ormond informed me that he had attended the meeting, which was only of a preliminary character, as very few members attended. I explained to him the steps that had already been taken by me in accordance with the request of the Ceremonial Committee, of which he is a member, and, understanding from him that no Chairman had been appointed, it was decided that it would be desirable for me to acquaint the Committee, through Mr. McIntyre, the chairman at the preliminary meeting, of the facts mentioned above, in order that the Committee might be seized of the whole of the facts, and be in a position to take such steps as it might deem necessary. I, accordingly, wrote to Mr. McIntyre, on the 11th July, the following letter.*

From the papers I learn that exception has been taken to this letter, and I can only conclude that exception was so taken in ignorance of the prior steps that were taken by me. I need hardly say that when writing that letter I was not aware that Mr. McIntyre had been elected as permanent Chairman; and further, it appears to me that the Committee would have had cause of complaint had I failed to place before them the negotiations to which I referred; but the idea of either dictating to the Committee as to the election of a Chairman, or suggesting to Mr. McIntyre his resignation in favor of Mr. Service, never entered my mind.

The Committee deliberated.

The Honorable James Service moved—

That the Committee desires to express its entire satisfaction at the manner in which the Chairman has carried out his duties.—Carried

The Honorable James Service moved—

That the thanks of the Committee be heartily accorded to the Clerk of the Legislative Assembly, Mr. G. H. Jenkins, and the other officers of Parliament who assisted the Chairman so satisfactorily in the discharge of the duties.—Carried.

Committee adjourned until Tuesday next at half-past three o'clock.

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* See Col. Sargood's letter of July 11, 1888, *ante.*

TUESDAY, 21ST AUGUST, 1888.

Members present:

MR. MCINTYRE, in the Chair;

Council:	Assembly:
The Hon. J. Balfour.	Mr. Bosisto
	Munro
	Officer
	Reid.

The Minutes taken at the last meeting of the Committee were read, amended, and confirmed.

The Committee deliberated.

Ordered—That the letters of the Hon. Lieut.-Col. Sargood, M.L.C., be entered in the proceedings of the last meeting of Committee.

Ordered—That the letter received from the Hon. James Inglis, Minister of Public Instruction, New South Wales, be also entered in the proceedings of the last meeting of the Committee.

The Chairman brought up a Draft Report, which was read paragraph by paragraph, and adopted.

Ordered—That the report be presented to both Houses of Parliament.

The Committee adjourned.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

GENERAL CODE BILL.

REPORT

OF THE

SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL;

TOGETHER WITH THE

PROCEEDINGS OF THE JOINT COMMITTEE OF THE LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY; ALSO THE MINUTES OF EVIDENCE AND APPENDICES.

Ordered by the Legislative Council *to be printed, 16th October*, 1888.

By Authority:
ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

D.—No. 2.

EXTRACTED FROM THE MINUTES.

TUESDAY, 24TH JULY, 1888.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.—The President announced the receipt of the following Message from the Legislative Assembly:—

MR. PRESIDENT—

The Legislative Assembly acquaint the Legislative Council that they have appointed a Committee, consisting of seven Members, to join with a Committee of the Legislative Council to consider and report upon *The General Code Bill*, and to request that the Legislative Council will be pleased to appoint an equal number of Members to be joined with the Members of this House; five to be the quorum.

M. H. DAVIES,
Speaker.

Legislative Assembly Chambers,
Melbourne, 24th July, 1888.

CODIFICATION OF LAWS.—The Honorable H. Cuthbert moved—

(1.) That a Select Committee be appointed to join the Committee of the Legislative Assembly to consider the best means of obtaining a codification of the laws in force in Victoria, and to report their opinion thereon.

(2.) That such Committee consist of seven Members, five to be a quorum, with power to send for persons, papers, and records.

(3.) That the Members of the Committee be the Honorables J. Balfour, F. Brown, N. Fitz Gerald, D. Melville, Lieut.-Col. Sargood, J. Service, and the Mover.

(4.) That such Committee meet in the South Library on Tuesday, 7th August next, at 3 o'clock p.m.

Question—put and resolved in the affirmative.

Ordered—That a Message be transmitted to the Legislative Assembly acquainting them with the above resolutions.

TUESDAY, 21ST AUGUST, 1888.

THE GENERAL CODE BILL COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Select Committee, joined with the Select Committee of the Legislative Assembly on *The General Code Bill*, have power to meet on days on which the Council does not sit, to move from place to place, and to report the evidence from day to day.

Question—put and resolved in the affirmative.

TUESDAY, 16TH OCTOBER, 1888.

GENERAL CODE BILL.—The Honorable H. Cuthbert, Chairman, brought up the Report from this Joint Committee.

Ordered to lie on the Table, together with the Proceedings of the Committee, Minutes of Evidence and Appendices, and to be printed and taken into consideration Tuesday, 23rd October instant.

REPORT.

THE SELECT COMMITTEE, to which was referred the *Bill to declare and consolidate the Substantive General Law*, have the honor to report to your Honorable House as follows :—

1. Your Committee have considered the evidence taken last year by the Joint Committee of the two Houses, and have taken further evidence which has fully informed your Committee of the opinions of the Judges and of the legal profession upon the Draft Code. Your Committee also invited the Chamber of Commerce and the Chamber of Manufactures to express their views upon the general subject of the desirability of a Code, and they have had under their consideration the replies of those bodies, as also some further general evidence from the public.

2. Their inquiries have satisfied your Committee that the Code, while a work of vast learning, contains so many inaccuracies that it could not be safely adopted in the form in which it was proposed to Parliament last year, namely, repealing absolutely the Common and Statute Law, and in its place claiming to embody the whole law upon the subjects of which it treats.

3. This was the view taken by the introducers in this Session of the General Code Bill. In order to prevent the total loss of so valuable a work, and to escape from the alternative of giving up all prospect of codification, they designed the second clause, and this clause has been the subject of prolonged consideration by your Committee.

4. According to the evidence, the objections to such a provision appear insuperable. Every member of the community, except the Judges, would assume the correctness of the Code, and his conduct and business affairs would be governed by the provisions of the Act. Contracts would be entered into, property would be assigned, and enormous liabilities incurred in reliance upon the law as declared by the Code. But if these transactions became the subject of legal proceedings, a totally different law would be applied to them, and the questions raised between the parties would be determined not according to the Code, but according to the opinions of the Judges or other persons who chanced to be called upon to decide them. This would cause enormous expense and inconvenience for years to come, and would place upon the public, upon whom the costs of legal proceedings already press heavily, the additional burden of perfecting the Code by incessant appeals to the law courts and the Privy Council.

5. After much deliberation, your Committee have arrived at the conclusion that this Code, which has been the great work of Dr. Hearn's life, embodying as it does the materials of some of the most perfect Codes in the world, should not be absolutely put aside, and they recommend that Parliament should make provision for submitting it to the best available Counsel for thorough revision and correction.

6. Your Committee would, at the same time, take this opportunity of recommending that the prosecution of the work of the consolidation of the law, partly entered on by Parliament, be systematically proceeded with.

Committee-room,
9th October, 1888.

PROCEEDINGS OF THE COMMITTEE.

TUESDAY, 21st AUGUST, 1888.

Members present:

Council:	*Assembly:*
The Hon. J. Balfour,	The Hon. Gavan Duffy,
H. Cuthbert,	H. J. Wrixon,
D. Melville,	Mr. Officer.
Lieut.-Col. Sargood.	

Extract from Minutes read by the clerk.

The Hon. H. J. Wrixon was appointed Chairman.

Committee deliberated.

Resolved—That their Honors the Judges be asked to attend and give evidence before the Committee.

A copy of opinions on the General Code Bill by the Hon. Dr. Madden, LL.D., H. Hodges, Esq., barrister-at-law, and H. B. Higgins, Esq., barrister-at-law, were laid before the Committee by the Chairman. (See Appendix A.)

Ordered—That these three gentlemen and also J. Warrington Rogers, Esq., Q.C., be asked to attend and give evidence before the Committee.

Ordered—That the Chamber of Commerce, and also the Law Institute of Victoria be invited to express their opinions on the General Code Bill, and more especially with regard to clause 2.

The Hon. Lieut.-Col. Sargood moved—That it is expedient that the Committee have power to meet on days on which the Council does not sit, to move from place to place, and to report the evidence from day to day.

Carried.

Committee adjourned till Tuesday, 28th instant, at Three o'clock.

TUESDAY, 28th AUGUST, 1888.

Members present:

The Hon. H. J. Wrixon in the Chair.

Council:	*Assembly:*
The Hon. J. Balfour,	The Hon. Gavan Duffy,
D. Melville,	Mr. Officer.
Lieut.-Col. Sargood,	
J. Service.	

A letter from Messrs. Freshfields and Williams, of London, addressed to the Crown Solicitor, was laid before the Committee by the Chairman. (See Appendix B.)

Committee deliberated.

The Hon. B. Patterson here entered and took his seat.

The Hon. H. Cuthbert here entered and took his seat.

Henry B. Higgins, Esq., barrister-at-law, was called in and examined.

The witness withdrew.

The Hon. H. J. Wrixon having vacated the chair, the Hon. H. Cuthbert was called to the same.

Henry Hodges, Esq., barrister-at-law, was called in and examined.

Committee adjourned till Tuesday, 29th instant, at half-past Two o'clock.

THURSDAY, 30th AUGUST, 1888.

Members present:

The Hon. H. J. Wrixon, in the Chair.

Council:	*Assembly:*
The Hon. J. Balfour,	The Hon. Gavan Duffy.
H. Cuthbert,	
Lieut.-Col. Sargood,	
J. Service.	

Henry Hodges, Esq., barrister-at-law, was again called in, and further examined.

Mr. Officer here entered and took his seat.

Examination of witness continued.

The Hon. D. Melville here entered and took his seat.

Examination of witness continued.

The witness withdrew.

His Honour Mr. Justice Kerferd was called in and examined.

The witness withdrew.

Committee deliberated.

Committee adjourned till Tuesday, 4th September, at Three o'clock.

TUESDAY, 4TH SEPTEMBER, 1888.

Members present:

The Hon. H. J. WRIXON, in the Chair.

Council:	*Assembly:*
The Hon. J. Balfour, F. Brown, D. Melville, Lieut.-Col. Sargood, J. Service.	Mr. Officer, Dr. Quick.

His Honor Mr. Chief Justice Higinbotham was called in and examined.
The Hon. Gavan Duffy here entered and took his seat.
The Hon. J. B. Patterson here entered and took his seat.
Examination of witness continued.
The witness withdrew.

Committee adjourned till Thursday, 6th instant, at half-past two o'clock.

THURSDAY, 6TH SEPTEMBER, 1888.

Members present:

The Hon. H. J. WRIXON, in the Chair.

Council:	*Assembly:*
The Hon. D. Melville, Lieut.-Col. Sargood, J. Service.	The Hon. J. B. Patterson, Mr. Officer.

Committee deliberated.
J. Warrington Rogers, Esq., Q.C., was called in and examined.
The witness withdrew.
The Hon. H. J. Wrixon having vacated the chair, the Hon. J. Service was called to the same.
Professor Elkington was called in and examined.

Committee adjourned till Tuesday, 18th instant, at half-past two o'clock.

TUESDAY, 11TH SEPTEMBER.

Members present:

The Hon. H. J. WRIXON, in the Chair.

Council:	*Assembly:*
The Hon. F. Brown, D. Melville, Lieut.-Col. Sargood.	Mr. Officer.

Committee deliberated.
A letter from B. Cowderoy, Esq., Secretary to the Chamber of Commerce, Melbourne, was read. (See Appendix C.)
The Hon. Gavan Duffy here entered and took his seat.
The Hon. J. B. Patterson here entered and took his seat.
A letter from His Honor Mr. Justice Holroyd was read. (See Appendix D.)
Committee deliberated.
Professor Elkington was again called and further examined.
The Hon. J. Service here entered and took his seat.
Examination of witness continued.
The Hon. H. Cuthbert here entered and took his seat.
Examination of witness continued.
The witness withdrew.
Raynes Waite Dickson, Esq., Vice-President of the Law Institute, was called in and examined.
The witness withdrew.
William Lynch, Esq., solicitor, was called in and examined.
The witness withdrew.
His Honor Mr. Justice Wrenfordsley was called in and examined.
The Hon. H. J. Wrixon having vacated the chair, the Hon. H. Cuthbert was called to the same.
Examination of witness continued.
The witness withdrew.

Committee adjourned till Thursday, 13th instant, at half-past two o'clock.

THURSDAY, 13TH SEPTEMBER, 1888.

Members present:

The Hon. H. J. WRIXON, in the Chair.

Council:	*Assembly:*
The Hon. D. Melville,	The Hon. J. B. Patterson,
J. Service.	Mr. Officer.

A letter from His Honor Mr. Justice Williams was read. (See Appendix E.)
His Honor Mr. Justice a'Beckett was called in and examined.
The Hon. Lieut.-Col. Sargood here entered and took his seat.
Examination of witness continued.
The Hon. Gavan Duffy here entered and took his seat.
Examination of witness continued.
The witness withdrew.
Emanuel Steinfield, Esq., Ex-President of the Chamber of Manufactures, was called in and examined.
The witness withdrew.
Leo. F. Cussen, Esq., Barrister-at-Law, and Lecturer on International Law, was called in and examined.
The witness withdrew.
Committee deliberated.
Committee adjourned till Tuesday, 25th instant, at half-past two o'clock.

TUESDAY, 25TH SEPTEMBER, 1888.

Members present:

The Hon. H. J. WRIXON, in the Chair.

Council:	*Assembly:*
The Hon. F. Brown,	Mr. Officer.
D. Melville,	
Lieut.-Col. Sargood.	

M. Victor Hugot was called in and examined.
The witness withdrew.
A letter from His Honor Judge Quinlan *re* the Bill was read. (See Appendix F.)
A letter from His Honor Mr. Justice Webb was read. (See Appendix G.)
A letter from J. E. Sprigg, Esq., barrister-at-law, was read.
A letter from J. B. Gregory, Esq., barrister-at-law, was read.
The Chairman gave evidence on the Bill, and enumerated the various steps that had been taken since it was originally introduced by the late Dr. Hearn, LL.D., and stated the intentions of the Government regarding it.
The Hon. J. Service here entered and took his seat.
The Chairman continued his evidence.
Committee deliberated.
Ordered—That a special meeting be called for the purpose of bringing up and adopting the Report.
Committee adjourned till Tuesday, 2nd October, 1888, at three o'clock.

TUESDAY, 2nd OCTOBER, 1888.

Members present:

The Hon. H. J. WRIXON, in the Chair.

Council:	*Assembly:*
The Hon. J. Balfour,	The Hon. J. B. Patterson,
H. Cuthbert,	Gavan Duffy,
D. Melville,	Mr. Officer.
Lieut.-Col. Sargood,	
J. Service.	

Committee deliberated.
The Chairman brought up a Draft Report, which was read, and is as follows :—

GENERAL CODE BILL.—DRAFT REPORT.

The Select Committee, to which was referred the *Bill to declare and consolidate the Substantive General Law*, have the honour to report to your Honorable House as follows:—

1. Your Committee have considered the evidence taken last year by the Joint Committee of the two Houses, and have taken further evidence which has fully informed your Committeee of the opinions of the Judges and of the legal profession upon the Draft Code. Your Committee also invited the Chamber of Commerce and the Chamber of Manufactures to express their views upon the general subject of the desirability of a Code, and they have had under their consideration the replies of those bodies, as also some further general evidence from the public.

2. Their inquiries have satisfied your Committee that the Code, while a work of vast learning, contains so many inaccuracies that it could not be safely adopted in the form in which it was proposed to Parliament last year, namely, repealing absolutely the Common and Statute Law, and in its place claiming to embody the whole law upon the subjects of which it treats.

3. This was the view taken by the introducers in this Session of the General Code Bill. In order to prevent the total loss of so valuable a work, and to escape from the alternative of giving up all prospect of codification, they designed the second clause, and this clause has been the subject of prolonged consideration by your Committee.

4. This second clause declares that the Code shall be taken to be law in all Courts, until its inaccuracy is established, in which case the Judge shall be entitled to refer to the Common and Statute Law, which under the present Bill is left unrepealed. This clause is designed to have only a temporary operation, until the defects of the Code are ascertained by experience and adequately corrected, when (after the lapse of a few years) it is anticipated that the Code could be adopted as absolute law. Upon the Law Department would devolve the duty of carefully noting for amendment all errors as they were made apparent.

5. The objections to adopting this clause are obvious, though, in the opinion of your Committee, they were felt and expressed by some of the witnesses in an exaggerated degree. Certainly, it will cause inconvenience, and, for a few years, place upon the legal profession and the public the burthen of making the Code perfect by practically experiencing and correcting its defects.

6. While the strong repugnance felt and expressed by many eminent legal authorities to this experiment is only natural, the question finally resulting from a full discussion of the subject is, as it seems to your Committee, whether the ultimate value to the community of an established Code is worth the temporary sacrifice demanded; or whether, rather than pay such a price, we should now abandon all prospect of codification, and finally put aside the great work of Dr. Hearn's life, embodying, as it does, the materials of some of the most perfect Codes in the world.

7. After much deliberation, your Committee have arrived at the conclusion that it is the duty of Parliament not to reject the present offer to enter upon a path of reform which, though difficult at first, will ultimately lead to a complete Code, and to a great extent relieve the community from the present uncertain condition of our law. They have, therefore, to recommend that the General Code Bill, with some amendments that do not involve any principle, be adopted and passed into law as soon as possible.

Committee-room,
2nd October, 1888.

Paragraph 1.—Read and agreed to.
Paragraph 2.—Read and agreed to.
Paragraph 3.—Read and agreed to
Paragraph 4.—Read.

The Hon. J. B. Patterson moved as an amendment—That this parapraph be omitted with a view of inserting the following words in lieu thereof—

"4. According to the evidence, the objections to such a provision appear insuperable. Every member of the community, except the Judges, would assume the correctness of the Code, and his conduct and business affairs would be governed by the provisions of the Act. Contracts would be entered into, property would be assigned, and enormous liabilities incurred in relience upon the law as declared by the Code. But if these transactions became the subject of legal proceedings, a totally different law would be applied to them, and the questions raised between the parties would be determined not according to the Code, but according to the opinions of the Judges or other persons who chanced to be called upon to decide them. This would cause enormous expense and inconvenience for years to come, and would place upon the public, upon whom the cost of legal proceedings already press heavily, the additional burden of perfecting the Code by incessant appeals to the law courts and the Privy Council."

Committee deliberated.

Committee adjourned till Tuesday, 9th instant, at three o'clock.

TUESDAY, 9th OCTOBER, 1888.

Members present:

The Hon. H. J. Wrixon, in the Chair.

Council:	*Assembly:*
The Hon. J. Balfour,	The Hon. Gavan Duffy,
D. Melville,	J. B. Patterson,
Lieut.-Col. Sargood.	Mr. Officer.

A memorandum from J. B. Gregory, Esq., Barrister-at-Law, relating to the General Code Bill, was laid before the committee.

Committee resumed the consideration of paragraph 4 of the Draft Report, and the amendment proposed in lieu thereof by The Hon. J. B. Patterson.

Question—That paragraph 4 of Draft Report stand part of the Report—put.

Committee divided.

Ayes, 3.	Noes, 4.
The Hon. D. Melville,	The Hon. Gavan Duffy,
Lieut.-Col. Sargood,	J. Balfour,
H. J. Wrixon.	J. B. Patterson,
	Mr. Officer.

And so it passed in the negative.

Question—That the paragraph proposed by the Hon. J. B. Patterson in lieu of paragraph 4 stand part of the Report—put.

Committee divided.

Ayes, 4.	Noes, 3.
The Hon. J. Balfour,	The Hon. D. Melville,
Gavan Duffy,	Col. Sargood,
J. B. Patterson,	H. J. Wrixon.
Mr. Officer.	

And so it was resolved in the affirmative.

Paragraphs 5, 6, and 7 of the Draft Report were read and negatived.

The Hon. N. Fitzgerald here entered and took his seat.

The Hon. J. B. Patterson moved that the following paragraph be added to the Report, viz.:—

> A Code which is not a correct statement of the law, and Dr. Hearn's Code is admitted to abound in inaccuracies, is, in the opinion of the Committee, not merely useless, but mischievous. It is useless, as it affords no trustworthy guide to the public or to the legal profession, and it is mischievous because it must impose upon the public an enormous tax in the shape of law costs for the purpose of removing its imperfections.

Question—That the foregoing paragraph stand part of the Report—put.

Committee divided.

Ayes, 2.	Noes, 6.
The Hon. Gavan Duffy,	The Hon. J. Balfour,
J. B. Patterson.	N. Fitzgerald,
	D. Melville,
	Lieut.-Col. Sargood,
	H. J. Wrixon,
	Mr. Officer.

And so it passed in the negative.

The Hon. J. Balfour moved that the following paragraph be added to the Report, viz.:—

> 5. After much deliberation, your Committee have arrived at the conclusion that this Code, which has been the great work of Dr. Hearn's life, embodying as it does the materials of some of the most perfect Codes in the world, should not be absolutely put aside, and they recommend that Parliament should make provision for submitting it to the best available Counsel for thorough revision and correction.

Question—That the foregoing paragraph stand part of the Report—put.

Committee divided.

Ayes, 5.	Noes, 3.
The Hon. J. Balfour,	The Hon. Gavan Duffy,
N. Fitzgerald,	J. B. Patterson,
D. Melville,	H. J. Wrixon.
Lieut.-Col. Sargood,	
Mr. Officer.	

And so it was resolved in the affirmative.

The Hon. Gavan Duffy moved that the following paragraph be added to the Report, viz.:—

> 6. Your Committee would, at the same time, take this opportunity of recommending that the prosecution of the work of the consolidation of the law, partly entered on by Parliament, be systematically proceeded with.

Question—put, and resolved in the affirmative.

Ordered that the Report be presented to both Houses of Parliament.

Committee adjourned.

MINUTES OF EVIDENCE.

LIST OF WITNESSES.

MINUTES OF EVIDENCE

TUESDAY, 28TH AUGUST, 1888.

Members present:

MR. WRIXON, in the Chair;

Council.	*Assembly.*
Hon. H. Cuthbert,	Mr. Gavan Duffy,
Hon. D. Melville,	Mr. Officer,
Hon. J. Balfour,	Mr. Patterson.
Hon. Lieut.-Colonel Sargood,	
Hon. J. Service.	

Henry B. Higgins, examined.

H. B. Higgins, 28th Aug. 1888.

1. *By the Chairman.*—You have examined a certain portion of the Code, and we have the benefit of your written opinion upon it. The result, as you express it, is decidedly unfavourable to that portion of the Code?—Yes.

2. As far as your view goes, it would be eminently unsafe for Parliament to adopt the Code in its present shape?—If the rest be like this it would.

3. In your inquiry you have not confined yourself to merely technical objections, but have looked substantially into the matter?—Yes, the substance. I do not think it is a fair guide to the law to any layman or lawyer, as far as these subdivisions are concerned.

4. If the rest of the Code is like it, the whole of the Code would be misleading to the public?—Yes. I feel sure it would do more harm than good.

5. Have you any general acquaintance with the Code?—No, I have not read it through; but as I knew I was to be examined to-day, on two evenings I looked at clauses here and there in other parts of the Code, and tried to examine them critically. I could not find that they threw any light on a man's duties who comes to the Code and says—"What are my rights, what are my duties, under certain circumstances?" I cannot find in the clauses that my eyes lit upon any guidance to a man as to what his rights and duties are; whenever it says anything that is at all practical, it seems to be incorrect in those clauses I looked at; and whenever it says anything which you cannot pick a flaw in, it is so vague that it does not give you any light.

6. That is the result of a general cursory examination?—It is only certain clauses which, at random, I picked out in the Code. Of course, I had not time to go through it. It would take me months to go through it properly.

7. You yourself were engaged on the Code?—Yes, I worked for a year in my spare time. I was one of the first appointed by Dr. Hearn to work with Mr. Gregory upon the property portion.

8. Has the portion you revised been altered since?—I think my work has not been used. I found I could not do it. I returned the brief and fee, and wrote to Dr. Hearn stating that I had not time. It would take me years of labour to do what was given me.

9. Your workmanship does not appear?—Not at all, so far as I know. I handed all my papers to Mr. Gregory. I do not know what he has done with them.

10. Have you considered the question of a Code in the abstract. Do you think it desirable to get some Code?—Certainly. As far as my study of the matter has brought me to a conclusion, I think a Code is a most desirable thing. It would be a saving of expense to the public, and would avoid a great deal of the friction which arises in relations between people in their dealings if they had a clear, concise and comprehensive Code; but my view is, as I have expressed it in my opinion, that the only way is to approach it piecemeal; to digest certain portions of the law, as has been done already in England; and then, when all these portions are in order, and anomalies removed which may appear in the digesting, to gather all together and arrange them in a Code. I think this has been gone the wrong way about; it starts with *a priori* principles of the simplest elements of jurisprudence, and it attempts to put the most complicated ideas of law within the limits of those narrow principles; in fact, I think Dr. Hearn has taken Austin as his basis, and Austin deals with the simplest duties and rights, and Dr. Hearn has worked outwards from that. I do not think the Austin principles are sufficient for such a subject as the law of property. He only deals with crimes and such things—elementary duties.

11. You are aware that Dr. Hearn also adopted the Indian Code?—As far as it went.

12. And the draft code on criminal law in England?—As far as they went, they are excellent, no doubt; but that carries out the theory I have stated, that there they start with branches of the law and digest them well. They have digested the law of evidence, and you have here digested the law of bills of exchange, and I think that digest of the law of bills of exchange has served the country well; there are very few cases of difficulty arising now about the law of bills of exchange. I see Mr. Pollock, in England, has digested the law of partnership, he is one of the leading jurists; there are several branches of the law which are ripe for digesting, but until they are digested I do not think it is possible to make a good code. I think you must fix your reins before you gather them in your hands.

13. Are there any other general observations that occur to you in your examination of the Code?—I do not think any general examination is of the least use, I think the only thing is a laborious criticism of

H. B. Higgins, *continued*, 28th Aug. 1888.

each clause and subdivision. I have looked at the clause which a member of the Committee was referring to after I came in——

14. Will you complete your views upon the Code and general views upon codification?—I may state that I think Mr. Pollock's view is a correct one, that the best way of codifying is to have a general statement of the principles of jurisprudence with an illustration to follow. I think it is exceedingly hard to understand a general principle, no matter how well stated, unless an illustration follow; he points out that you have the advantage there of a broad and comprehensive statement along with a concrete instance as you have in case law to help you.

15. That is the method he follows himself?—Yes. It has been done in the Indian Evidence Act and in the Indian Succession Act, and in a number of the Indian Acts which have been passed for the purpose of codification. In fact I do not know of any instance where a code has at all succeeded that it has not been done. I understand the New York Code has not been brought into operation even in that state—it was drawn by competent lawyers, but not brought into operation yet.

16. I think it is?—I find it has not been brought into operation in this present year 1888; it was passed by the State of New York, but it was brought into operation in California, and I understand in California they practically put it aside, and only use the case law.

17. There is a code in operation in New York?—My authority is Mr. Pollock, in his introduction to his Digest of the Law of Partnership, 1888. If he is wrong, I am wrong.

18. He must be speaking of some later code; there was an earlier code certainly, and its operation was complained of very much?—In California it is in operation, but Mr. Pollock states there is more reference made to decided cases than to the code itself.

19. The result of your examination so far is that codification is hopeless until you codify separate heads of the law, and then combine those in one great code?—Yes, I think that is a logical way of doing it. It is being done, and very well done. We have copied the bills of exchange code here and it serves a useful purpose, and there is no other reason why some other subject could not be codified. The law of partnership could be codified, although with great labour; also the law of bills of lading, the law of marine insurance, and the law of easements.

20. The real property you do not think so?—Easements is a portion of the real property. I think that is the most difficult of the laws to codify. It has never been put into proper arrangement since the feudal system; it is in a state of chaos. I am afraid it will be the last to codify.

21. That being your view on codes, I was going to ask your opinion on the second clause. You will allow me to remind you of the difficulties that force the Government to make the proposal contained in that clause; it is the feeling that this Code, although inaccurate, is a vast monument of learning and industry, it is impossible to get it revised in this country or at home, and it would be a sad waste of power and material to throw it away; but as we do not see our way to adopt the Code absolutely we are forced to make this suggestion to adopt it with this safety valve, the effect of the clause being, as you observe, that the code would be *primâ facie* law until it was shown it was at variance with the law, in which case the court could go outside and correct it by the law. The Bill would only be passed for a period of three or five years, the intention being that during that period a constant note would be taken of errors discovered and in that way the Code gradually corrected until it became perfect. That is the idea, what is your opinion of it?—I looked at that clause specially, and it seems to me to amount in substance to this: That whenever this code agrees with the law it is to prevail; that being so, I think that the whole Code is absolutely futile, because it means this, if it is to prevail wherever it agrees with the law, you must first of all find out what the law is, and as soon as you have found out what the law is, if the Code agrees with it—well, the Code is no good because you have found out what the law is. If the Code does not agree with it, the Code must go. I expect that lawyers arguing in court will ignore the Code practically. Perhaps out of respect to it there will be reference to it, but if it is not the ultimate authority people will not in the hurry of business go to the Code, they will go to the first source. It means that the Code will be a kind of text-book, only worse than the ordinary text-books because it does not give references. A lawyer can now go to the text-books and see the state of the law, and then he will look to his authorities at the foot, and he will see if those authorities carry out what the text-books state; but here the Code does not give authorities, except very few, and is most incomplete in that respect. Any practising lawyer will simply have this an idle book upon his shelf, keeping all his reports and other authorities, and if he is faced with a section of the Code in court by anybody he will simply say, "The law is different according to this authority," and it must go. My opinion upon that clause is, that although it certainly takes the sting out of any inaccuracies of the Code, it also takes away any of the honey that there might be in it.

22. Do you think, considering the undoubted uncertainty of all law, it is no advantage to have some text-book or code which you assume to be law until there is some flaw shown to be in it; is not that some assistance in litigation?—I do not think it would go any further than a text-book.

23. This is different from a text-book, because it would speak with the voice of power until it was demonstrated to be wrong?—I cannot see how it would make any difference, it speaks with no voice of power unless it is final. A text-book is often referred to in court, and so would the Code be, but when one brings the actual authority and says, "That says so-and-so," the text-book is put aside; in fact, some judges get angry if you refer to the text-book and say, "You can look to the text-book to guide you to a case, that is all."

24. You must consider in a good many cases the Code would accurately guide you to the law. You have seen Dr. Madden's opinion?—No, I have not.

25. His opinion is they do state the law. I think we may consider in a good many cases it does state the law, perhaps where there is no great difficulty about the law. Is it not some advantage to have the law contained in a vast number of authorities brought into one short statement and accepted and taken as correct, unless some error is shown—is that no use?—No, I do not think it is any use. Of course, I can understand if the Code were throughout substantially correct it would be exceedingly useful, but the benefit of any code is accuracy, and unless it is accurate throughout it will mislead a man in looking for his rights. It is a question of degree entirely, but I cannot say how much is good and how much is bad. All I can say, so far as I was asked for an opinion, and looked through clauses the other evening at random, it seems to be egregiously inaccurate. I do not think any text-book would be so inaccurate.

26. You think the Code should be put aside?—I have not been asked that; I should think there are some portions that might be utilized for the purposes of a digest law. I think it is a splendid idea and a splendid design. I think the originator of it has given his best attention to the arrangement of subdivisions and so on, but in details it is most inaccurate. I do not think it could be helped.

27. *By Mr. Duffy.*—Can you suggest any means by which the Code could be made more accurate?—I do not think that the Code, as a whole, could be made properly unless you put apart several highly trained men for years without any other work to do and allow them to revise one another's labours; and, in fact, compel them to revise them; but do not let them have the distraction of other business, they cannot do it with the distraction of other business.

28. You think the only practicable plan to be pursued would be to take portions of the law, and, from time to time, codify them?—Yes, and eventually gather all the law together and make a code of it.

29. As regards section 2, if it was determined by Parliament to pass this Code into law, can you suggest to the Committee any other loophole by which the necessary safety can be assured instead of section 2?—No. As far as I can see at present the only logical way is to have the Code supreme or not at all. I do not think that you can have any intermediate course. I have not thought of an intermediate course much I admit, but no lawyer will refer to an authority which is not final. I do not see what intermediate course there can be.

30. Suppose the Code was made supreme, is there any mode by which the Code might be made supreme, and by which we would not be subject to the egregious error of going against the law?—No, I cannot think of any.

31. Supposing when Parliament was sitting any mistake was found the Code could be amended?—That would lead to tremendous legislation, tremendous difficulties; it would lead to this, that most of the cases before the courts would have to come before Parliament to decide what was the law; the Legislature would have to decide what was the law.

32. Can you suggest any tribunal that could take the work of rectifying the Code into its hands?—I have not thought over that. I think it would require a good deal of thinking to come to a conclusion about any tribunal. It would mean that there would be a code with this sort of protection, that the parties might go before the courts, and the courts would decide according to the Code, and then the person might appeal to a tribunal which should say that the Code was wrong on that point.

33. I am afraid I have not made myself understood. The Code does not profess to change the law but to declare it, and that could only be found upon a case coming before the court. If on the case coming before the court, the court decided the Code did not declare the law, can you suggest any way that it could be amended?—I do not see any way at all. It would mean that you would put the litigant to a tremendous lot more expense. He would have to come before a further tribunal after the judges, who would be asked to state that the Code was not right or that the Code was right.

34. *By the Hon. J. Balfour.*—I think you said the Code should have an abstract statement of the law, and be followed by an illustration or concrete statement—will you explain that. Do you mean that each clause should be followed by an illustrative case?—Yes: a brief case in a-b-c form. It has been done in several very useful text-books, and also Acts which have been passed in India. It is put in the briefest form of illustration—the names are not given—just A, B, and C, and only the essential facts put in. This is the sort of thing—[*referring to a book*]—it starts with the statement that the death of the plaintiff or defendant shall not cause a suit to abate, if the right of suit shall abide, and then goes on to give an illustration.

35. This is the only form of Code that you think good?—It would be most useful both to litigants and lawyers; it would enable them to put their fingers upon an analogy. It is very hard for the mind to follow general terms—people always go to the concrete, and in order to get something concrete they must have an instance.

36. In regard to clause 2, the idea evidently was that the use of the Code in the courts would discover its errors—in fact, clause 2 makes it a kind of provisional Code to be revised from time to time?—Yes.

37. In fact, it would not be the law unless it was the law, and you say practically it would not be used?—I should not wonder if out of respect for it the judges occasionally were to refer to it, but I fear in the stress of business no practising lawyer would refer to a thing which would not give him the best law attainable, and arguments would proceed independently of the Code, and when they are faced with the Code they would say, "Here is a case which says so-and-so," and they would depend upon the cases. It might add a little more length to the arguments by reference being made to the Code, and the attempt being made to show that the Code was or was not the law; it would not help the elucidation of the law.

38. *By the Chairman.*—In the inferior courts would it be of use where they only want a general elucidation of the law?—If it were substantially right I should think it would be of use there; certainly it would be of use if there were a good body of law which comparatively unskilled men could work upon but the whole question, even for the police-court, is whether this Code comparatively is right. I am not, competent to say that—I can only say that the parts I have looked at, both those I gave an opinion upon and those I looked at, at random, were egregiously wrong—more inaccurate than any text-book I have seen.

39. *By the Hon. Lieut.-Col. Sargood.*—Have you any intimate knowledge of the Indian codification?—No, beyond reading of it, and reading some of the Acts. I have read some of the Indian Contract Act.

40. Can you say whether a similar clause to clause 2 was introduced in those Acts?—I do not know. The Indian Codes seem to carry out the principle of going to work piecemeal; they have taken the law of succession, contract law, and the law of evidence, and codified them.

41. They have repealed all the laws relating to those subjects?—I should think so.

42. *By Mr. Patterson.*—Clause 2 suggests the idea that there are inaccuracies in this Code. Is it your opinion that by passing clause 2 we would add an uncertainty to the law, inasmuch as there would be an appeal from decisions given under the Code, and it would also add to the expense of the law, instead of saving the public expense in litigation by passing this Code. In your opinion decisions under this Code would not be final, and it would lead to further appeal and consequent expense?—So far as it would have effect given to it at all, so far as it would be referred to, it would be a waste of the time of the courts, because it would not be ultimate law; but I apprehend it would be referred to much less than is thought by the framers

H. B. Higgins, *continued*, 28th Aug. 1888.

of the clause. If inaccurate, as I take the Code to be, if used at all it would mislead men into giving wrong judgments, and lead to more appeals and more expense.

43. It is not only valueless, but dangerous?—Certainly, I am sure that bad law is dangerous.

44. *By the Hon. D. Melville.*—You say you have found it egregiously wrong. Will you give us an illustration of that?—Here is one on page 268, subdivision (*b*) clause 1:—"Every person may as he thinks fit," but subject to the right of other persons "use his property in its natural condition and in the ordinary manner of its use." I say that does not give the slightest light to any layman or lawyer. Any man may use his property in an extraordinary manner if he likes, or in its unnatural condition if he likes. If I have a coat it would be an extraordinary use of it to tear it up, but I can do it. If my coat is in its natural condition I can use it no doubt, but I can also use it, as far as the law is concerned, by taking off one sleeve; so that that clause sounds well but is absolutely unmeaning—it does not lay down any principle whatever.

45. Is that the extent to which that is wrong?—That is only one. I think also it is wrong to say "every person"—if you take the Code as a whole it will only be "every full owner," because "full owner" is defined at page 266: "The rights of full owners shall be as follows."———

46. *By Mr. Patterson.*—You must read on—that clause is to define what he may do subject to any other person?—That is said already in the first clause—"subject to the right of any other person." Any one can use his own property in its natural or unnatural condition if he likes. What appears in the Code here or elsewhere is a well-sounding statement that has no practical application or meaning.

47. *By the Hon. J. Service.*—What is the best method of setting about codification, in order to secure an authoritative Code that laymen would be justified in passing?—By employing men who will give their whole time to it, and do no other work. I understand that in England a quarter of a million is proposed to be set apart for the work, and there is quite as much complex law here as in England. We have a smaller population, but the complications of the law are just the same—perhaps we have more, owing to mining and other special accidents. I should adopt the English efforts after codification as far as I could. If there is any part of our law ripe for codification I should put that before some skilled men to give their whole time to it, and draft a digest.

48. I would like you, if possible, to sketch out to the Committee the best method by which a Parliamentary Committee, like this, should set about preparing such a digest as you think Parliament might be asked to pass without any amendments. What, for instance, would commend itself generally to the Bar. Suppose you were to put it this way—There is So-and-so, who thoroughly understands the law of property. Would you appoint that man to draw up a code on that subject, and have somebody else to revise it, or would you have two or three take it in hand. Of course, each matter would have to be undertaken by a single mind in the first instance, but suppose there were three appointed, and they criticised each other's work, and submitted the whole as the result of their labours—would you consider then the thing might safely be submitted to Parliament, or would you think, after it had passed from a body of that sort, there should be some body behind them again that should again criticise. I find Dr. Hearn says this Code has passed under the review of two distinct bodies?—I do not understand how that could be. I have not seen the full statement, but I understand from my friends at the Bar who did some portions of the Code that they had very limited portions.

49. "This Code has undergone careful revision by two bodies of experts." Here we have had two revisions already. Suppose we have other two, and find ourselves two years hence in the precise position we are in now?—I think there is a misapprehension about the reports going through three minds. In conversation with one of the gentlemen who was engaged on the Code I was informed that he was told by Dr. Hearn to confine his attention to the law of succession. Upon that law there was an Indian Act which was a wonderful aid; but he said he had nothing whatever to do with the rest of the law of property. I asked, after I found what I conceived to be an impossible work was finished, "Have you gone through the whole of this?" and I was told "No." I understand that Dr. Hearn, finding the limits of the work were too wide, asked the gentlemen to confine their attention to specific portions. Of course I may be wrong; that is only hearsay.

50. To whom is this Code to be submitted, so as to come down to us authoritatively?—You have a far greater variety of experts in England than you have here—men who confine themselves to the drawing of Acts almost exclusively. There you have jurists who can afford to stay in their chambers and not take any practice; but they are exceedingly well paid. And it really comes to that eventually—you must let the men make as much in their chambers codifying as they would make outside.

51. *By the Chairman.*—Your view is this—that the Code is worse than useless with clause 2, and the only way you can codify the law is by taking small portions, such as bills of exchange, and codify them from time to time?—Yes; this is too ambitious a work.

52. *By the Hon. J. Balfour.*—But you would do it here; you would not wait for England?—No, not at all. But it would take far more expense and far more time than has been taken in this Code.

The witness withdrew.

[*Mr. Wrixon having to leave, the Hon. H. Cuthbert took the chair.*]

Henry Hodges, 28th Aug. 1888.

Henry Hodges, examined.

53. *By the Hon. the Chairman.*—You have been a barrister for a great many years?—Some fifteen years.

54. Had you anything to do with the drawing up of this Code?—Nothing whatever.

55. You have been asked for your opinion on certain portions of this Code before the Committee?—I have.

56. In addition to the portion of the Code on which you have given your opinion, has your attention been directed to any other portions of the Code in which any inaccuracies have been found?—I cannot say my attention has been specially called to any portion, but when I was first requested to attend before you to give evidence, I picked up the Code and thought I would start at the beginning; I looked at the beginning, and tried to interpret the second clause in the Bill as it originally stood, and having made an effort to interpret that clause myself and find out what that clause meant, and seeing it was open to three constructions, I went and asked several of my learned brothers to interpret that clause for me, and stood by to let

them work out their own conclusions. I must say there were three different interpretations given to me of that clause. Henry Hodges, *continued*, 28th Aug. 1888.

57. Have you got that clause with you?—It is before me: "So far as it is founded upon the common law, this Act shall be deemed to declare upon the subjects to which it relates the doctrines of that law as it now exists." The first interpretation which occurred to me was, that this section intended to state that this was an authoritative declaration of what the common law was, but that there were, possibly, certain portions of the common law which had been accidentally omitted, but that, so far as it expressed anything, that expression was to be taken as the law. I then, with that view of it, went to criticise it literally, and see if literally it would bear that construction; and then I see it starts with, "So far as it is founded." I go to a clause in the Act, perhaps one of those on which I have expressed an opinion, and I say that particular clause is not founded on the common law; consequently, as that is not founded on the common law, this Act does not declare on that subject the law—that was the difficulty which presented itself to my own mind. I thought, perhaps, I was hypercritical, or there was something wrong with me, and I went to several others, and I found some took the view that it meant what this new clause is intended to make it mean, others that it meant that this was an authoritative exposition of everything stated in it; another, that so far as it had a foundation of some kind or other in the common law, although it was not precisely in accordance with it, this was to be taken to be the law. Those were the views that were presented, and, up to the present time, if I had to go to a court to ask the court to judicially construe that section, I should feel in some doubt as to what construction the court would put on the section. Then I began to try and find what was in the mind of the compiler. I was able to find that out after I had struggled a good deal. I found it in this prefatory note in the first paragraph. I find that section means that so far as this Act speaks, it is to be taken to be an authoritative exposition of the law; so far as it speaks it is binding—it is law. That difficulty prevented me from going much into detail.

58. That removed all your doubts?—As to what the author meant, yes; but the court would not have been allowed to look at that in order to say what Parliament meant when Parliament passed it. The court would have been left in a difficulty as to the three constructions—that I and learned gentlemen were in to find out which of those was the right one; it was from an outside source I found what the compiler meant, that rather checked my going into more detail over those numerous sections. The members of the Committee will understand that it would be utterly impossible for any one practising to go laboriously through the whole of this, so I ran my eye down the index without going into detail; the first thing that attracted my attention was this—I saw the heading "Vicarious liability," it comes under the heading of "Inculpation and Exculpation." I was puzzled to know what "vicarious liability" meant; I went to the section; it is on page 30, I partly imagined what it might be, but was by no means clear as to what it was. I think it will be found upon examination to bear upon the liability of a master for the acts of his servant, or a principal for the acts of his agent; then I thought it was curious to find it under that heading, and I pass on, and I find in a totally different part of the work that the relation of master and servant is dealt with. This object I am mentioning now is more an objection to arrangement than to accuracy in dealing with the subject (I did not go minutely into it section by section except the sections upon which I wrote an opinion) but it struck me that, considering this Code is to enable, not the professional men, but the public at large to obtain with reasonable facility a reasonably accurate knowledge of the law on any subject—the Code for that purpose ought rather to be drafted with a view to bringing all the matters on one subject together rather than having them divided, one in one place and one in another, this latter plan may be more scientific, but for a practical code for practical use it seemed to me that the object would rather be to attain not so much what is scientific as what is convenient, so as to enable a business man to find what he wanted; so I say I find here "Vicarious liability" separated altogether from master and servant, principal and agent; that seemed to me to be an error of arrangement, but the same kind of thing occurred, not only in that, but in another heading you will find——

59. That could be very easily cured?—Yes, so far as arrangement is concerned, the other was arrangement too. Then from the inaccurate point of view, at any rate inaccurate language; there is one heading "Injury to the feelings of others." It is under the heading "Relative general duties," on page 23 of the Index, "Duties relating to the feelings of others—Subdivisions (*a*) Defamation;" now defamation is not an action for an inquiry to the feelings of others at all; they may use the most violent language to a man in private and may hurt his feelings more terribly perhaps than other language used in public, but that is no cause of action; the cause of action is not an injury to the feelings, it is the injury to the reputation; it is because that man's pocket may be affected—as many members of the Committee know to call a man a liar even in the presence of others is not actionable, but, if he suffers by it, if he loses business by it that is actionable, not because it hurts his feelings, but because it touches his pocket. I refer to that only to show the inaccuracy of language which occurs in various parts of this Code, beyond that I have not closely considered section by section except those upon which I expressed an opinion. I did it in the first instance with the very greatest possible diffidence, and did not criticise until I had carefully considered the numerous what one may call individual instances to which each general proposition would have to be applied. I tested each general proposition by a number of instances. Suppose I take an A B C case I apply that to this proposition and see how it works, and then I go to my authorities and see how it agrees. I have not seen what I wrote since the day I wrote it, though I have not forgotten what I wrote. Looking at the second section of this Act, I have found almost all the other sections to be inaccurate.

60. Beyond those particular sections that were submitted for your opinion, you have not gone carefully into the Code?—Certainly not, I tried last night, but was unable to get beyond the 2nd section.

61. Have you read that second clause which the Attorney-General directed the attention of the last witness to?—Yes, I have read it, and with very great respect to the draftsman it will require to be considerably altered to do what is intended.

62. Do you think it would be safe with that safety valve to accept the Code as it is, and allow, whenever it is discovered the Code is wrong, the law to stand?—With regard to the safety valve, the effect of this section will be rather curious unless it is altered; if you look at that second clause you will find "If on the hearing or trial of any action suit proceeding matter cause or issue by or before any court in Victoria" and so forth; that latter part is confined entirely to something that takes place on the hearing or trial as you are aware, under our present procedure, there are many cases disposed of without a hearing or trial at all. Take a proceeding for summary judgment, there is no hearing at all so it would seem from

Henry Hodges, *continued*, 28th Aug. 1888.

that, that in that case one kind of law would be administered, whereas if that person had gone to trial the law would have been different, because this part of the section only applies to the hearing or trial, but there is no hearing or trial, it is disposed of without coming to the hearing or trial, and he would not have the benefit of that clause because the case never came to hearing or trial; of course if the first part would cover the whole so as to render the second useless then no harm would come, because then the second part would be useless verbiage, but if the second part is necessary it becomes necessary to make a proviso for all interlocutory proceedings as well as final proceedings, and even on final proceeding, where you move for a summary judgment, as it is called, this ought to be made to apply; a person should not be made to defend in order to get the benefit of the clause.

The witness withdrew.

Adjourned to Thursday next, at half-past Two o'clock.

THURSDAY, 30TH AUGUST, 1888.

Members present:

MR. WRIXON, in the Chair;

Council.	*Assembly.*
Hon. J. Service.	Mr. Gavan Duffy,
Hon. J. Balfour,	Mr. Officer.
Hon. Lieut.-Col. Sargood,	
Hon. D. Melville,	
Hon. H. Cuthbert.	

Henry Hodges, further examined.

63. *By the Chairman.*—I think when we left off you were favouring the Committee with some criticisms on clause 2?—Yes, I was suggesting at that time that clause 2 in its present form might lead to an awkward complication as to whether the law would not be administered differently on interlocutory applications from the law as administered on final decisions. My reason for suggesting that difficulty was from the technical meaning of the words hearing and trial. They are well understood legal terms to denote what has taken place at what is called the hearing of a suit in equity, or the trial of a suit at common law, consequently when a cause was not on hearing, as it is called, or when it was not on trial the law would be administered, or I should rather say, might be administered differently; it might be administered on the Code as being the law on interlocutory applications, and on final applications on the Code as not being the law. There are even, if my interpretation is correct, certain final applications on which the law would be differently administered from what it would be administered if the case went to trial. I was mentioning at the time a cause where, under our present system, applications are made under Order 14, Rule 1, for summary judgment. That is where a person gets judgment without there being a trial. In that case this Code might be taken to be the law, whereas if the party defended and the cause went to trial this Code in that very case would not be taken to be the law, and an altogether different judgment be given. I was suggesting that as one difficulty, and it seemed to me if that was all that was meant by this section it might be done in a simpler way by providing that this Act should be taken to be *primâ facie* evidence, and *primâ facie* evidence only, of what the law is, and shall be law only in so far as it correctly expresses the law as it existed at the time of the passing of the Act. I cannot say I have carefully considered it, but those words appear to me to cover the whole ground that I understand is intended to be covered by clause 2, and then it would apply to interlocutory applications and final applications whether it was a trial or hearing or not. I thought if that was the object it might be conveniently obtained by a short section to that effect, rather than by this long section which appears to imply a good deal of doubt whether it means interlocutory applications and things of that sort, or whether it only applies on final hearings. Then I understand the Committee were desirous I should express an opinion of the effect of this clause assuming it had that effect; the effect would then be not to make this Code absolutely law but it would be in each case something on which any tribunal could act, and would act, until it was shown that the Code was wrong, and the way in which it appears to me that would very frequently lengthen and render more expensive the administration of justice is this, in each cause where the Code is being referred to, the first thing that would be fought out would be what the Code says, what it means, and sections referring to the particular subject would, no doubt, in all cases where there was anything in them be elaborately contested and fought out, one side contending that the Code meant what the other side contended it did not mean. After that was decided, and it had been determined what the Code meant, there would come up then the further question—"If that is what the Code means, then it is not in accordance with the law as it exists at the present time." Then would follow a second argument, and the whole subject would be threshed out then as if the Code did not exist; and so you would have what one might call substantially two arguments, where at the present time you have one. And there is this little further trouble, it seems to me, that in inferior courts—when I speak of inferior courts, I mean courts of petty sessions, justices, and so forth—they would be very apt to take the language of the Code in its literal sense, and say in effect they will have nothing further to do with legal arguments. If the parties are not satisfied with them they must go to a court of appeal, and would decide upon the Code, and would not consider the arguments upon cases and authorities which might show the Code was wrong, and so it would increase the number of appeals. There seems to me also to be this further difficulty that would arise, that it would be likely to increase litigation, for persons relying upon the Code as being a *primâ facie* exposition of the law would take it as the law and act upon it, be prepared to commence their litigation or defend upon it, and be relying upon it really as a statutory enactment, and they would find that if they had taken legal advice, they would have been otherwise advised; and so there would be many cases either defended or started simply upon the authority of the Code. While those are the objections to it, I quite see that clause 2 would prevent an injustice that might happen, because if the view I have taken in the opinion I expressed of certain sections, say about the statement of accounts, is

correct, it certainly would be a terrible thing for many men to find that by some accident £100 had been inserted in an account instead of £1,000, and by means of that accident £900 was absolutely lost, though there was not the slightest doubt it was a mistake and an accident; yet if those clauses about the statement of accounts are final (I am only taking that as an illustration), the person entitled to one thousand pounds would be bound to accept £100, and there would be an end to that. Of course I am referring here to an opinion I previously expressed, which I understand the Committee have seen, and particularly with regard to that portion of it which relates to a statement of accounts which, I felt at the time it was before me, if passed in that form would shut out many from their rightful claims. No doubt this section would prevent that, but while preventing that and other similar things, would in other cases lead to lengthy trials, and possibly more trials than there otherwise would be.

64. *By the Hon. Lieut.-Col. Sargood.*—Would not that apply to any code containing such a provision as this clause 2?—Yes, it would apply to any code that did contain that provision.

65. Taking that very point that you refer to, an account stating £100 instead of £1,000, would not the words in section 4 apply to that—"But the party who admits the correctness of an account may show that the admission was made under a mistake, or that certain items were miscalculated or founded in error." Would not that cover such cases?—No, for this reason, the third clause relates to different classes of accounts from clause 4. Clause 4 relates to what is ordinarily regarded as an account stated which is only one-sided, and which has not cross items, and does not come within clause 3 at all. The two things are well known in the law. I think very likely the compiler of the Code or the drafter of this section may have meant that, but he has not said it, and it would be in distinct conflict with clause 3, and in distinct conflict with what is the law in regard to those cross accounts which are on a different footing in the eye of the law to accounts which are not cross accounts, but which are one-sided. This very section 3 is taken almost *verbatim* from the language of Lord Justice Blackburn, in a judgment he gave, to which, I think, I have referred in my opinion. Lord Blackburn, in a few lines further on, expresses a limitation to the finality of that account. I have not the case here, but I could show the very language which Lord Blackburn used.

66. *By the Chairman.*—Have you concluded the general expression of opinion on the Code?—I think on this Code there was one matter I heard Mr. Higgins express an opinion upon when I came in which coincided with—I will not say my own views, though they are my own views also, but the views which have been promulgated by men who have had more experience in drafting codes than I have—that is, the advisability of piecemeal codification. The man who drafted the Bills of Exchange Act, Mr. Chalmers, wrote an article to the *Law Quarterly*, in which he suggests and advises that same course of piecemeal codification, and he suggests it being adopted in what you may call systematic order, selecting such subjects as are what he called "ripe for codification." There are many subjects that have been so fully threshed out in the courts of justice that a draftsman is not at so great a disadvantage in codifying that particular part of the law, by reason of the fulness of the decisions, and the fulness of the explanation of the principles upon which those decisions are based. I may give an illustration here which is also given by Chalmers, the law of partnership, that has indeed gone so far as to have a draft code prepared by very eminent hands at home; I think Mr. Pollock was the main instrument, and the law of partnerships, as he points out, is one which is very largely of modern growth, very fully decided, and the principles very clearly enunciated, and it is possible on a subject like that to codify with reasonable facility, and with reasonable certainty that you really have the law. Then it seemed to me you might go from that to such a subject as the law of mercantile agency, or the law of agency generally, and from that to some such subject as master and servant, where you are still keeping on the same lines. By that means you would get a complete codification upon the law of agency, and master and servant is really a branch of it, and so is partnership. You would get the whole of the law upon that subject in the Code in a comparatively short time, and be in a position to go a step further, and get the law upon contracts relating to realty. By that means I think the whole law could be gradually codified; but I do feel, and feel very strongly, that at the present time no one man that ever lived would be competent to codify the whole of the British law in its present diffuse state; it would be a labour which would surpass anything that has ever yet been done; and it seemed to me that only in that way would we get a good code, and we would get the code by a process which one might call reformation, as distinguished from revolution, and the latter is what I feel this Code would be. From the only sections I have examined closely, I fear it would almost amount, in its present form, to revolution, whereas by the piecemeal process we would gradually get a complete code, and when we got nearly the whole digested, one man might possibly master the whole, and put the whole into one complete code.

67. *By the Hon. Lieut.-Col. Sargood.*—That was really done with the Indian Code?—I think so. I think it was Macaulay who started that method, which Mr. Higgins was suggesting, of the principle with an illustration. I know he got credit for it, and it was then thought to be a stroke of genius. I know, from a public or non-professional point of view, it is very felicitous, but from a purely professional point of view the abstract proposition is often enough.

68. *By the Chairman.*—Does that complete the expression of your opinion?—I think so.

69. Then the Committee may gather from that you are clearly of opinion we could not take the Code as it was proposed last year—that is, without clause 2—that would be a fatal step?—In my opinion.

70. With clause 2 you think it would be innocuous, but useless?—I will not say innocuous, because it seemed to me to lead to a lengthening of the proceedings and increased litigation.

71. *By the Hon. Lieut.-Col. Sargood.*—Double arguments, in fact?—Double arguments, in fact. And also misleading people who would start litigation on the strength of it.

72. *By the Chairman.*—Having regard to the undoubted uncertainty of the law in many respects now, as illustrated by example by repeated appeals at home and reversals which go on from court to court, you consider it would be very much aggravated by the new element of the Code?—I think it would be largely aggravated in each case. There would be the old stand-point; there would be the opinion as to what was the meaning of the Code, and second, whether that meaning was in accordance with the law as it exists.

73. Would that apply so much to the lesser courts, where the final distinctions of law are not so closely pursued, and are not so necessary to be closely pursued. Would not the Code form a rough and ready guide for all practical purposes?—So far as I have examined it, it would form a rough and ready guide that would lead people into many errors.

Henry Hodges, *continued*, 30th Aug. 1888.

74. That would be dangerous, instead of useful?—That is my impression. When I was saying on the previous occasion that the arrangement seemed to me bad, I meant from a non-professional point of view, not a professional, because a professional man would seek out the sections wherever they may be; but to have those divisions Inculpation and Exculpation would puzzle a non-professional man to start with, and to find in that portion some of the doctrines of master and servant, and in another and totally distinct part another portion of the law of master and servant; to find in one part portion of the law relating to patents and in another distinct part another portion of the law relating to patents; and to find the civil and criminal law mixed up together, would, I think, although capable of being remedied, require a very considerable alteration of the whole in order to make it practically useful. Because, as I understand it, this is really for the benefit of the public generally, not the profession; it is to facilitate the public. Professional persons must endeavour, from various books and statutes, to find out what the law is—search in the hidden places, which the public will not and cannot. The Code is to enable a man to read as he runs, and, in the course of his business, find out with reasonable facility what the law is. I have mentioned those two instances which have occurred on a cursory examination of the Code. There may be many others which I have not noticed.

75. *By the Chairman.*—Judge Webb in his evidence adverts to the difficulty you point out, but he thinks it of little consequence, because anyone can refer to the index to find what they want?—It is possible that a person who would carefully examine the index would be able to find out, assuming we got a good index. As a lawyer I think we would find out soon; but if you have a man, a non-professional man, who does not understand the use of indexes, in the same way as lawyers do, running and jumping about from one part of the Code to another, and then trying to bring them together in his own mind, he will have a task which I think can only be accomplished by a professional man. Part of the difficulty arises from the learned author's division of the subject into rights and duties, and keeping the rights and duties to some extent separate, whereas from a practical point of view the right and co-relative duty are always dealt with together, and it very often shortens things to have them together.

76. That was Austin's plan?—I think it was. I know Austin found some difficulty in getting everything under the rights, which induced the author here to depart from that classification and put everything under commands. He puts it, all law has its origin in the command of the State.

77. Condemning this Bill, as you feel bound to do in either shape, do you think you could practically revise it in this country?—I do not think the whole Code could be practically revised. When I say I do not think, I am in doubt whether it could be. This Code would be of immense service no doubt to anybody who was trying to codify the law on any particular subject.

78. Following out your plan of taking portions?—Yes, he would then have something which has been considered. He would have a plan, and he could amend upon the plan in his particular subject. He would have a great number of the doctrines here which he could verify, and so far as they were inaccurate he could correct. In that way, it would be of immense service to him. I do not feel that this has been altogether a lost labour. It may be of service to future generations in many ways, even in codifying. I say I do think codification an excellent thing. I think it is an admirable idea if properly and carefully worked out, and worked out in the way in which, I think, it was worked out in India, and in the way in which they have started to work it out at home, and in the way in which to some extent we have started here, we have started with bills of exchange.

79. *By the Hon. J. Balfour.*—Seeing we have that Code, such as it is, with its errors, would it not be possible to divide the Code as it is now into the different subjects and have a set of professional men labouring upon each at once, even though it should take a long time to perfect?—I think that very possibly it would. Of course the professional men that are available for this kind of thing in this colony are more limited than they are at home. That is one reason why I think that piecemeal codification is better. Give men one subject at a time, and when their minds are concentrated on, so to speak, a limited space, and they see the end of their work before them within a reasonable time, they will devote themselves much more energetically to it than if they have such an enormous mass as we have to deal with here, and the mass you have here is only small compared with the mass a man has to deal with who proceeds to codify. But when he gets a small subject, such as the law of partnership, he takes the best treatise on the subject. He would take the codification here, and Pollock's Codification and Pollock's Digest. He would have a comparatively narrow subject with which to deal. I know when I have a limited number of questions to answer, or a limited number of matters to deal with, I deal with each of those much more carefully than if I am asked to write a voluminous treatise, and I think others act similarly. So with the assistance of this draft code, though I would not like to say it was impossible it could be done, I am inclined to think it could not be done with so few lawyers who have time to devote to it. I do not think it would be possible to do the whole satisfactorily, but it might be done piecemeal.

80. Do I understand, then, that the difficulty of carrying out the suggestion that I made that it should be done piecemeal, but done at once by different professional men, is the want of a sufficient number of first-class professional men who have the time?—That is really the difficulty. You want one or two for each subdivision of the subject; the one who deals with the law of contracts might be unfit to deal with the law of real property. There are only a few men in each branch who could devote the time to it.

81. *By Mr. Officer*—Can the defects in a Bill of this kind ever be detected satisfactorily until it does become law. Is not that the best way to find out its defects?—I think there is no doubt that its defects would best be found out by making it law, and in a very short space of time, a good many of the sections would be dealt with; but meanwhile there is the danger of the injustice that would happen to the individuals who have, on the basis of this being law, started or defended their suits, and fought their battles, being held to be absolutely wrong on the law as it existed at the present time.

82. Even if the plan suggested by Mr. Balfour were carried out, would it be perfect?—I do not think it would be possible to say any code would be perfect, but I think it would be very much nearer perfection if done piecemeal. The draftsman would get instruction from each piece that was done, and from each case that was fought out on a portion that was completed, but I think that no codification will be perfect, though, so far as we have seen, the Bills of Exchange Act has been as nearly perfection as any Act of the kind could be expected to be. I believe Mr. Chalmers, who drew the Bill, says, in an article that he wrote, that there are some two or three defects in the Bill. He does not mention what they are,

but, so far as I have had an opportunity of seeing it, so far as litigation up to the present time has shown, the Bill appears to express the law as it existed at the time. If this is passed into law absolutely it never would be discovered what defects there were in it, because the court would never have to decide what the law was. They would only have to say what the law is as enunciated here. In the very case I have put, of an accidental omission in an account where there are cross entries, if the person was robbed of it there would be no discussion as to what the law was before; the only question would be what this Act says. Henry Hodges, *continued*, 30th Aug. 1888.

83. Do you think it is possible that lawyers ever can agree as to what is the law?—If you asked me whether it is possible I think there are cases in which it would be impossible to get lawyers to agree, though in 99 out of 100 cases they will agree. I might illustrate that by the case Mollit and Robertson that went to the House of Lords. Although there was the most ample discussion in the court below it went through all the courts, and it went to the House of Lords, and in every court there were dissenting judges, and if my memory serves me rightly there was only a majority of one in the House of Lords, so I do not think it would be possible ever to polish the law into such a shape that there would be no differences of opinion. Fowler and Hollins is another of the same sort. They are both exactly on the same footing in that respect. I think they are reported in the same volume. Where you have the conflict of opinion in the highest authorities——

84. *By the Chairman.*—When we see that conflict in the greatest authorities, that drives us to consider whether it would not be well to lay down something as the law, and stick to it?—Even if that were done I think you would have on the construction of sections in this Act the same conflict of opinion that you have upon whether a certain thing amounts to a conversion or does not. Take the question of Fowler and Hollins, this Act would not prevent that same conflict of opinion. This Act would not settle whether what was done amounted to a conversion or whether it did not. You would have the same trouble in attaining the result, whether it was a conversion or was not as if this Act did not exist. I tried to find an interpretation of the second clause as it originally stood, and if we were inquiring whether or not the Act would abolish differences of opinion, that section seemed to show conclusively that the Act certainly would not. I thought that section was badly worded; but even with perfectly worded sections it cannot abolish the differences that would exist between minds when you get on subjects which are so to speak, on the border lines. A matter of that kind was very admirably put by Lord Bramwell. He said "It is very easy to say at twelve o'clock in the day that it is mid-day; it is very easy to say at twelve o'clock at night that it is night, but it is very difficult to define the precise time at which day becomes night." So when you get on those subtle points of the law there always must be upon the reading of an Act of Parliament, or the acts of certain individuals, a conflict of opinion. The main object of the law is to make them as few as possible. If I thought this Code would reduce those, even although it occasionally did an injustice, I should say that the benefit to the community by diminishing disputed points would exceed the wrong that might be done to occasional individuals.

85. Mr. Higgins expressed the opinion that the effect of the second clause would be that the Code would be substantially neglected and cast aside; do you concur in that view?—I think by the profession it would; not by the public. The profession would say they were not going to refer to anything which is not absolutely binding. You have only got to show your Bill, I show my case.

86. *By the Hon. J. Service.*—Would the clause you propose to substitute do away with that difficulty?—No. I was only afraid that this clause in its present form might lead to the law being decided in one way on the interlocutory applications, and in another way on the final applications. The clause was only to make, as it appeared to me, the intention of this more clear, and to have a case always decided in accordance with what the law is; not at one time in accordance with what the Code declares it to be, and another time with what it is. It is somewhat difficult to make clearly understood the technical meaning of these words, the hearing or trial of an action—they have a technical meaning in all proceedings. When a suit comes on for hearing—that is, when it comes on in its final stage to be disposed of—hearing refers to an equity suit, and trial to a common law suit. I was afraid this might do an injustice in that way, and I thought, though I have not drafted a clause, that I might make a suggestion for the draftsman which the Committee might consider. I feel that all words that are unnecessary only lead to obscurity, and the shorter it can be made the better, so long as the meaning is expressed.

87. *By the Chairman.*—I may say the intention of the clause was to make the decision of the court apply to that case. It would never do to invest the court with any general authority. The court would merely say how it read the Code in that case, and if there was any doubt they should take it into a higher court. Would that not be fully met in the way I am suggesting?—What I fear is not only conflicts between the inferior and superior courts, but between what the Supreme Court would decide on an interlocutory application, and what the Supreme Court would decide when the case came on for final hearing. I saw there would be difficulty, and a great deal of argument about it, and I thought it would be as well to sweep away as many arguments as we can.

The witness withdrew.

His Honor Mr. Justice Kerferd, examined.

88. *By the Chairman.*—I believe you have looked at the Code generally, though you have not examined it critically, and I understand your attention has been somewhat specially directed to clause 2?—It was, by the letter of invitation asking me to come here. His Honor Mr. Justice Kerferd, 30th Aug. 1888.

89. The Committee will be indebted to you if you will favour them with your views upon the Code?—With regard to clause 2, I glanced at it when I got the letter of invitation, and it appeared to me that the operation of clause 2 would be to leave the state of the law very much as if the Code had not been passed at all, and I think, if it were desirable to pass the Code, it would be better to pass it without clause 2. Whether the law be good or bad, there should be some degree of certainty that it was all contained in the Code in the interests of suitors, because they would go acting upon the advice of their counsel, and proceeding upon the law as laid down in the Code, and they would still be met with the contention—"That is not the law," and so far as they were concerned it would be a very costly matter for them. It would involve in every case that was worth being carried on beyond the immediate tribunal that was hearing the case, the contention that the Code did not disclose the law, and the case would be carried to an appellant tribunal. It would be infinitely better that the Code should contain what we might call bad law, and yet be, for all

His Honor Mr. Justice Kerferd, *continued*, 38th Aug 1888.

purposes with regard to the subject matter mentioned, the law, than that you should leave it open in this way, so that a wealthy suitor could say—"That is not the law; I will carry it further to an appellant tribunal; I will run through all the appellate tribunals I can go to, up to the final one," so that my view with regard to clause 2 would be that it would be better to omit it altogether for that reason.

90. As to the Code generally, are you prepared to express any opinion whether you could recommend its adoption or not, with or without clause 2?—As to the Code generally, of course, I cannot exclude from my consideration the practical difficulty of getting a Code like this through Parliament—that is one element that must be taken into consideration. Another is that to induce Parliament to pass it it must bear upon it some stamp, it must have the imprimatur of men who are acknowledged in the profession as being competent to give an opinion, and then Parliament might be induced to depart from its usual procedure with regard to Bills, of criticising them at every stage in each of the Houses, and allow the thing to be carried through Parliament very much, as was once said, like a sack of coals. Now it would be impossible for any person practically acquainted with the kind of work which has been done in this Code, to underrate the value of it, or overestimate the enormous labour that it represents. Those who have had experience in that kind of work can have only one feeling—that is, of admiration for the amount of work that has been done here; and this work, although it may not be fitted to be carried through as a measure by itself, will be exceedingly valuable, and will save an enormous amount of labour when you come to deal with the codification of the law in the way which I think would be the most practicable way of doing it—that is, to take it under the various heads of the principles of the law. I do not know that I can give a better illustration of what I mean than what was done by the Service Government when they passed the addition to the Instruments and Securities Statute in the Act which deals with bills of exchange. It was simply a transcript so far as the Government were concerned, from English legislation, but the great advantage of that Act was, and is now, that it contains the whole law—statute and common law. It was prepared, and there it is—any person who wants to consult the law with regard to bills of exchange can go to that statute and get the whole of that statute law as it existed before the statute, and also the common law, and know that it really contains the whole of the law. Therefore I should suggest that that should be the course that should be followed, rather than passing in one measure the whole of these subject matters. Take the various matters in the order of their importance, whether dealing with real property or customs, or wrongs, or whatever it may be, and that the work of codification should go on and extend over a series of years—that there should be certain gentlemen selected, and in each year they would produce the codification of some branches of the law, and it would be passed as a statute, and in course of time when all these were put together, the real codification of the authoritative law which then appeared upon our statute book could be worked together, and worked together with confidence that the several parts of it had been put in practical operation. Such a statute could be amended from time to time as omissions presented themselves, with regard to different branches, and then the codification could be completed, and would, I venture to think, with some practical knowledge on the subject, be a substantial work that would last for time.

91. You would not consider it safe to adopt that Code as it stands now?—The objection as it stands now—of course, I wish what I say in objection to be taken in connection with what I have said in my admiration of the work—is, that it introduces new phraseology to describe a great many of the legal principles that are involved. Here I turned up by accident, or, rather, by chance, where the book fell open, with regard to contributory negligence. Take that as an illustration—"Contributory negligence shall not be an excuse."

92. *By Mr. Duffy.*—"Shall be an excuse?"—That is the second subdivision of it. "(*a*) If the damage be not the natural and immediate consequence of such contributory negligence; (*b*) If the act of contributory negligence be not such as to preclude the party primarily guilty of negligence from avoiding the consequences of such contributory negligence by the exercise of reasonable care." It does not appear at the first sight what is the precise reading of that subdivision (*b*.) "(*c*) If the act of contributory negligence be not an independent act, but an act resulting in the moment of peril from the original act of negligence." All those three subdivisions are clothed in language which I am not prepared to say would not accurately describe the contributory negligence, but I would say it is new phraseology; it does not describe it in a way in which contributory negligence comes to be dealt with. In the margin here is one of the leading cases, Davis *v.* Mann. Davis *v.* Mann is a case which really places in very popular form the doctrine of contributory negligence. Actions of negligence very often arise with regard to local governing bodies, the condition of the roads, omnibus, tram-cars, railways, all kinds of persons who have duties to other persons, are continually brought before the courts, in some form or another, in actions for negligence, and invariably there is a plea of contributory negligence. The result of it is, that if the plea of contributory negligence be proved, that is an answer to the action. That was laid down in Davis and Mann. Davis and Mann is familiarly known as the donkey case. Some persons, out of sport, tied a donkey by the legs, and left it in the middle of the road. Another person coming along with a cart, instead of avoiding the donkey, as he might have done, seeing it there, drove over it, was capsized, and received an injury. It was found that he was guilty of contributory negligence. That illustrates the doctrine with regard to persons who bring an action for negligence. The person who is accused says, "I was guilty of negligence. I did make a hole, leave a heap of metal, or made an obstruction, but you saw it, and could have avoided it;" and when that is proved, that is a complete answer, because, though the person did commit the wrong, the immediate cause of the wrong was the plaintiff's negligence. The members of the Committee who are familiar with this common subject will at once be struck with the fact that this subdivision of contributory negligence clothes the doctrine in unfamiliar language—at all events, it is new phraseology. That is one of the difficulties that I think would run right through the whole of the Code. It is one of the rules of drafting that, when you mean the same thing, say the same thing, and when doctrines of law have been laid down in well-known language, it is never wise to depart from it, because our language is so flexible, and words are used that are capable of so many different meanings, that when you adopt new phraseology the fact of doing so opens the door to any amount of litigation.

93. I may add we have had most satisfactory evidence before us that in many respects the Code is inaccurate, that you do not go into?—I carefully avoid that for other reasons.

94. You have expressed the opinion that it is a work of great value, at the same time it is inaccurate and could not be adopted absolutely?—Not without great cost to the suitors. I may remind you of the well known saying with regard to the Statute of Frauds—that every line has cost a subsidy.

His Honor Mr. Justice Kerferd, *continued*, 30th Aug. 1888.

95. The object of clause 2 was to enact it with a safety valve, and to enable the community, the Code being enacted temporarily, to learn the Code, find out its defects and remedy the defects as they went on. Though that is an imperfect means of dealing with the question, as every one felt, the matter on which we wish your opinion is, is it more advisable to take it in that maimed fashion, or put it in the waste-paper basket?—I would not like to say it should go in the waste-paper basket, but I would deal in detail with it; do so much of it every year or every session, and deal with the matter very much as bills of exchange have been dealt with, and embody all the law dealing with the subject. Make sure of your ground as you go long.

96. *By the Hon. J. Service.*—Then you would make use of this?—Decidedly, it would be of the greatest value—I may say it is of the greatest value now to anyone who wishes to work up for himself and ascertain what is the real state of the law. It is of great value for any person to come to and be put upon the track as to where he will find the law. It is of great value to know where you can put your hand upon a particular book upon any subject, and so it is to be able to put your hand upon a work that will inform you on any point of the law.

97. *By the Chairman.*.—From your experience in drafting do you think it would be feasible to get the whole of this code revised here?—In detail it would. I think you can have no better names than those gentlemen whose opinion you have got, and if the Crown were to prepare the Bills and submit them to them for their final revise, and they came from them with their final stamp upon them, they would go through Parliament in the way I have suggested, taking the subjects in the order of importance. All that pertains to land with regard to registration, or sale, or specific performance of contracts, would be invaluable if the whole law could be found in the four corners of any particular statute for the time being, which statute is ultimately to form part of the Code.

98. *By the Hon. J. Service.*—You think there are people in the colony whose imprimatur would be sufficient to carry the thing through Parliament?—I do.

99. You mentioned that the law of exchange was drafted in England, and was a transcript?—Yes.

100. We had in evidence before us last week something like this statement—That there were a number of experts in London who devoted themselves to specialties, and, in fact, never went outside their own office—devoted their months of labour to such work as this; but I think there was a doubt in the minds of some of the Committee—it was in my own, I know—as to whether we have people who stood so high in this colony as the gentlemen I refer to stand in the old country, and who, at the same time, could be got in sufficient numbers to carry through this work in anything like a reasonable time. The difficulty I expressed at the last meeting of the Committee was the possibility of arriving at some finality. When could this Committee, for example, feel itself in a position to say to Parliament "You are quite safe to pass this, like a sack of coals"; and when would Parliament feel quite safe to adopt that course. For example, suppose Mr. Hodges and Mr. Higgins, say, could be persuaded and paid for devoting their time to codifying, even in detail, do you think that the Bar as a whole, and Temple-court as a whole, would be content to accept their imprimatur, or would there be a body of critics even upon those gentlemen who would insist that they should be allowed to criticise after such gentlemen had performed and finished their work, and thus throw the work on another Committee, and so on *ad infinitum*. Do you think it possible that we have men whose decision would be accepted as final by Parliament, as well as by the Committee?—I think politics come in, and you want a Government with a good majority to support them to carry through measures—that has largely to do with the success of getting measures through Parliament, whether they are good, bad, or indifferent. I think there are members of our Bar here who devote themselves to the different branches—those names you mentioned and others, who have given a considerable portion of their time to examine the particular branches—that when the Bill has been prepared by those gentlemen, and the Attorney-General is in a position to go to Parliament and say, "This Bill has been prepared upon the foundation of Dr. Hearn's invaluable work; it has been subject to the revision of men pre-eminent in that particular branch; it may not be perfect, there may be omissions, but as such we pass it now as a tentative measure, and, if experience shows there are omissions, there will be measures taken to place those omissions on the statute book, it would be passed.

101. After the Committee was appointed, and my name was on the list, I got the report of last year's Committee, and the evidence they have taken, which I read with great interest; there, I think, the Committee was unanimous in recommending the Code of 1885 to be passed through in the way you suggested, and one would have thought that the Government then might have, on the faith of the Committee, submitted the thing to Parliament, with a recommendation to carry it through, that is, supposing the state of public business permitted it, but here we come; and the Attorney-General during the recess, having heard some rumours that only one side was heard last year—that there was evidence to be given by men of standing of an adverse character to that given by the judges and barristers who were examined last year—sent out a circular to some of them, including Dr. Madden, Mr. Higgins, and Mr. Hodges. Dr. Madden's report was pretty favourable, similar to what we had last year; but the opinions of, I think, two were so absolutely adverse that it would be an impossibility for this Committee, in the face of those opinions, to bear out the recommendations of last year's Committee. I would like to be satisfied that we have means of arriving at finality; and after taking the opinions of Messrs. Higgins and Hodges and other gentlemen who will be called, and being prepared to follow the course suggested by them, that the next Committee will not be in the position we are in, that it shall not be a case of climbing up the hill and falling back again?——

102. *By the Chairman.*—Before answering that, I would make a remark. Mr. Service's question is whether we have got men sufficiently eminent here to devote their attention to the work and to command general respect and attention. I would remind you that in England when this thing was contemplated, of a Code, so difficult did they consider it to get those men even there, that they proposed that they should put a quarter of a million of money to permanently pay off certain leading lawyers—make them renounce their business and take up the Code, that was the only way they thought it feasible to attempt it, and therefore if we propose to do it here, the question is whether we should not contemplate also permanently buying off a number of leading men at the top of the tree—whether we can do it—whether we have the money, and whether there are men who will be satisfied to do it?——

103. *By the Hon. J. Service.*—In addition to my remarks, can any one tell us how this Bill, the Exchanges Bill, was codified—by what process was it done in England?——

104. *The Chairman.*—Mr. Chalmers, at home.

His Honor Mr, Justice Kerferd, *continued*, 30th Aug. 1888.

105. *By the Hon. J. Service.*—Do you know how long it took, and another thing was it accepted by the Imperial Parliament?—Yes, we took it from their statute book, I think I ought to mention that the Service Government introduced the Bills of Exchange Act; it was Dr. Dobson, of the Legislative Council, who pressed upon the attention of the Government of the day the desirability of having it done, and after consideration the Government agreed to pass it, and a most valuable measure it is. I would say that the weight of those objections, and they are very weighty, rather comes in aid of the view which I was venturing to suggest, that, whilst you would not get those men who are in leading practice to undertake the drudgery of drafting, they might undertake to revise the Bill which should be prepared for them and which dealt with a particular branch of the law. The ex-Chief Justice, Sir William Stawell, was exceedingly anxious to have the criminal law codified; he sent for me one day, and in consequence of what he said, I went and saw the late Mr. Justice Fellows, and he undertook to prepare the codification of the whole of the criminal law. When you remember how much of the law is administered in this country by magistrates and subordinate officials, the value of such a measure as that, if no other good were accomplished it would place before our magistrates the whole of the criminal law in one measure—statute law, and all resting in common law in regard to the procedure, and everything else. It would be exceedingly valuable. I have no hesitation in saying that if such a measure were prepared and was submitted to Mr. Smyth, and Sir Bryan O'Loghlen, and one or two other names of experience extending over a quarter of a century, at the top of their profession it would be sufficient justification for any Government to ask Parliament to place it upon our statute.

106. *By the Hon. J. Balfour.*—You think with the basis of the Code, and with the drafting that could be done by Government, you could get sufficiently eminent barristers to revise if it were done piecemeal or as it is?—Yes.

107. You think you would get through in one or two sessions?—You would get through measures dealing with land, criminal law, customs, and mercantile transactions, which would be exceedingly valuable to this community.

108. And all part of the general Code?—Yes; the great thing is to put the several measures which would form the Code upon the statute book. But it would be positive ruination to the litigants to pass the Code as proposed; it would be exploring a new country; every line would be subject to contention, and it would involve ruination in regard to the question of costs.

109. *By the Chairman.*—You say that, remembering the undoubted uncertainty of the law now in many respects?—I would hardly say the law is uncertain as the application of it is uncertain, in the application to the state of facts. Judges differ as to what is the law; but the law is supposed to be certain, if we can only apply it to the facts.

110. The numerous appeals at home show it is uncertain?—It is the popular way of putting it, the uncertainty is in the application of it.

111. The result is the same?—Yes, it is. I look upon the codification of the criminal law as really being a matter of great moment, if it could be done.

112. *By the Hon. J. Service.*—Mr. Justice Fellows undertook to do it, but I suppose he died before it was done?—He did.

113. Was that while he was on the Bench?—Yes; he drafted that measure which divides the colony into bailiwicks. He made himself master of the whole of our criminal procedure. There is a great deal now with regard to presentments and with regard to offences which might be simplified, and reduced to a very small compass.

114. *By the Hon. H. Cuthbert.*—In the codification of different subjects, such as the criminal, mines, and so on, the labour would be not only taking the law from the statutes, but also the common law?—Yes.

115. Seeing the difficulty of getting experienced draftsmen here, supposing the work was done originally by the very first leading barristers here, would it not be well to submit it also to some leading men in England?—With regard to mining law, this colony owes a great debt of gratitude to Sir Robert Molesworth, who had to start here with the old Goldfields Act; then the Mining Statute was passed, and his decisions outside of that statute now have given to this country a body of law which has practically reduced to a minimum all litigation in regard to mining. If our statute law, and his decisions, and the decisions of the Full Court upon the Mining Statute were put in that would be a code of mining law which we could not have taken from any other country. The circumstances of this country were entirely new, and had to be dealt with by exceptional legislation, and it would give a code of mining law that would be most valuable. In regard to getting names outside the colony, we have to take into consideration that a man may be a very clever man, but if people do not think so, or do not know anything about him they will not accept what he has to say. We might get names of undoubted eminence in their profession in London, but, as far as our Legislature is concerned, they would carry no weight at all. I think there are men here at the Bar who are quite able, and whose names would be quite sufficient, to satisfy Parliament in placing the Act upon the statute book, with a view of having it amended, if there were any omissions, from time to time as they presented themselves.

116. *By the Chairman..*—In fact, your conclusion is to take the Code in neither shape, but to start separate codification in separate branches?—Using the materials here, which will be invaluable, and the proceedings you have begun in the bills of exchange and going right through, in the course of a few years you would have upon your statute book authoritative material upon which you could codify, because you would not change the law then. It is already upon the statute book. By those means the outside public would become used to the codification system. I think from the litigants' point of view it would involve less expense to them.

His Honor withdrew.

Adjourned to Tuesday next, at Three o'clock.

TUESDAY, 4TH SEPTEMBER, 1888.

Members present:

MR. WRIXON, in the Chair;

Council.	*Assembly.*
The Hon. D. Melville,	Mr. Officer,
The Hon. Lt.-Col. Sargood,	Dr. Quick,
The Hon. J. Balfour,	Mr. Gavan Duffy,
The Hon. J. Service,	Mr. Patterson.
The Hon. F. Brown.	

His Honor Mr. Chief Justice Higinbotham, examined.

His Honor Mr. Chief Justice Higinbotham, 4th Sept. 1888.

117. *By the Chairman.*—We have asked you to-day principally with a view of your giving us the benefit of your assistance upon the proposed second clause. The Committee have had the advantage of reading the evidence you gave last year before a similar constituted Committee upon the Code generally; but considerable increases have been made in the Code, and the object is to obviate the danger of passing it into law absolutely by the provisions contained in the second clause. Considerable doubts exist whether thut is a wise provision. We thought you would favour us with your opinion on the subject?—I have considered this clause, and it appears to me to provide an effectual means of avoiding what I understand to be the principal difficulty entertained by the Committee in the way of adopting the Code. That difficulty I understand to be that the Committee were apprehensive that there might be very considerable and numerous errors discovered in any Code that might be adopted by Parliament, arising out of the great magnitude of the work of a Code, and the errors that would necessarily creep into such a work from necessary causes, and from the necessary differences of opinion amongst most competent draftsmen as to the provisions of many portions of our laws. I think this second section is a very felicitous method of avoiding that difficulty and completely meets it. It provides that the Code shall be considered to be a declaration of the existing law, and that it shall not be deemed to repeal any part of the statute law or common law, but that it shall be deemed to be *primâ facie* a correct statement of both Statute and Common Law, and that it may be accepted and ought to be accepted as a declaration of what the law is by all courts of justice until, and unless it be shown to the satisfaction of the court, that it states incorrectly the law, either statute or common. If that should be shown to the court, then the Code will have no authority, and it will be the duty of the court to ascertain what the true law is, and to give its decision upon the law actually in force. I think the effect of passing the Code with this second clause in it will be to convert it into a text-book of law, that it will be used by members of the profession and by courts of justice as *primâ facie* a correct statement of the law, and that it will have the advantage over text-books in this—that it will present a summary and concise general statement of the law upon any subject arising in courts of justice, or upon the great majority of questions arising in courts of justice, and that it will also have the *primâ facie* authority. Ordinary text-books only deal with particular classes of legal subjects, and they only serve to refer a practitioner or a judge to the sources where the law can be ascertained in the decisions of courts. This text-book will contain a summary of all the law and it will have *primâ facie* authority; and until it be shown that the law as stated in the Code is bad law, badly or erroneously stated, it will be deemed by the courts to be the law. The effect, I think, will be that this Code will become the general text-book and would be gradually corrected and gradually set free from all the numerous errors that undoubtedly will be discovered in it. I venture to say that with all respect to the distinguished author of the Code, because I think it is a statement that may be confidently made of any Code that may be prepared by either one man or any number of men—however competent—numerous errors must be discovered. I observe in the papers which have been forwarded to me that learned counsel who have been consulted upon some parts of the Code have discovered some, and by no means small, errors in the Code. I think that was to be expected, and that the use of the Code will discover numerous other errors in many other parts of it. But I believe I am right in saying that this edition of the Code has been corrected in accord with the opinions given by some of those learned gentlemen.

118. It has—That would indicate the method in which the Code would continue to undergo constant revision in any case where the Code was discovered to be erroneous; at the time of revision those errors would be corrected, and the next Code that was published or edited would be free from the errors so discovered. I have looked at this second section in connection with the first section which appears to me to be a very important and necessary addition to it. I do not know whether this first section which provides that the Code shall only continue in force until the 31st October, 1893, and no longer, is intended to make this Code a mere tentative system, or is intended to carry out what I would venture to hope may be the opinion of the Committee, namely, that Parliament should enter upon the policy of constant periodical revision of our laws. Some of the codes that have been adopted, the French Code in particular, have suffered from the want of constant periodical revisions, and their use as codes has consequently become much less—a great part of their utility has been lost from that cause. If Parliament should adopt a policy, and announce a policy which would call upon the Government to provide for periodical re-enactments with corrections of the Code, I think that would serve as a means of constantly and effectually approximating the Code to a true statement of the statute and common law, and just in proportion as the Code attains that object, and more nearly expresses the statute and common law in that proportion will it attain the object which it will be the purpose of Parliament to attain, namely, a statement in compact, and, above all, in classified form of the law of the land. I should hope, if I may venture to say, that this first clause would be intended to be an indication of the intention of Parliament that there should be periodical revisions of the Code similar to periodical revision, (quinquennial) which the judges have on two occasions reported in their opinion it was advisable to make in the statute law of the colony. If the Code be adopted, that suggestion of the judges will become unnecessary, because the statute law will be embodied in the Code. If it is not adopted, the decisions will be decisions upon the Code, and they will accumulate in notes, and the obscurity of the law will become increased from time to time instead of being diminished. I would also ask leave to point out that I think there is a considerable part of this Code which will not be open to the same great difficulties to which other parts of it will be open. All statements of common law, while they must be the subject of

His Honor Mr. Chief Justice Higinbotham, *continued*, 4th Sept. 1888.

difference of opinion amongst legal practitioners, must form the subject of consideration and review and investigation in courts of justice. I think the portion of the Code that includes the statute law is not open to the same extent to difficulty of interpretation, and that part of the Code, especially the parts relating to absolute private duties, and absolute public duties, consisting as it does for the most part of the statement of the statute law might be made more easily the subject of revision and correction. I would instance in particular one portion of this Code which I see was prepared before an Act which has since been passed; there are provisions here relating to jurors, and reference is made to an Act which is no longer law. On page 100 there is reference to two sections relating to jurors. Act No. 560 is no longer the law. That has been repealed by a later Act of Parliament, No. 940. It may be that those provisions are the same in the present Act as in the Act referred to in the margin, or it may be that they are not, but all this part of the Code that relates to statute law might, I should suppose with little labour and expense, be subject to revision such as I observe it has been desired by the Government to obtain from home. That might easily, I should think, be obtained here. The statute law does not admit of the same doubt and require the same investigation as common law. The principles of common law necessarily require it. Perhaps those parts of the Code might undergo further review. I think they would readily admit of it. I have already had the honour to submit my views generally on the subject of codification in Committee last year. I do not know that I have anything to add to them. The advantages of the Code are undoubted, I think, and undisputed; but there are, no doubt, very considerable difficulties in enacting a code. The principal difficulty has been removed, I believe, by this second section, but there are other difficulties remaining which will certainly and naturally make the Code in itself a source of difficulty and objection to those who have to administer it. It introduces the law in an entirely new arrangement, an arrangement which is open to objections more or less valid, and which must incur disapproval from many persons. I venture to think this Code is both defective and not the most expedient that could be adopted; at the same time others will entertain different opinions. It seems a necessity for Parliament to disregard all objections of that general character if it would have a Code at all. If there is to be a Code—and there ought to be a Code—it can only be adopted upon the suggestion of one mind in which Parliament has confidence, and I suppose there never can be an occasion hoped for in which we can look for the amount of labour devoted by a highly competent mind to the preparation of a code such as we have in this document. I do not, myself, believe that the Code prepared by a large number of authors would be less free from difficulties and objections than this Code is likely to be found. I have not examined this Code. I am not able to speak as to any part of it, but I know that the author of it was a highly competent and learned man, and Parliament will, in the last resort be compelled to trust to an individual mind or the individual minds of those who have prepared the Code; and after the most careful preparation of the Code, and after the most extended and careful revision of the Code, whether prepared by one man or many men, Parliament must expect that innumerable errors will be discovered in it when it comes to the test of close examination in a court of justice. If Parliament is prepared to face that difficulty, of course all courts of justice ought not to shrink from the additional labour and additional difficulties which undoubtedly they will feel when called upon to administer from a document like this, the law of the land. Those difficulties, or rather the chief difficulty will, I believe, be entirely obviated by the provisions of this second section.

119. Would you like to add anything to what you have already said?—I would like to add that I think it would be extremely expedient if the Joint Committee should approve of this Code, and recommend it to Parliament, that they should put into some distinct form the expression of their opinion that the policy as announced in section 1 should form part of the policy of Parliament, and that there should be expressions of opinion that there should be, at quinquennial periods, a revision submitted to Parliament of the Code which Parliament is now asked to adopt.

120. I might say that those who are proposing this Bill contemplate even a yearly revision. We imagined that errors would be discovered year by year that we would have to immediately correct, and those corrections would no doubt be embodied in the fresh edition of the Code at the end of each quinquennial period?—That would, no doubt, be necessary but for this second section, but it will not be absolutely necessary to correct the errors discovered in the Code as they arise if this second section be adopted. I think it has been found by the profession that numerous editions of the statute law have been rather perplexing. There have been several editions published in late years, and they are not found to increase facility of reference. I venture to think it would be more advisable to have stated periods at which the whole of the statute law, if the Code should not be passed, or the whole of the Code if the Code be passed, should be subjected to a general revision. It would be easily made of periods of five years, because all the decisions of the Courts correcting errors could at one and the same time with very little difficulty be embodied in the new quinquennial edition. I suppose a code passed from year to year would be like the Mutiny Bill passed by the House of Commons, a mere form, but a form that would involve considerable expense, and the advantages I think would hardly compensate for the expense and trouble of publishing a yearly edition of the law, and would involve considerable expense to the public in using the new edition. Professional men will enter on the margins of their Code all the decisions of courts affecting particular parts, and they will not require it, but it will have to be considered whether it would be worth while publishing a new edition every year if copies will have to be transmitted to all the public offices, and all the courts throughout the country.

121. Would not the difficulty then present itself, if certain clauses were declared during the year by the courts not to be law, whether they should be left in the Code; according to the section here they would have to be taken to be the law, and yet the courts would declare them not to be the law?—There is that difficulty at present extending over many years, courts deliver decisions which give a legal interpretation to sections of Acts of Parliament, and the public magistrates and practitioners have to acquaint themselves with those decisions, and frequently difficulties arise through the public not knowing the decisions. It is a question partly of policy and partly of expense, whether it is advisable to have yearly revisions of the whole of the law.

122. Coming back to clause 2, some gentlemen who have been examined before this Committee, very competent authorities, have expressed a very strong opinion that the effect of clause 2 would be to greatly increase the uncertainty of the law, and add to the expense of litigation. They put it in this way—they say that, first, the courts would have to make out what the meaning of a clause in the Code was, and then they

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would have to consider whether the meaning so expressed was or was not law, and in that way there would be additional trouble given by this Code—it would not absolutely declare the law, it would submit that initial problem to the courts, and in that way it would increase the uncertainty, and add to the perplexity of the law. Also they were of opinion that, with the operation of this clause, the Code would tend to mislead people, because practitioners and others would read in the Code a certain proposition of the law, and would advise their clients to go to law on that section, and afterwards the courts would say it was not the law, and in that way injury would arise. I think the Committee will be glad to hear your opinion on these objections—that it would add another problem to the law as to what the Code did or did not mean, and then that the court would have to determine whether that meaning was correct law, and in that way you would be merely introducing a new term into a complex legal equation as it were?—I have seen that objection, and it does not appear to me to be a strong one. Every person who has to consider the subject of law, either as the person who intends to resort to legal proceedings or to advise on the taking of legal proceedings, has to consult some legal authority; at present he consults text-books unless the law on the subject which he has to consider is familiar to him, and he takes his impression of existing law from the statements in the text-books, and he then refers to the authorities mentioned in the text-books in order to ascertain whether the doctrine stated in the text-books is or is not law. I think this Code will form, as I have said, a general text-book in which legal propositions are to be found stated upon all subjects of statute and common law as clearly as they will be found to be stated in one of the numerous text-books in any branch of the law, and in that way it will form the basis of legal judgment instead of the existing text-books. I think that it will have the effect—and ought to have the effect, because it is a *primâ facie* declaration of the law—of inducing persons, in many cases, to act upon the statements in this Code, just as they often do now upon the statements in text-books, and that will be subject to the risk of its being discovered that the declaration of law given here is not a correct declaration of the law, but I do not think it will introduce a new objection for consideration beyond those that exist at present. A man wants to ascertain the law on a subject affecting him, and he goes, or rather his legal adviser goes, to a text-book, and, in order to see if the text-book is correct, the legal adviser has to consult the authorities. Here he will go to this text-book, which will be more probably correct than any other text-book he can go to, and it will contain a full statement of the law on the point to which he refers, which, in many cases would require the examination of more text-books than one. There will, no doubt, be the danger that persons will rely upon this, as it is intended they shall rely upon it, as a statement of the law, and afterwards find it is not so, but that will only arise in cases of such magnitude and difficulty as will probably come before legal advisers, and the legal advisers would at once be able to refer to authorities, and ascertain for themselves whether this was or was not a correct statement of the law. I think it should be assumed, and Parliament must assume, that, as a whole, the competent author of the Code has correctly stated the law. I am inclined to think that it would not cause increased trouble or expense, and that it would not lead to a greater number of appeals.

123. It has also been stated here by a competent gentleman that to a great extent the Code if enacted with clause 2 would be disregarded by the profession, they would pay no attention to it, it would not be absolute law; do you think that would follow?—I do not. I think the profession, as I have said, will take this as a text-book, they know the question that has to be dealt with in court will be dealt with on this Code, and that the magistrates and judges will treat this Code as law until it is shown not to be law. I think a suitor would be an unwise man, and his adviser an unwise adviser, if he passed by what Parliament had declared to be law until shown not to be law. I am inclined to think that this will be the text-book upon which all legal opinions will be founded.

124. So that on the whole your opinion would be that it would be advisable to pass the Bill with clause 2?—Yes, assuming that Parliament is of opinion that it is advisable that the law should be codified. I desire also again to say that I regret that this Code is in the form in which it is. I do not believe this is the best, or the simplest, or the most scientific form, in which the law could be codified or classified. I think it is greatly to be lamented that Dr. Hearn did not adopt the system of classification of the law which is familiar to lawyers, and which is based on the old divisions of Roman law, to which I believe none superior have since been discovered; but assuming that, and assuming that Parliament considers it advisable to adopt even an imperfect Code, founded upon an imperfect system of classification, then I think it would be advisable that this Code should be passed with the second section.

125. *By the Hon. Lieut.-Col. Sargood.*—Are you of opinion with such a code as that, even with the innumerable errors, it would be better to pass that into law than have no code at all?—I am.

126. *By the Hon. J. Service.*—Even though high authorities should say it would be dangerous to pass into law certain sections or portions of this Code?—I think the most formidable danger is averted by the second section. No doubt that danger was a most formidable one, but before this section was introduced I ventured to express the opinion last year that even with that great danger ahead it would be advisable for Parliament—provided Parliament were always at hand to introduce and pass amending Acts—to adopt the Code, but that source of danger is entirely taken away by what I consider a most felicitous device, a most novel device.

127. *By the Hon. Lieut.-Col. Sargood.*—Then this will really be a text-book to be revised every five years?—Yes.

128. At the end of five years do you anticipate it will still be a text-book, or when is the time to come when all law is to be repealed, and this will be the law?—That is a difficult question to answer. I do not think there is any difficulty about leaving it a text-book, because it will always approximate to the law. It is declared to be the law until it is shown not to be the law, and it will be undergoing constant revision by which it will be constantly brought more nearly into accordance with the law.

129. *By Mr. Duffy.*—The principal use of a text-book is in referring to authorities. There are very few authorities quoted here; will that not be a drawback to it as a text-book?—Except that the result of the authorities is authoritatively stated, this Code declares the law until it is shown not to be the law.

130. Will it not be necessary for the legal advisers to satisfy themselves, by a study of the authorities, whether it was or was not the law?—It would always be open to them to do that; they would always act on the risk of the law being different from what it is stated here to be.

131. Would not that be, in practice, a very serious risk to clients?—In certain cases, where the principles of law are stated, it would.

132. You have stated that the form of codification is not the best?—Yes.

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133. I understand that it is Austin's form that is followed?—No, it is not Austin's; Dr. Hearn followed neither Austin or Bentham; he has devised a system of his own.

134. Some of the witnesses examined as experts gave it as their opinion that the best way of codifying would be to codify piecemeal, to take one branch of a subject and codify it, and when it was passed into law and experience obtained of it, then proceed to codify another branch, and so on; and when we have a number of branches codified, a master mind could unite them into one code?—I think that might result, if Parliament adopted the policy of codifying by degrees, in the end in the codification of all the parts of the law, when they could be cast into a system and put into a general frame, but I would say that Parliament has never yet adopted the policy of regular codification of the law. It has not even adopted the policy of any regular consolidation of the law, which is certainly a step in the direction of codification, and a very useful step. Some parts of our consolidated law are virtually existing codes. I ask the attention of the Committee to one Act, a consolidated Act, which has been of the very highest value, namely, the criminal law.

135. And the Bills of Exchange?—Yes. I do not know if any member of the Committee remembers the state of the criminal law before it was consolidated. It was in a state of utter confusion. We had Acts of Parliament which adopted by their titles English Criminal Acts, and in order to find out what the English Criminal Acts said we had to resort to the English Acts of Parliament, which were inconsistent with one another, and until the criminal law was consolidated in the Criminal Law and Practice Statute the members of the legal profession did not understand the criminal law. The Bills of Exchange is an instance—I am afraid it is a solitary instance—of codification of a branch of the law. That is very useful, and if Parliament were to adopt the policy, and act on the policy, of codifying individual parts of the law, it would result in the law being gradually codified, and it could be cast in a better frame than it is to be found in this Code; but Parliament has never yet adopted such a policy, although there have been codifications proposed of many parts of our law. There is no part of the law which could be codified with more advantage than the law of evidence, but although there are excellent exemplars upon which the law of evidence could be codified, Parliament has never attempted to do it.

136. That would be a useful suggestion from this Committee?—No one could doubt it would be desirable to codify all the branches of the law. The question is how it should be done.

137. There is no example of such a section as this second section in any other code?—I never heard of the device until I heard of it from your Chairman.

138. Is your Honour aware of the bringing into operation of codes in any other countries?—Only generally. I know something of the preparation of the French Code, the Italian Code, the code of Justinian—I know something of them generally. All the codes have been adopted wholesale, and in the most summary way; I think the French Code was prepared and adopted in a very short compass of time.

139. *By the Hon. Lieut-Col. Sargood.*—That would not apply to the Indian Code—that was piecemeal?—Yes, I believe that was piecemeal.

140. *By Mr. Duffy.*—We have had some evidence as to what was proposed to be done by the Imperial Parliament when they proposed to codify the law; can you give us any information on that point?—I am not acquainted with that; I know that for the last forty years this subject of codification, as well as consolidation, has been familiar to the minds of the profession at home. I remember as far back as the year 1850 it was a subject of earnest consideration by the English Law Society. I was present at a lecture given before many men of eminence in the legal profession, at which the principle was stated in a very able lecture by Mr. Reilley, who has since been engaged in the revision of the English statute law, that consolidation must precede codification; it was upon that principle that Parliament was asked, in 1864, to consolidate our statute law as a necessary preliminary to the codification of the law that it was hoped would follow.

141. *By Mr. Patterson.*—You have described this Code as a text-book; is there any instance where a text-book has been made law. A text-book, as I understand, is a collection of decisions; is there any instance of a text-book, merely as a text-book, being enacted as the law?—I am not aware of any.

142. A text-book is merely a guide to the law?—Yes.

143. You could not make law of a text-book?—No; but in this case it is declared to be law until it is shown not to be law. A text-book consists of what is known as the marginal notes of decided cases, that is a short statement of decisions given on any particular subject; but these short marginal notes are often inaccurate, and the statement of them requires an examination of the authorities to which they refer. Assuming that they are correct statements they have authority, but the examination of the cases of which they profess to be a summary may show, and often does show, that they are inaccurate or require to be compared with, and altered by, subsequent decisions; they have no authority excepting as a guide to the sources and fountains of authority. This differs in that respect from any text-book. I am not aware of any case in which a text-book has ever been made a declaration of the law.

144. *By the Hon. J. Balfour.*—It was stated by one of the gentlemen who gave us information on the subject that this clause 2 itself was not correct, that the terms "If on the hearing or trial of any action, suit," and so on did not comprise everything, being technical terms, they did not comprise applications in chambers and so forth, or cases that did not go to hearing under the new procedure?—Those words, "Any person having, by law or by consent of parties, authority to hear and determine any question of law" are copied from an Act in which arbitrations are contemplated—the Law of Evidence Act.

145. They think the first words, "hearing or trial," is too limited?—Yes, I can understand that.

146. It was impressed upon the Committee that if there was a mistake in the drafting of that clause, how much more danger would there be of errors in the whole of the Code?—I think the Committee may assume that in every page of this Code there will be mistakes. I desire to express my opinion that, on inquiry, every page of this Code may probably disclose mistakes.

147. *By the Hon. Lieut.-Col. Sargood.*—That might occur in every Code, no matter how carefully framed?—It would. I think there is no doubt, no matter how carefully framed.

148. *By the Hon. J. Balfour.*—Another objection that was raised was this, that the lower courts would be apt to take this Code as correct—magistrates and others?—Certainly, when they are bound to do it.

149. Consequently, assuming there are these mistakes that you admit there are throughout, decisions will be given contrary to the law?—I think that will undoubtedly be the case.

150. Still, even with that objection, you would urge the passing of the Code into law?—Yes; but I doubt very much whether the discovery of those errors will increase the number of appeals. I am inclined to think it will not.

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151. *The Chairman.*—In the case put by Mr. Balfour, if in an inferior court a decision is given which, we assume, is illegal, being based upon one of those wrong sections, and that decision involved a matter of sufficient consequence, the party can appeal and no wrong will be done, because the party who thinks he is wronged can go to the superior court, which will determine which is the law.

152. *By the Hon. J. Balfour.*—It is an objection that this Code, which has got the imprimatur of Parliament, does mislead to some extent, especially in the lower courts?—Yes.

153. Another point that was mentioned was that this Code would probably be used, not as you have suggested as a text-book, but be used by the laymen, but the legal gentlemen would pass away from this and go direct to the law of the text-books they have got, and if that was the case, how would the errors he discovered?—I do not quite follow you.

154. Barristers and lawyers would not use this book, knowing they had the direct law in the Acts of Parliament, and this was only a codification of the law, and if that was the case, if that Code was not used, the errors would not be discovered. It would be used by laymen to get a notion of what the law was, but not by lawyers in the courts?—I think on subjects of difficulty that course might probably be followed, but in ordinary cases, and in cases where there was not access to numerous authorities, the legal practitioner is compelled to resort to text-books or hand-books for his guidance preliminarily, and I think that the fact this text-book would have the authority of a declaration *primâ facie* of the law would induce him to resort to this rather than any other text-book.

155. Then of course the objection would disappear, and errors would then be discovered by the use of it?—The errors might be discovered, and probably would.

156. Then as to the codifying, as you have heard to-day, it was pressed by more than one witness upon the committee that the only correct way of codifying would be to do it piecemeal—that there was no one mind probably to be discovered who could properly codify the English law, but by taking out parts, such as the law of partnership, bills of lading, and so forth, and codifying them, we could eventually get a code of the law. You have expressed the opinion that is one way of codifying; would you think it is a better way than taking a Bill like this of Dr. Hearn's—would you advise that as the course to be pursued in preference?—I think no one mind could be equally capable of codifying all parts of the law. You might find many minds better qualified than Dr. Hearn's for codifying any particular part of the law. A lawyer acquainted with the law of partnership would probably codify the law of partnership far better than Dr. Hearn has done it, and lawyers acquainted with other parts of the law would probably codify them better than Dr. Hearn has done, but Parliament must ultimately trust to a single mind whether it takes up the Code as a whole, or allots the preparation of the Code to a number of separate codifiers, it must accept it on trust from the particular mind that is engaged on the whole or any part; and it must do so on the assumption that whether it be codified as a whole, or in parts, errors will be found and questions will be raised and difficulties suggested. I think that must be assumed; but assuming that, I think if Parliament should resolutely adopt the permanent policy of codifying the law by degrees, that it might attain a better codification, possibly by a separate codification of its parts by the most competent authorities on those parts.

157. And if Parliament adopted that—do you think they would find great assistance from this publication of Dr. Hearn's?—I am not sufficiently acquainted with the Code to express an opinion upon that; I should suppose that text-books would supply a person with a general view of any branch of the law that would enable any lawyer to dispense with this in codifying if he were acquainted with the particular subject.

158. You have stated that it was enunciated at home that codification should follow consolidation, supposing you were to recommend to this Committeee a course, would it be that Parliament should commence systematically to consolidate and steadily to codify?—I think our statute law is consolidated, it only requires a very slight amount of work to complete the consolidation.

159. To include the more recent Acts?—Yes. I think that might be easily done, and the judges have recommended that that should be done, but that would be only necessary if Parliament does not adopt the Code; if Parliament does not adopt the Code, I think it highly expedient that the statute law should be further consolidated. Further, the judges have recommended that it should not only be consolidated, but consolidated at quinquennial periods, and new editions should be published of each quinquennial consolidation.

160. Then I understand you think a better code might probable be the result of this policy of codifying piecemeal than by accepting a code such as this, although it would take a longer time?—It would depend upon the persons selected to codify—their peculiar knowledge of particular branches.

161. Do you think those persons are to be obtained in the colony who would be able to devote their time to it?—I suppose that is doubtful; of course I mean men who would be able to devote their time.

162. Then if it be the great difficulty to get men with ability and at the same time who could give their time to such a piecemeal codification, do you think we should fall back upon this as being better than waiting for that?—If Parliament shrinks from adopting the policy of at once entering upon this piecemeal codification, or if it should find a difficulty in obtaining competent persons to codify piecemeal, in either case I should be glad to see this Code passed.

163. *By the Hon. J. Service.*—The passing of the Code will not be of much practical service for some years to come, but we would be gradually working ourselves out of a greater confusion than we are in now by the conflict between the existing law and the codification; we might be working through that to something worth fighting for?—That is my impression.

164. Perhaps it might be the first quinquennial period, by that time we might arrive at a code which might be regarded as fairly setting forth the body of the law?—I think so. I think the glaring errors will be discovered in five years.

165. In the meantime this is the very rawest material of what we may hope to have hereafter; we would not present this to Parliament or recommend Parliament to adopt it with the view that it was to give us anything near perfection; in fact we would be finding Members of Parliament and the press, and every

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person taking an interest in legal matters, no doubt, speaking in the most contemptuous manner of this Code, for the first year or so?—I should so expect.

166. Probably the lawyers would go into court and say—"Well, your Honour, we have got a code here setting forth the law on such a subject, but I believe it to be entirely wrong, and with your permission I shall refer to the law as it stands outside the Code altogether." Would not that be the course adopted?—I do not think it would, because it would be the duty of the courts to take this as the law until it was shown not to be the law. I think practitioners will not be at liberty to put this aside and say—"This is of no authority, the court must look to the authorities that we are going to cite in order to find out the law." I think magistrates and judges will be bound, if this is declared to be the law, to look at it, and if they find the law upon the point in question clearly stated here, they will be called upon to take that to be the law until it is shown not to be.

167. Then a great deal of suffering would probably require to be submitted to in the inferior courts—that is among the poorer classes of people who are the least able to bear it?—Yes, I think that would be the consequence, but that state of things exists at present, to some extent, the inferior courts not being able to refer to legal authorities, and being often called upon very quickly to determine most difficult and abstruse questions are in danger of erroneously deciding now; they will not be in greater risk or much greater risk then of deciding erroneously than they are at present.

168. I think you in your evidence a little while ago, and in the evidence of some other gentlemen, it was stated that this book was no doubt full of errors?—Yes, I have no doubt of it.

169. Errors will be found in every page?—Yes. I speak, of course, merely from probability.

170. Assuming that is likely to be correct, and it is borne out by the opinions of other gentlemen who have given evidence, we would plunge the whole of the inferior tribunals into chaos really for the next two or three years if we compelled them all to adopt as law this Code, which the best lawyers in the colony state to be full of errors, and that, in fact, there would be unjust judgments in all our inferior courts until that period arrived when the errors in this Code should be corrected by appeal to the law outside the Code?—That risk exists at present.

171. How is that?—The inferior courts have to ascertain and determine the law relating to the question before; them they have to determine from their general knowledge or from the works of authority, text-books or the statutes that they have before them, and they are liable to erroneously interpret the statutes or erroneously draw conclusions from the statements of common law in the text-books.

172. That brings us back to what Mr. Balfour was saying, you say the court would compel the profession, when appearing in any particular case, to recognise this Code as law until they showed it was outside the law?—Yes.

173. I do not see how that could be done. In the way I have suggested the lawyer would begin and say—"This is contrary to the law as it stands," that is all he would require to say, because by that remark he would recognise the authority of this as the law, but he would immediately fall back upon this second clause and without many remarks at all, he would simply, knowing there was an appeal from this written book to the principles of common law as defined in the text-books, at once fall back upon the ultimate appeal in place of arguing the case out at first upon the Code?—I should suppose the magistrate would ask the practitioner his reason for denying any provision of this Code to be law, and if he could give a satisfactory reason the magistrate would be quite ready to listen to it, and overrule the provisions of this Code if it were shown to his satisfaction not to be law, that is the way it would work.

174. The law would be set aside by appealing?—I mean the inferior court, the court where the proceedings first take place, if the advocate were to say to the magistrate, "This provision of the Code which applies apparently to the subject you have to consider is not law"—the magistrate would say "Why is it not law, if you can show me it is not law it is my duty to disregard it, if it be the law I must act upon it; it is for you now to show me that your case is not governed by this provision of the Code."

175. Without pursuing that further, with reference to the troubles that would afflict the poorer classes of suitors, do you not think that those disadvantages in the inferior courts to the poorer classes of suitors would be obviated very largely if we adopted the piecemeal system, that is in place of plunging us all into chaos over the whole body of law, if the particular branches of law were codified one after the other, that at all events would limit possible errors in inferior courts very largely to the one branch which was codified and adopted with a clause like this; it would limit the thing while the whole process was going on over a considerable period of years—do you think the advantages to the great mass of poorer suitors would not be greater if the piecemeal system was adopted than if Parliament were to enact this as a whole?—I think that would depend upon whether Parliament adopts the policy and acts upon the policy of proceeding at once.

176. They would not do it at once unless they acted upon the policy. I think my question nearly supposes they would adopt that policy, then would it be better, in your opinion, for the sake of suitors, and saving that general confusion that would arise to have it done piecemeal so that the public would only be troubled with one branch of the law in that chaotic state at one time?—In the first place I do not think that general confusion and chaos would arise from the adoption of this Code; whatever additional difficulty would arise might or might not be better averted by piecemeal codification according as the persons to whom the pieces of codification were allotted were competent to deal with their work—you have to consider that in considering piecemeal codification.

177. Assuming that the people were equal—the same men perhaps—suppose, for instance, you were to engage a man to codify the insolvency law, and another to codify the real property law, whichever policy was adopted by Parliament we could assume that the same parties would be brought to the work, and I do not see that that element need enter into the consideration. It strikes me it would be assumed that the parties, whoever they were that you employed to codify, whether one this year, and another next year, or all this year were all equal in ability?—I do not think there would be an advantage in codifying piecemeal specially, rather than codifying as a whole. I understand that some parts of this Code have had the advantage of being examined by most competent authorities. I understand His Honour Mr. Justice Webb has examined it.

178. *By the Hon. Lieut-Col. Sargood.*—We examined on the last occasion gentlemen who had examined separate parts?—Mr. Justice Webb has examined a part of it.

179. *By the Hon. J. Service.*—On the whole, after having heard all the discussion, and read some of the evidence given by former witnesses, would your Honour be prepared to recommend the adoption of this Code as it stands in preference to the piecemeal codification that we have been speaking about?—It is a difficult question to answer; it involves uncertainty as to the piecemeal codification, but in view of the uncertainty of Parliament adopting this piecemeal codification with promptitude and with resolution to carry it out to its end, I am prepared to say I should prefer to see this Code pass into law. His Honor Mr. Chief Justice Higinbotham, *continued*, 4th Sept. 1888.

180. *By the Hon. J. Balfour.*—Considering the difficulty of getting competent persons to devote their time to it?—Yes.

181. *By the Chairman.*—Do we not somewhat exaggerate the supposed confusion that would result from the adoption of the Code, admitting its inaccuracies, because would not many of those clauses—though when scrutinized by the keen eyes of experienced draftsmen show imperfections, yet—for a rough and ready use of the courts be a good and serviceable guide for every day litigation?—I think they would, but I cannot disguise from myself that this Code would present enormous difficulties to all magistrates and all judges; it would compel them to go to school again.

182. *By the Hon. J. Service.*—In the face of that, you would recommend it?—Yes.

His Honor withdrew.

Adjourned to Thursday next, at half-past Two o'cloch.

THURSDAY, 6TH SEPTEMBER, 1888.

Members present:

MR. WRIXON, in the Chair;

Council.	*Assembly.*
Hon. J. Service,	Mr. Officer,
Hon. D. Melville,	Mr. Patterson.
Hon. Lieut.-Col. Sargood.	

J. Warrington Rogers, Q.C., examined.

183. *By the Chairman.*—I believe you were employed on, and you gave some attention to, this Code when it was being drafted?—After the first draft was completed, in fact after the first draft had been printed, I may say as a prelude to that I had frequent conversations with Dr. Hearn in reference to the subject of codification of the law and amendments of the law. He and I were great friends, and we conversed a great deal together on subjects of common interest. We often conversed on the matter, and when Dr. Hearn had reduced his thoughts into writing, and printed them, the first printed draft, if I may so speak, of the Code were submitted to me in common with other gentlemen of the Bar, each member of the Bar taking a particular portion. I may say that when Dr. Hearn asked me if I would take this work it was a mere professional matter, because the Committee are aware that the sum of £2,000 was given to Dr. Hearn to obtain a revision, and not one single farthing of that went into Dr. Hearn's pocket. He distributed that among the men who did the revision. The portions which were delegated to me were Part II., Inculpation and Exculpation; Part III., Absolute Private Duties; Part IV., Absolute Public Duties; Part V., Relative General Duties; and Part XIV., Sanctions and Remedies. Those were the portions it was my duty to revise. I would ask permission to say that before undertaking the work I agreed with Dr. Hearn that I did not in any way accept the responsibility of the analysis nor did I agree with it. I thought, and still think, the analysis terribly defective and very unpractical. The analysis is scientific theoretically. J. W. Rogers, Q.C., 6th Sept. 1888.

184. That is the arrangement of subjects?—Yes; it is theoretically, I would say the composition of Bentham and Austin with variations by Hearn, but it is not in any complete system; and I would say it is unpractical for this reason: If I understand the use of a Code it is that the general public should become more easily acquainted with the law, and that men of business should from the Code be enabled at a glance, as it were, to see the scope of the law which affects their own particular occupation. Now this scientific analysis utterly would defeat that object, the law is so split up by it that a man in business would not see in any one portion of the Code the law which is to regulate the conduct of his business; and before he could understand the Code at all he would have to go through a course of training in Bentham and Austin, because you will find in the Code from the way in which it is divided that a man to get at the subject matter of his business, the law in reference to his business, must understand what absolute private duties mean, absolute public duties, relative general duties, rights in *rem*, and rights in *personam* mean, in other words he must understand all the scientific terms which are used throughout the divisions of the Code. And then this difficulty arises—if you were to take, for instance, such a subject as marriage, you will find that one portion of the law of marriage is in one portion of the Code, and another portion in an entirely distinct portion of the Code. So you will find in reference to such a subject as stock—I mean cattle and sheep—instead of having as you might under a differently arranged Code the whole law in reference to it in one portion of the Code, you have the law in reference to stock scattered through the whole of the Code. You have to find a little bit here and a little bit there, and you can only find the bit you want by understanding the scientific division into those various clauses of duties of rights. I would just by way of illustration mention one division here, it is Part III., Division 2, Household Duties, and in article (*a*) you will find a section taken out of the Gaols Statute, one solitary section. We have 56 sections of the Gaols Statute scattered throughout the Code in various places, you take subdivision C, and you will get an isolated section from the Masters and Servants Act.

185. What section is that from the Gaols Statute?—Nineteen, I think; I am taking the first edition of the Code. You will find Part III., Division 2, Household Duties. There are three editions; the first is the one that was submitted to the revisers.

186. You are giving us your criticism on that first edition?—So far, but the same thing runs throughout. Take the three subdivisions under that division, in (*c*) you find a section in reference to the

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Masters and Servants Act; in (*a*) you find a section in reference to neglected children. I take that as a sample of the whole. It runs through the Code in this way, from a scientific division it is perfectly correct that those particular sections of those particular statutes should be brought together under those particular divisions; but instead of having the sections relating to gaols altogether, you find a little bit here and a little bit there, and so with masters and servants and children. The consequence is, instead of the public being able from this Code to ascertain the law on any particular subject in their business, they will have to run through the whole of this Code from beginning to end, and would want a scientific education. I have seen it in evidence that the Bar would want re-educating. I do not think that is of so much consequence—they have more or less training in jurisprudence—but the general public, if I understand the thing rightly, with a Code want to have the law put in such a plain simple manner that they can then understand it and each man in his business can get the law relating to his own business in the Code. In reference to that I might mention the New York Code. That is a code which was drafted by very able men in America; it was framed irrespective of these peculiarly theoretical, scientific divisions; the whole subject of the law is broken up into what I might term business divisions, that is, into such groups that each man in his own business finds all the law that relates to his transactions. That seems to be the great defect in the construction of this Code. Of course I would say that I recognise in the highest degree the immense labour of Dr. Hearn, the research and so on, and his behaviour in doing this work without payment, but I have satisfied myself that the present analysis would be entirely prohibitive of the general public acquiring the use which they ought to get from a Code. One matter in reference to the analysis is this, that a great difficulty will occur in future legislation when you want to pass amending Acts; you will have, unless you create the greatest possible confusion, to follow this analysis; every Statute or Bill you introduce must be framed upon precisely the same divisions as the Code, or you will get into the greatest possible confusion. In less than a year you would have such confusion that no man would know what was the law. You must frame all your future legislation, until you repeal it, upon the lines of the Code itself, otherwise you will get into the greatest possible confusion. Therefore, in reference to the analysis, my opinion is, that the analysis, however scientific (and I bow to Bentham and Austin and Hearn), is of an unpractical character, it is not suited to laymen; it is not so much with the lawyers, it is their business to understand and work it out, but with the general public they could not use this Code in the way they could use the American Code. The New York Code men of business can use, it is a plain intelligible business code.

187. Do you attach weight to the view of Mr. Justice Webb expressed that the analysis may be defective, but the general index would remedy that?—No, I do not think it would. A man in business wants to have the law in a form in which he can put his hand upon it. In an index you have to go to references and cross references. I do not think that would meet it. Another thing that struck my mind very forcibly is the difficulty of framing your Acts from session to session upon this Code. If Parliament says this analysis is to be adopted then it has tied its hands in the way it will legislate in future.

188. Do you think the Acts could be passed in the usual way, and then embodied in the Code?—I do not say it would not be possible, but you would have to go through the two different processes, Parliament would have to delegate work to the codifiers after the Act had been passed, so that a double operation would have to be gone through; and if it is to be left to the codifier to re-arrange, Parliament is giving up its functions to some extent to the codifier.

189. *By the Hon. J. Service.*—It seems to me this is a much more serious point than the one we were discussing at our last meeting. The mere fact as stated by Judge Higinbotham that there were errors in every page of the Code perhaps, but those errors might be cured from time to time, and probably be almost entirely cured during the first four years, put the Bill before us in a practical light; but if I understand you aright, malarrangement, as you may call it, or improper analysis can never be cured?—No; that is so.

190. I think that a very much more serious defect than the mere fact that on any particular point of law, or subject of law, there may be errors in the Code. You speak about this being a thoroughly scientific analysis. A scientific analysis, to my mind, conveys the idea that the analysis is made upon scientific principles, which, above all things, means upon practical principles, because science is the knowledge of facts, and therefore if this analysis is not based upon a knowledge of facts, and a knowledge of the general features of the law, which would bring them all together, it seems to me this is not a scientific analysis. It may be scientific in one sense, but not in what I call a practical sense, which after all is the great object we have in view in endeavouring to codify the law at all. I do not know whether there would be a difficulty in this way, in dealing with any portion of the law, it strikes me that in certain clauses and sections of the Act we might necessarily have to deal with more than one aspect of the law. Suppose, for example, you were to say that a man who committed an act of insolvency would be liable to a certain punishment, that enactment might divide itself into two parts—first the act of insolvency, second the punishment. That is a rough way of putting before you the feeling in my mind, but if that be the case that the various ends or objects of the Code might run into each other in such a way that you must necessarily touch upon the one in dealing with any other you cannot deal with any one particular subject without going over the line and dealing with some other. Suppose there was a heading called "Penalties" and a heading called "Insolvency." There is no such thing I know, but that will convey my idea, as you speak about the thing not being done in a scientific form, and portions of the law are spread over various headings of the Code, the question is whether that is not a necessity in point of fact; that is, it might be got rid of by repetition, but whether it is possible to gather under one heading every enactment concerning any one branch of the law without intruding on the same domain portions of other branches of the law, that is the difficulty with me, and whether that might be got over by repetition, namely, whilst you included what I might call a subordinate branch of the law into the particular subject that you were codifying or discussing, you could repeat it more fully under its own head afterwards?—When I use the term scientific I use it almost as a word of second intention in this way—lawyers have been accustomed to look to the works of Mr. Bentham and Mr. Austin as having attempted to introduce the scientific principles of legislation, and based upon that a scientific analysis, which is scientific and correct upon their particular theory of the principles of legislation, but they were both—great as they were—chamber men, and I do not think practical in the way in which they proposed to break up the law. In reference to the observations about the repetitions throughout the Code that would depend very much upon the principle upon which you divided your Code. I think you may adopt a division by which you may avoid repetition. That is my own impression, and

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that it would require a very definite line which does not exist in the present Code. For instance, one of the first lines I should take in the division of the Code would be the criminal code as contra-distinguished from the civil or non-criminal code; I would have a criminal code or a distinct part of the code which would be the criminal law. I would then have other divisions, very much in the character of the divisions of the New York Code. The New York Code was framed by an extremely able man, Mr. James Dudley Field, and I think you will find that you may divide the Code in a similar manner. The great division would be the criminal and the civil law. Then I would divide the procedure from substantive law. Now you will find this Code professes to deal with substantive law only; but you will find a great deal of procedure in this Code. It is erroneous in that, procedure is mixed up with the substantive law here, and the two should be kept entirely distinct. That, to my mind, is the fault. I may say in the revision of the portions of the Code that were sent to me I pointed out to Dr. Hearn that defect in several instances, and the present edition has infinitely less of procedure in it than the edition that was submitted to me, because Dr. Hearn adopted a great many of my suggestions in the construction of what I call the second edition. The second one was altered very considerably in this particular in consequence, I have no doubt, of the minutes or notes I made upon my copy of the Code as a reviser; and still there is a mixture in the present Code of procedure with substantive law, so that I think, while recognising the observations of Mr. Service, you could so divide the great subjects of the law that you would not run one into the other; and I think that might be of a most practical character. I consider there is a most valuable pabulum in this Code for future codification. The money spent upon it is nothing to the work that has been done. I will give an instance to illustrate my idea. I would take such a subject as assurance. There you have got life, fire, marine. Take another subject, partnership. As to partnership, I suppose there is no branch of the law which in the last 30 years has undergone such wide changes as the law of partnership, but I take it as including joint-stock companies and corporations.

191. *By the Chairman.*—You are taking those that may be codified by themselves?—Yes. The law of partnership has been more altered within the last 30 years than any other subject I know. I recollect, some years ago, when a member of the Law Society, we took the law of partnership before us. That was the foundation of the law of limited liability. That law of limited liability revolutionised the law of partnership.

192. Are we to understand that you consider the last edition of the Code which is now before us as imperfect?—Certainly. I will show you deviations from the law in one of the series, and they might be found in the three editions. Taking the first, I will say this, if you look at the first carefully, and then look at the third, you will in some parts wonder that the third was an evolution from the first, so great is the variation.

193. Is it an improvement?—Certainly. To give an illustration of the mistakes in the first, I draw your attention to it for this reason: you find throughout the Code that the references in the margin to the authorities are not accurate. They refer to the authorities there, but the expression in the Code varies from the authorities referred to. That arose partly from Dr. Hearn, in my opinion, altering terms which have a definite meaning which we find in the statutes. To give an illustration, in what was Part 14 of the first edition, "Sanctions," in article 2, of Division 2, Dr. Hearn refers to section 285 of the Criminal Law and Practice Statute; and the provision in the Criminal Law and Practice Statute is that in the case of felony where there has been a conviction, and there is a second conviction and no specific punishment, "Whosoever shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, shall (save where it is otherwise specially provided) be liable on such subsequent conviction, at the discretion of the court, to be imprisoned for any term not exceeding fifteen years." You see there is a provision for felony. Dr. Hearn took out the word from his Code generally, and substituted for the word "felony" in this section "indictable offence." Now "indictable offence" would include a misdemeanour, and amongst misdemeanours would be a nuisance, and amongst nuisances there might be improper management of a factory, smoke from chimneys, and other things. A man might be indicted for a misdemeanour and a nuisance, convicted, indicted again a second time, a second time convicted, then by the change of the term from "felony" to "indictable offence" Dr. Hearn would render the man so convicted, a respectable manufacturer, liable to fifteen years' imprisonment. That is the effect of changing terms. I pointed that out to Dr. Hearn, and he then adopted, upon my suggestion, the term "crimes and misdemeanours," as you will find in the second and third editions; but I see Dr. Hearn has not fully carried out the recommendation, or not thoroughly realized it. If you look at the third edition, at page 237, "Sanctions," you will see, I think it is in article 10, "Imprisonment with hard labour." In the margin there is a reference to sections 291 and 302 of the Criminal Law and Practice Statute. You will see that article enables the court in any case where imprisonment is awarded by law to sentence a person to imprisonment or to hard labour in a gaol, or to work upon the public roads. If you look at section 291 of the Criminal Law and Practice Statute you find that is confined to indictable offences, and in the Criminal Law and Practice Statute indictable offences and summary convictions are kept quite distinct; and section 302 in the same statute you will find is confined to offences punishable on summary conviction, and 302 for offences punishable on summary conviction only enables the court of justices to award imprisonment with hard labour in gaol. So you see by putting the two together, and losing sight of the distinction between the two, the justices are able, in a case of summary conviction, to send a man on the public roads, whilst the statute only enables a justice to award hard labour in the gaol. Take such a case as the Factories Act, Shops Act, or excise matters, or things of that kind; you might have a respectable man, a good citizen, who had made some slight mess of those things, and who might be imprisoned, sent under that section under gaolers with carbines on their shoulders to work, perhaps in cutting down a road, opposite perhaps the house where his wife and children were looking out of the window. It was never intended to do that by the section, but with the confusion of mixing up 291 and 302 that man may be sent upon the public roads. Now let me give you another. If you look at page 238, article 17, you will see in the margin, "Criminal Law and Practice Statute 295," and in the portions of the Code referred to in that article, are a number of offences of a mild character punishable upon summary conviction, such as taking pigeons, and things of that kind. If you look at 295 you will see that power to impose whipping is confined to indictable offences, so that by altering that language, one, two, or three whippings may be given to boys for offences that the Legislature would never dream of ordering whipping for. So you have that serious alteration made by inattention to the particular language used in the statute referred to in the margin. In my edition

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I found that there was a very able work referred to, indeed, in all that portion, "Inculpation and Exculpation"—what is called "The Draft Code." You will see "D.C." referred to; that was a very able performance by some of the first minds in England. It was published by direction of the English Parliament. I find that, over and over again, Dr. Hearn departed from the language in the Draft Code and used his own, and yet left the reference to the draft code. I pointed out a number of instances in which this was done, and which produced a very different effect to what was in the Draft Code. Here is an instance in Dr. Hearn's Code (first edition); part three, article 2, has this provision—"No person shall consent to the infliction of death upon himself. If any person offend herein he shall be guilty of misdemeanour." That is Dr. Hearn's provision. There is an absurdity in that, but this is a departure from the English Draft Code in which there is this provision—"And if such consent is given it shall have no effect upon the criminal responsibility of any person by whom such death shall be caused." Dr. Hearn has left out the second part and has put in a portion of his own, and still referred to the Draft Code. There is a reference to the Draft Code, but it is an erroneous reference, because it is quite a different provision in the Draft Code.

194. *By the Hon. Lieut.-Col. Sargood.*—The Draft Code affects the party inflicting?—Yes; the other code acts upon the person himself, which is an entirely different thing. In nine pages, from 35 to 44, I found 43 variations. No doubt they have disappeared now. I pointed them out and they have gone; but in reference to the correctness of the Code there is that fact, which you will find runs through the Code—the first varies considerably from the second. The scheme was altered and the third differs from the second. The second and third editions have not undergone that severe revision which the first did, and I do not know to what extent it may be defective now.

195. *By the Chairman.*—You do not know how far it may be defective?—No, but I conclude that we will find those things throughout.

196. We have had other evidence to the effect that this Code is defective. Is your opinion then that we could not safely adopt this Code in an absolute form?—I am quite satisfied of that.

197. Assuming it is your opinion we could not adopt this Code in an absolute form, we are very anxious to get your opinion whether we could do so by adopting this second clause which would be a safety valve at any rate, and in any case of inaccuracy which you point out would prevent harm being done?—In the first place, it is capable of one or two different readings; but take the most harmless reading, and assume that it takes the whole sting out of the Code and leaves the Code as though it were a private book, instead of an Act of Parliament, well that conduces to my mind to make the second clause a sham and a violation of the principle that Parliament has approved of for this reason, it is a declaratory provision. A declaratory Act is passed by Parliament for the purpose of removing doubts and difficulties, and declaring what the common law is, but this provision says that the Code declares the common law, but if it does not declare the common law it is not to be regarded as any authority at all. You might as well be without that provision at all, and leave the Code as an ordinary book. Books of authority, say Lord Coke, Blackstone and other works of authority, require no Acts of Parliament to say they are the law. If they are the law the courts are bound by them. They adopt them as authorities. If this Code without any Act of Parliament as an exposition of the law is correct, the court will recognise the Code and decide in accordance with the correct exposition which is in the Code.

198. *By Mr. Patterson.*—As a text-book?—As a text-book.

199. Without the sanction?—There is no sanction given. This clause says if it is right it is right, and if it is wrong it is wrong. That means nothing to my mind at all.

200. *By the Chairman.*—It goes a little farther; it declares it shall be taken to be the law until the contrary is proved, so in any case until the opposing parties satisfied the court it was not law the court would be compelled to take it as law?—That would be the case with a text-book. Suppose a man said—"This is the law," and the court says—"It is not the law and we will not take it;" the man appeals and the court says—"That text-book was right and you were wrong in not receiving it."

201. *By the Hon. J. Service.*—There is this difference; we want to attain to a body of law which will be fully recognised as the final law to appeal to. We want that in a codified form. We cannot get that free from imperfections; there is a little absurdity in saying—"This is the law of the land, but if it is not the law of the land, it is not to be the law of the land," but if you remembered that condition of affairs would last for only two or three years, that it was merely a transition state of the law in passing from the confused state of the law at the present time to bring us in a few years to the condition that every man could see what the law was, do you think it is so absurd to adopt that method of walking upstairs, as it were. If it were to be the permanent law, every one would admit it was a ridiculous thing, but if it were the only means or the best means by which we can get from the present confused state of the law into a codification which would be safe to enact as the absolute law—do you think it seems so absurd?—It does present itself to my mind as very absurd to say one thing and mean another. Parliament declares it to be law and to remove doubts, but I apprehend this Code will not remove doubts in any degree, but will increase them, there would be explanations running through the Code of the law as the law is not.

202. Very temporarily?—Then would it not be better to wait a little longer and get the law.

203. Can you get it?—I cannot see any reason why you should not.

204. *By Mr. Patterson.*—Does this Code not aim at too much?—I think a great deal too much.

205. Would it not be possible to codify in sections?—I am satisfied that is the only way to do it well. There are, no doubt, many men in this colony quite competent to prepare different sections of the Code, which would harmonize together ultimately, and if that were done I assume the Government would adopt this course—they would introduce a standard system of drafting *pari passu* with the codifying of different portions of the law, so that the whole system of drafting would go harmoniously on. At present we have a confused way of drafting our laws, and if we had clear divisions between the civil and criminal laws, we could harmonize them by taking separate groups.

206. *By the Hon. Lieut.-Col. Sargood.*—Granted that the ability is here, could you get the gentlemen recognised by Parliament and the public as being competent to give the necessary time?—I should think so if you pay for it.

207. *By the Chairman.*—You know there are very few gentlemen who will devote themselves to drafting; do you really see any prospect of ever being able to codify the law if we do not do it in this way?—Yes, I do, and without doing the mischief that I think you would do if you pass this Code.

208. You think we have the gentlemen here who would give the time to it?—Yes, plenty of them. With regard to clause 2, I have been putting it in its most innocent sense, but by clause 2 a most curious

change, and, I think, a most dangerous change, in administering the law will be introduced. It first begins by declaring that this Act declares the Common Law Statute. Then it takes the sting out by saying it is not to be binding—"If on the hearing or trial of any action suit proceeding matter cause or issue by or before any court in Victoria or any judge or justice of any such court or any person having by law or by consent of parties authority to hear and determine any question of law in accordance with the law of Victoria any of the provisions of this Act are adjudged to be in conflict with or repugnant to or not to correctly set forth any provision of the common or statute law existing and in force in Victoria at the time of the passing of this Act then such provision of the common or statute law if not expressly repealed, shall for the purpose of such action suit proceeding matter cause or issue and so far as the same relates to or affects the subject matter thereof prevail against such provision of this Act." What is the result of that —"and such last-mentioned provision shall so far as it is so adjudged to be in conflict with or repugnant to or to incorrectly set forth the common or statute law be for the purpose aforesaid of no effect." That is to say for the purpose of that particular action or suit, and what is the result of that. I will put the case that a court of justices of the peace decide that Parliament has made a mistake in saying this was common law, and upon appeal the Supreme Court decides that the provisions of the Code do not correctly set out the law; the Supreme Court has then to decide, according to what it considers to be the law, the subject matter of that action, and that one only—that is not to be a precedent which is to govern other cases. It is intended that that section shall apply only to the particular cause in which the decision is given. The result will be that in an action between Jones and Brown you will have one description of decision, and between White and Green you will have another, thus destroying the whole system by which the courts are brought into some uniform rule by having to recognise precedent.

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209. Would not the final decision be uniform?—Not necessarily, because this is only to bind in the particular action in which the particular decision is given.

210. If the court decides in the case of Brown and Jones, that would be a leading case?—Not under this section.

211. It would be still their interpretation?—If the Code, in a particular instance, does not represent the law as it is, it has to apply only to that particular suit.

212. It was only intended that the police magistrate should decide that particular case, but the decision of the Supreme Court would be binding as a precedent?—No, the courts say that they must discuss the matter, because Parliament has declared this is not to apply except to the one case. Parliament is the all-powerful body, and Parliament declares, in that solemn manner, that this is declaratory of the common law; but if a justice of the peace says Parliament is wrong, then the justice of the peace has to judge according to his view of the law, and not according to the view Parliament has taken of the Code, and so with regard to the Supreme Court. The important portion is in reference to the Supreme Court.

213. *By the Hon. J. Service.*—It does not go even the length of saying, "This case is not to be recognised as a precedent," and yet we know that even when that provision is made "this decision or this action is not to be taken as a precedent," that it is a precedent, and continues to be a precedent for all time to come, but this section does not say that. If it had gone that length, your contention might have been right, but without that I think the Chairman's opinion is the one that is likely to be acted upon?—It is a matter of opinion. I think the court will be inclined to say, "Parliament has declared this to be common law, unless each particular case decides that it is not."

214. If the first case were decided before Mr. Justice Webb, and the second before Mr. Justice Holroyd, and the facts were identical, Mr. Justice Holroyd would say, "I find the law so-and-so, and in that case I am backed up by my brother Webb," and the matter would settle down to that, as surely as if this Bill said it was to be so?—I will not contest it, but I think the clause is open to those two readings. Taking the first, it seems Parliament is almost avoiding its functions. Parliament has to declare the law, and by this clause Parliament does declare the law, but it also says the decisions of the court may upset the law.

215. *By the Chairman.*—It is only for the time?—It is a matter for Parliament. I do not see why Parliament should give up its functions even for a time.

216. You would condemn the Code even with this clause?—Yes, but I think it would be very useful not to adopt at once, but to prepare a series of codifications of various parts of the law.

217. *By Mr. Patterson.*—You think it is a very admirable cyclopædia?—It is about as accurate as a good many cyclopædias are.

218. *By the Chairman.*—You think we have the gentlemen who will devote their attention to it?—I have no doubt of it myself, I think it might be most usefully worked with an improved system of preparing the Bills for each session.

219. *By Mr. Patterson.*—You were engaged upon this work?—At its inception, after Dr. Hearn had completed his first printed draft, then certain portions of it were submitted by him to me, and I professionally revised them. It was then I found such an immense number of variations from the law in that first edition of the Code.

220. And Judge Hamilton was engaged upon it?—Yes.

221. *By the Hon. D. Melville.*—You say the errors you pointed out have been mostly corrected in the second and third editions?—Those I pointed out in the particular portions of the Code I revised have to a large extent been corrected, but I never had a chance of revising the corrections.

222. In the part that is before us can you give us any opinion of its correctness, can you speak confidently as to whether it is correct?—I am sure it is not. I have given you two instances. All my emendations were not adopted. In some of them Dr. Hearn put his own view on my emendation, he altered the original expression but did not adopt mine; I do not mean to say he is wrong but as an expression of law as you will find it in the authorities referred to in the margin, it is frequently not a correct expression of the law. I was looking this morning—I found a very long portion was gone altogether and I could not find it in any part of the Code.

223. Could you put your finger on any glaring incorrectness in his work now?—Yes, I have given you two glaring instances. If you look at page 237 you will find there a most serious discrepancy between the article 10 and the authorities for it, which are given as 291 and 302 of No. 233; again at 238 you will find article 17 varies in a most important particular as to the number of whippings for an unfortunate youth for whom Parliament has not at present provided that punishment. I have not had time to go through

J. W. Rogers, Q.C., *continued*, 6th Sept. 1888.

this third edition, I have no doubt you will find in it a quantity of matter omitted; I cannot say where it has gone to.

224. *By the Chairman*.—At the suggestion of the Committee last year, all the new matter was omitted from the Code?—No, it is old law; a great deal was taken from the New York Code, and it referred to damages and the mitigation of damages, and so on.

225. *By the Hon. J. Service*.—Speaking of this New York Code; can you give us any information about how that was made, how long it took, whether it was a complete code, and whether it was accepted by the Legislature of New York State right off?—It has been accepted, how quickly I cannot say. Dudley Field was the principal man; of course there were several men at the Bar employed upon it. There is a code of procedure as well as this code of substantive law. I think you will find them in the Public Library, in fact they have a very useful paper in reference to codes and codifications in the Public Library. I had no idea they had so many. I went to-day to look at the New York Code to see if my memory was correct as to the manner in which the law was broken up, and I found my memory was correct.

226. Was it a complete code?—Yes.

The witness withdrew.

[*Mr. Wrixon having to leave, the chair was taken by the Hon. J. Service*].

John Simeon Elkington, examined.

J. S. Elkington, 6th Sept. 1888.

227. *By the Hon. the Chairman*.—You are a barrister-at law, practising in the Supreme Court, and professor of history and political economy at the Melbourne University?—Yes.

228. Have you seen the Code proposed to be submitted to Parliament?—I am familiar with it, having been on intimate terms with Dr. Hearn for more than 20 years; to some extent the Code and I grew up together.

229. Were you engaged with Dr. Hearn upon the compilation of it?—In a private capacity I was; I received no fee for any work I did, I assisted him a good deal from time to time in the compilation of it.

230. Have you formed any general impression as to the correctness of the Code as an expression of the original common law as well as of the statute law?—My opinion shortly, is, that the Code as it stands is the most complete approximation in the English language to a general code of law.

231. You are now having reference to the New York Code and the Indian Code?—Yes, I am tolerably familiar with the Indian Codes; I have a general knowledge of the New York Codes, and of some of the continental codes.

232. You think it is, on the whole, a remarkably accurate expression of the law?—Yes, that is my opinion, so far as the Code goes.

233. Have you seen the evidence given by any of the other witnesses, for instance, Messrs. Hodges and Higgins?—I have gone over the newspaper accounts, I have not had time to read the detailed evidence.

234. You have heard something of the evidence given to-day by Mr. Rogers?—Yes.

235. In the face of that expression of opinion which goes to confirm the opinions expressed by other witnesses, some of whom are most eminent barristers, are you still inclined to think that the Code, as it stands, is one that is so free from errors that it might be adopted by Parliament without much damage?—With diffidence I would say so. I recognise, that although an old student of the law, I am a young member of the Bar; I have not been admitted more than three years, but I recognise also, that I have had opportunities for acquainting myself with the mode of composition of codes that justify me in saying that some of the criticisms directed against this Code are not well founded.

236. Do you refer to the general phraseology of the Code or to what they call the analysis of classification, or system upon which it is based?—The system is as nearly perfect as can be, not from the point of view of the legal profession practising in our courts perhaps, but from the point of view of the jurists. I am persuaded that Dr. Hearn's classification is a more meritorious classification than Mr. Austin's, and I am persuaded that when the principles of that classification are thoroughly understood, because it is not presumptuous on my part to say they are not understood by the members of my profession, speaking generally, there will be no difference of opinion on the subject.

237. You differ from the last witness?—I do.

238. Do you think, regarding the fact which you yourself admit, that this classification is not thoroughly understood by the profession, that it would be well for this Committee to recommend Parliament to pass this into law with that feeling against it by the profession?—I do; the legal profession are very quick indeed to pick up whatever it is desirable they should pick up; there will be no trouble whatever, so soon as it becomes a duty imposed on them to master the details of this Code, in acquiring it as thoroughly as those who have made a study of it.

239. In reference to the difficulties that Mr. Rogers mentioned of bringing people under several laws, owing to the change of phraseology by Dr. Hearn from that which obtained under the existing law, do you think it would be safe to enact this Code as it stands?—I cannot express an opinion upon Mr. Rogers' statement as a matter of fact; but, assuming it is accurate, it seems to me that section 2 would be a very complete safety valve.

240. You have read that section over carefully?—A copy of the Code was supplied to me; but in the present edition section 3 in the previous Code is left out, whether accidentally or not I cannot say. Section 3 as it stands now is—"Every statute (whether passed before or after the date of the coming into operation of this Act) in which the word 'felony' or 'felon' is used shall be read as if the word 'crime' or 'criminal' in the sense in which these words are used in this Act were used therein instead of the word 'felony' or 'felon.'" The old clause 3 says "This Act shall be deemed to apply to all persons, either absolutely or in their mutual relations; and not (except so far as is herein expressly provided) to any particular classes of persons, or to any special or exceptional relations, whether public or private, or to any matter of administrative regulation or of judicial procedure or to Her Majesty's prerogative." That is left out in the Act now before us. It makes a most material difference in the whole structure of the Act. You have a number of matters of the greatest importance deliberately omitted from the Code.

241. *By Mr. Patterson*.—Does the omission of clause 3 from this Bill make the Code apply to matters which Dr. Hearn did not intend it to?—The effect of the omission of the old clause 3 from the present

Act is to represent to the public that the Code applies to several branches of the law to which it was never intended to apply.

242. It has a wider scope?—Apparently it has, but not in reality; those matters that were omitted come under the two great classifications of the law of personal conditions, as Austin calls it, and the law of procedure; those branches of law are deliberately omitted from the Code, mainly for the reason that at present they are not susceptible of classification. It is admitted in the case of procedure that, at all events, it is doubtful, so that is deliberately left out. As to the law of personal conditions, that is what is called in Blackstone the law of persons, that is the law which applies to parent and child and so on; you will not find a word relating to this in the Code. The 3rd clause specially mentioned that they are not dealt with in the Code; I am persuaded that a great deal of the criticism that has been directed adversely to the Code is owing to the fact that attention has not been directed to that, and the Code is supposed to cover a good deal of ground it is not intended to cover.

243. *The Hon. the Chairman.*—That has not come before us, the errors of this most recent edition are errors of commission rather than of omission; there has been no evidence in my presence to show that the objection to this Bill is caused by the supposition that this Code contains that which it does not contain owing to the third clause having been left out, or that notice has not been drawn to it?———

244. *By Mr. Patterson.*—Some of the arguments against the Code may have been derived by those gentlemen from the parts that it was not intended to apply to?—I noticed in the newspaper account of Mr. Higgins' evidence that it was stated that the law of partnership was a good illustration of the way in which the law might be digested, and the law of bills of exchange was an instance in point of what had been done. I will undertake to say that Dr. Hearn's Bill fairly summarises the law under both of those heads, and where there are any omissions, the omissions are designed. For instance in Chalmers' Act, an Act relating to bills of exchange, there are a number of sections dealing with procedure that are all omitted, and deliberately omitted, but every material proposition of law that is contained in Chalmers' Act I venture to say is contained in Dr. Hearn's Code. The same remark will apply to the digest of the law of partnership. With reference to the piecemeal codification I should like to offer an opinion, though I do so with some reluctance. We must remember the law as a whole has to be looked to. We speak of codifying piecemeal, but there is no one part of the law that is unconnected with every other part, say, for example, you codify the criminal law. I may mention that Dr. Hearn's Code is a complete code of the criminal law I believe, it is the completest code of the criminal law that exists. Take the offence of bigamy, that would properly come under the criminal law, but at the same time in order that the offence of bigamy may be complete there must have been a marriage, and the law of marriage must be referred to, a Code that comprehended bigamy within the criminal sections and omitted the ordinary rules of law as to what constituted a valid marriage would be an incomplete code.

245. *By the Hon. the Chairman.*—That illustrates the difficulty of preventing one branch of the law from running into another; that strikes me as being a considerable difficulty, unless under each heading you submit to a certain amount of repetition?—Again, take the law of theft; theft forms the subject of a number of provisions in the criminal law, but questions of contract and questions between employer and employed, and other matters that have no connection with the criminal law, are involved, and that being so it appears to me it is far better to have a general conspectus of the law, such as we have here, admitting in some parts it is defective, because all the codes are in some respects faulty. The French Code was, notoriously, in many respects faulty for many years; so even assuming this is a vague statement of the law in some respects, I venture to say it would be far better for this to become the law of the land, and left to the modifying hands of those whose business it will be to revise it, than to have the law in its present state.

246. The Bills of Exchange Act has been taken as a specimen of what has been done in codification; do you think any disadvantage arises now from the fact that this branch of the law has been codified apart from all the others, and stands out by itself as a complete code of the law relating to bills of exchange—do you think it would be more advantageous if that had formed a part of the general code in questions arising out of that heading?—I should like to see the law throughout codified in similar detail.

247. In what respect would the bills of exchange code be improved by the general codification of all the other branches?—It would put the whole law in the same position of definiteness and cognizability as the law of bills of exchange now is; that now stands as a model of the class of work.

248. In dealing with any case that arose under the bills of exchange law, no particular disadvantage would arise to lawyers or to litigants from the fact that the other branches of the law were not codified?—They have trouble that might be spared them if the other parts of the law were codified in the same degree of perfection.

249. That had no reference to the particular case?—I said just now that each part of the law is interdependent upon the other, and to that extent it would be better to have a convenient work of reference.

250. Suppose the marriage law were codified, in the case of a suit at law on a bill of exchange, reference would not be required to be made to the marriage law or the law of partnership or insolvency?—There is a certain interdependence in all branches of the law, and that is recognized in the Bill before you, and constitutes, to my mind, a strong reason for adopting it as a whole.

251. *By Mr. Patterson.*—Will it be safe to make law like that, or will it be more expensive to make it with the second clause?—I would adopt the second clause, the third clause as it stands in the 1885 Act is omitted by accident, I presume; I cannot understand it being omitted by design. I should like to point out the third section expressly excludes certain branches of legislation, for instance, everything relating to the Queen's prerogative or the law of the constitution, the law of procedure, and the law of evidence, all that is definitely omitted.

252. You prefer the third clause of the first Bill brought in by Dr. Hearn to this second clause?—I should be inclined to take the new second clause, but leave the old third clause in; with regard to the second clause I should think it would be more prudent to leave the question of determining the validity of the Code to the Full Court.

253. Is there any such clause as that in any code in the world?—I do not think so, but at the same time admitting this to be accepted as an experiment for a time, it would prevent it doing mischief at all events.

J. S. Elkington *continued*, 6th Sept. 1888.

254. *By the Hon. the Chairman.*—Leaving it to the Full Court would imply an appeal?—At the same time the arguments would be reserved for the Full Court; you would not have the arguments before every minor; judge, or justice; a single set of arguments would be addressed to the Full Court, and would decide the question one way or the other.

255. One advantage of that would be that you would have a regular series of decisions by one body, the Full Court, which might be used afterwards?—Yes.

256. *By Mr. Patterson.*—That second clause seems to add only another uncertainty to the rest?—It need not do so.

The witness withdrew.

Adjourned to Tuesday, next at half-past Two o'clock.

TUESDAY, 11TH SEPTEMBER, 1888.

Members present:

MR. WRIXON, in the Chair;

Council.	*Assembly.*
Hon. Lieut.-Col. Sargood,	Mr. Officer,
Hon. F. Brown,	Mr. Patterson,
Hon. D. Melville,	Mr. Gavan Duffy.
Hon. J. Service,	

John Simeon Elkington, further examined.

257. *By the Chairman.*—Had you completed your criticism and your views on the Bill when you gave evidence before, or is there anything you wish to add?—I appear to-day at the request of the Committee. I understood that some further questions were to be put to me with regard to specific points. I spoke with regard to the second clause, and also with regard to the omission of the old third clause which I thought of high importance. I thought it must have been omitted by accident.

258. As this new clause says this Act with reference to the matters to which it relates will be held to declare the law, that was considered to render the third clause unnecessary. It is a mere question of drafting, a purely technical question. Now as to the effect of the second clause have you expressed your opinion?—I stated generally on the last occasion that in my view the clause should be limited to the Full Court; that is to say, as I understand, in the form in which it is drawn now any tribunal whatever, from the court of petty sessions to the highest organization of the Supreme Court, will have an opportunity of expressing an opinion with regard to the incidence of this highly complex and technical body of law. I should be inclined to reserve that for the Full Court. That will, I consider, get rid of some of the objections as regards the double set of arguments that will have to be applied all along the line. I think the normal position to assume is that the Code represents the law, and if a man doubts that let him go to the Supreme Court.

259. Will you not leave it to an inferior court to avoid an undoubted error. Suppose before the county court a clause were cited which was admittedly wrong, will you allow that court the safety valve of saying "We will correct that by the recognized law"?—It costs very little to have the matter tested before the Supreme Court.

260. If you take that power away you make the Code absolute law for the inferior courts notwithstanding what errors there may be?—I would leave it so. A judge has really the power now to state a case for the opinion of the court. If this Code is to be pronounced upon by every petty tribunal in the country, those who administer the Code will have to go through a long education in the principles of the Code because they are certainly not understood.

261. On the general idea of the second clause as affording a safety valve for undoubted mistakes in the Code, do you approve of that?—I do.

262. Do you attach weight to the objection that by that means you reduce the Code to the position of a text-book?—I do not, if the precaution I would take were observed, because it would be absolutely binding on all the inferior courts, and it would be left to the Full Court to say whether that was the law of the land or not.

263. And you think it would not increase the existing confusion of litigation by having the Code and the existing law side by law, even to the Supreme Court?—I do. The Supreme Court with regard to each case submitted to it would have to go through the process that every judge must go through in applying the law to every case. He has to extract the principle of the law from the multitude of cases, to put it into the best language his knowledge will dictate, and apply it to the case. The more thoroughly we can have that done the better. The court would decide whether the Code truely expressed the strict principle of law involved, and would indicate the form of amendment where any is needed.

264. With the amendment you propose you would approve of the second clause?—I would. I should like to call attention to one point that seems only incidentally to be referred to by witnesses, as to the importance of having cases by way of illustration. It is quite true that a general principle is a wide principle, and therefore a vague principle. It sometimes conveys at first blush very little information to the mind. That would apply I suppose to a layman as well as to a skilled lawyer, but once light up that general principle with three or four applications, and immediately other applications suggest themselves, and there is an amount of vigour and sense of completeness imparted that otherwise would be wanting. The difficulty as you are aware with regard to illustrations is that it would not do to incorporate them as part of the law. In the form in which the Code now stands, it would be imprudent to have specific illustrations. I know that was the view of the late Dr. Hearn, but it would be highly desirable to have an authorized edition of the Code as soon as possible after the Code is passed into law containing a sufficient number of those general illustrations to act as a guide, not only to laymen but to the profession.

I noticed one criticism on one clause where it struck me that the clause was perfectly right, but the bearing of the clause was not grasped. It was a clause of very wide application indeed, and covered an immense number of cases. J. S. Elkington, *continued*, 11th Sept. 1888.

265. *By Mr. Duffy.*—The witness did not understand the question?—He had evidently not appreciated the bearing of that particular question. It might very naturally happen, particularly as it might be a branch of the law with which the witness was not specially conversant. Perhaps, I may add with reference to the question of codification that according to my view of the matter, and according to the view which I know has been worked upon by jurists in framing the Code, the whole must precede the parts, and therefore the proposal to digest branches of the law and put them mechanically together to form a Code out of the whole is not the form in which a scientific Code should be constructed. The whole trouble with regard to the New York Codes (for there are more than one) is due to the neglect of scientific principle. They have in New York brought together several branches of the law that had been digested, perhaps, rather than codified, and the Code in each branch has been actually the law of New York for many years past. The dispute now is whether the Civil Code shall come into operation. The objection there is that the Civil Code has been drawn upon principles altogether different from the codes they have had in operation, therefore they are asked to submit to an important section of the law being presented in a crystallized legal form on altogether different principles from the rest of the codified law. If that view be adopted that you must codify each part of the law, and when you get every part codified consider you have a codification of the whole we shall simply have the New York trouble repeated here on some future occasion, because the Civil Code has not yet been passed in New York. If, on the other hand, we have the whole field of law mapped out on juristic principles, than it is a matter of small importance that some branches of the law are not codified in as complete detail as other branches of the law. Some departments of the law are infinitely more intricate and technical than others. The codification of some branches could be accomplished with reasonable accuracy and in a comparatively short time, but other branches of the law, more particularly such as relate to real property, are extremely difficult owing to the remote origin of our law, and to the rules that judges have laid down in the long course of ages. It would be exceedingly difficult to throw it in a shape that would avoid any exception being taken by lawyers. That I know was felt by Dr. Hearn; and he was very anxious to have that portion of the law expressed in much greater detail than it appears in the Code, but he was not able, I think, to get a man possessing the needful knowledge and with the requisite leisure. Mr. Higgins was not able to take it, and the same was true of other gentlemen well qualified for the work. That is not a reason why passing the Code should be really postponed, because the extension could be carried on *pari passu* as occasion arose.

266. *By the Chairman.*—You are in favour of adopting the Code in its present shape?—Yes, with careful examination to avoid any errors that may arise.

267. *By the Hon. J. Service.*—You said in New York troubles had arisen?—Yes; the codification in New York has only been partial; there has been a Commission for codifying the law I think for about forty years. Their system of codification was bad from the outset, I mean unscientific from the outset, not such as Mr. Austin, or Mr. Pollock or Dr. Hearn would have approved.

268. Was that known beforehand?—Yes.

269. Then why did they pursue it?—The controversy was between practising men and jurists.

270. Is there any place in the world where this codification has been a complete success?—I am not able to say there is any place in which there is a complete scientific system of the law in actual operation. The closest approximation we have is in the continental countries of Europe and in British India.

271. They have the Code Napoleon?—Their codes are based upon the Code Napoleon. In Germany, I think there are three codes in force, the principles of the Code Napoleon are known as the common law in Germany; they have improved upon it very much. The French Code was the Code Napoleon largely based upon Roman law, with a good deal of what we call commercial law introduced. The code of Italy is again a modification of that, and so with other countries that have a code. The general result appears to be that a system of codification works very well, although it would work better if the principles of codification could have been more correctly exhibited in the form given to the law.

272. Practically you are of opinion that codification is an advantage to a country?—Certainly.

273. That is judging from the practical experience of other countries?—Yes.

274. You mention particularly those countries that have either adopted the Code Napoleon or modified it in some way?—Yes, and improved upon it.

275. You mentioned Germany particularly?—Yes.

276. Have the Latin countries adopted it with more success?—I fancy that the German law as it stands in its present codified form is the completest among the countries of continental Europe.

277. How was that adopted?—That has been the work of a long line of jurists for the last fifty years. The two great competitors were Thibaut and Savigny. Savigny contended that, the Roman law was good enough, or some modification of the Roman law. Thibaut argued in favour of a completely scientific form of codification, and the result I think was a very fair compromise.

278. Was the original basis the Code Napoleon?—The Code Napoleon was imposed upon Germany as one of the results of Napoleon's conquest, and the Germans would not have it, but determined to have something of their own.

279. They built upon that?—Yes.

280. For how long?—The last sixty or seventy years the work has been steadily going on. They have departed largely from the principles of the Code Napoleon but no doubt the Code Napoleon first suggested that form of codification.

281. *By the Chairman.*—I suppose the most successful code is the Indian Code?—Yes, but it has to be remembered with regard to the Indian Codes, that the same strain is not put upon them as with the other codes. The whole English-speaking population of India would be contained in a very small part of the city of Melbourne. The issues of questions are not threshed out with the same keenness and subtlety that would be the case here. The illustrations particularly, in the Indian Codes, are of very great value and great assistance in legal problems.

282. *By the Hon. J. Service.*—The difficulty I feel about the matter is this: We have excellent authority for this piecemeal legislation; we have also the strongest evidence in favour of adopting the Code as it stands, so as to clear the way gradually, after having adopted the foundation law, as it were. I feel

J. S. Elkington, *continued*, 11th Sept. 1888.

myself as if we were getting "bushed," having no clearly defined line upon which witnesses would agree, and which we could trace surely and safely, even if somewhat gradually. I feel myself I would rather go slowly along, and be sure I was in the right path all the time, than commence in a kind of haphazard fashion and find out afterwards we were blundering?—The best actual examples are those afforded by the Indian Codes. A large part of the law has been successfully codified, and by no means the least successful part is that relating to the law of succession, which is a very difficult part of the law, and it has been amply codified. That was done in England under very competent lawyers, and a good part of that is here. With regard to the general question, it must be admitted that we must make haste to be slow. I was struck with the remark of the Chief Justice, that we shall have to go to school again. That is admittedly the case. I think every lawyer will admit that he has to learn the principles upon which the Code is founded. Having done that there will be no difficulty in recognizing that the entire body of law is covered, although with unequal completeness. I think every witness who has looked into the matter will allow that. Opinions may differ with regard to the merits of the scheme, but that will happen to any scheme. The great merit is that it is a scheme—that it completely covers the field of law, giving reasons why special but comparatively unimportant branches are left out.

283. The Indian Code, as I understand, is a codification of the law of England?—So far as it applies to India. There are important modifications introduced into the Indian Code which the circumstances require.

284. *By the Chairman.*—It is the English law in India?—Just as this would be in regard to Victoria.

285. *By the Hon. J. Service.*—There are local conditions that would modify the Code?—Yes; and if you will look through the marginal notes you will find, in a great many cases, the Indian Code has been adopted—the Contract Act, the Act of Succession—and the same thing applies to the criminal law.

The witness withdrew.

Raynes W. Dickson, examined.

R. W. Dickson, 11th Sept. 1888.

286. *By the Chairman.*—You are the Vice-President of the Law Institute ?—I hold that office.

287. Have you given any attention to Dr. Hearn's Code?—I cannot say I have; I have glanced through it; I have only had it in my hands a very short time.

288. Have you had opportunities of becoming acquainted with it in your practice, or obtaining knowledge about it?—No, I have had to refer to it on one or two occasions, but not often.

289. Have you formed any opinion as to the propriety of having a Code at all?—I am certainly of opinion that a really good Code would be a great advantage.

290. Are you in a position to offer any opinion with regard to this Code; can you personally, or on behalf of the profession, give the Committee the benefit of any opinion as to whether it would be desirable to adopt Dr. Hearn's Code ?—As far as the council has spoken, it is certainly somewhat against the passing of the Bill as it stands. I do not think any member of the profession has had time to look through it, or would give an opinion. I have heard what barristers have stated about it; I am not in a position to say it is correct or not. I would say that, in my own reading, it seems to me on many occasions to be too general; it is not distinct enough to be of great assistance to us.

291. Have you found it inaccurate?—Yes, I have in one or two instances. It takes the law too generally. As it stands, it would not be any guide to me at all; I would have to go and find out what the meaning of the Act was before it would be of any service to me.

292. I might premise that we have had clear evidence that the Code is inaccurate in many respects, and, therefore, assuming further that it would not be safe to adopt it absolutely in the sense in which it would repeal all the Statute law, the suggestion of clause 2 has been made, viz.:—That you should, for a short time, enact the Code, leaving it to declare the law *primâ facie*, but to be corrected by reference to the outside law whenever it was shown to be incorrect. Have you formed any opinion, or have those you represent done so, upon that? The feeling of the council is decidedly against passing the Bill with that clause in it; they think there would be no finality; it would be only an ordinary text-book, and a book not so well known to us as many others we have been studying since we have been in the profession, and it certainly would not be to our advantage; there are many other text-books we have been accustomed to all our lives, and we should not turn to this text-book with so much confidence as to those we know; the feeling of the council is they would rather see the Bill passed in an inaccurate state than passed with that clause.

293. It would be a little more than a text-book, because it would be law until it was shown to be otherwise ?—I am afraid it could never be more than a text-book; the very first question would be—"Is it the law?" and we should have to go behind it on all occasions. I think we should turn to the books we have been accustomed to all our lives, rather than to the Code.

294. If the alternative were between putting the Code aside altogether and adopting it with that clause, you would say "Put it aside"? At present I would.

295. Are you prepared to recommend adopting the Code as it was proposed last year without that clause?—Personally—and I think I am speaking again the views of the council—I would like to see something more done to make it more accurate before adopting it. As it stands it would be almost too dangerous without clause 2; I would like to see something done by which it could be revised in some way.

296. In neither shape would you care to take it?—Unless with further revision.

297. *By the Hon. Lieut.-Col. Sargood.*—What chance have we of further revision?—I am afraid there are no professional men here who could give the time to it, but Mr. Pollock at home would be just the man to revise a Code like this. I think there are other men who are not in active practice, but who have devoted their time to lectures and writing.

298. What time would you give Mr. Pollock to revise that?—He is a lecturer at present. When I was at home he was writing a book, I think, on the law of retorts, but he might devote his whole time, I daresay.

299. Supposing he did devote his whole time, what time would you give him?—There are other men besides Mr. Pollock too, such as Mr. Chalmers. I think there are men at home who have time and ability to devote to the revising of that. I think it would take, perhaps, a couple of years. I think we ought to

revise it to give us some security and confidence in it, and the work already done would save time, and it would come to us with more confidence. R. W. Dickson, *continued*, 11th Sept. 1888.

300. *By the Hon. J. Service.*—Would revision by men in England be regarded here as sufficient in codifying the law. As I understand, there are local traditions in India which vary to a great extent the law of England. Of course, any one could codify the statute law if they had the statutes before them, but is it not the common law of England modified for India?——

301. *The Chairman.*—Of course, any one attempting to do this work would have to make himself acquainted with the common law.

302. *By the Hon. J. Service.*—Do you think the revision by an eminent barrister at home would be regarded by the profession here as sufficient to satisfy Parliament in adopting the Code on their recommendation, if you employed more than one man?—I do. I would not put it before one man. I mentioned Mr. Pollock's name casually. I suggest at least three men should be employed. I do think it would then give greater confidence. Of course it would be better to have it done in the colony, but the question is whether three leading men would give up practice to do the work, and I do not think we have in the colony leading men sufficiently idle to do it. Dr. Hearn revised it, and he employed men under him. We do not know who they were, but I think there are men of equal ability to Dr. Hearn at home who would confirm what he has done.

303. *By the Hon. Lieut.-Col. Sargood.*—Before we agree to that, we should come to some decision as to whether this is the best form of codification?—Yes; I think it might be improved upon. I think it might be simplified.

304. *By Mr. Duffy.*—You are aware the law of bills of exchange is practically codified in this colony?—Yes; it is taken almost word for word from the English Act.

305. Has that proved satisfactory?—Yes.

306. Do you know how it was introduced into the Legislature at home?—Mr. Chalmers was employed by the Bankers' Institute and by the Chamber of Commerce, or whatever they call the body at home, to draw the Bill. It was then brought into the House of Commons by Sir John Lubbock. After it had been read a second time it was referred to a Select Committee, of which Sir Farrer Herschell was chairman. The Committee consisted of three Queen's Counsel, merchants and bankers; they sat upon it as a Select Committee and took evidence. Mr. Chalmers was present the whole time. All the amendments were given to him; he altered the Bill accordingly, and it was again returned to the House of Commons, read a third time, and sent to the House of Lords. From there it was again sent to a Select Committee, with Lord Bramwell as chairman. A few amendments were then made. They were agreed to by the Commons, and the Bill passed without opposition. They had the advantage there of the assistance of men like Mr. Chalmers and well-known law members of the House of Commons, as well as the House of Lords. Everything was done to make it safe.

307. It proved satisfactory?—Yes, there was only one opinion upon it, and that was satisfactory, It would be wise for us, perhaps, to wait until they do codify in England, and take it, as far as we could from them.

308. It has been suggested by some of the previous witnesses that instead of codifying the whole, we might take different sections of the law and codify them; for instance, the law of partnership on which, I understand, Mr. Pollock was engaged; what is your opinion of that?—I should prefer to have it as a whole, I think it would be much better; but if we cannot do it perfectly unless we do it piecemeal, let us have it in that way, but if we could get it done as a whole, let us have it.

309. *By the Hon. Lieut.-Col. Sargood.*—Would it be better to take this as a whole or wait for work extending over a series of years?—I would rather have it brought in piecemeal that have it as it stands at present. If we could feel that what we did get was absolutely final, I should prefer that to the want of finality at present.

The witness withdrew.

William Lynch, examined.

310. *By the Chairman.*—You are an ex-president of the Law Institute?—Yes. William Lynch, 11th Sept. 1888.

311. You have been deputed to express the views of the institute in regard to the General Code Bill?—Yes.

312. Have you been able to give the Bill any attention yourself?—I have been interested in the Bill ever since Dr. Hearn commenced to deal with the subject. I have given it some sort of general attention and consideration as a matter of general policy.

313. Have you examined the text of the Bill?—I have looked through the Bill. I would not be disposed to offer a critical opinion on its correctness or otherwise.

314. Have you used it as a reference book?—Yes, I have.

315. If you were to express any opinion what would that be?—Taking the Bill as it is and having heard the views of the gentlemen who have already given evidence before the Committee, particularly the statement made by His Honor the Chief Justice, that probably there would be a number of errors found, it seems to me it would be a very inadvisable step to pass the Bill in its present form. It seems to me also that the second clause in the Bill is one that would add another terror to the law, which is sufficiently difficult and intricate already, if you were to argue the correctness of the Code in every case, as I think would undoubtedly happen. In cases where it was a question of common law, the Code would come into dispute, and that would add another element to litigation. That is the way it presents itself to my mind. It would be certain that in every case governed by the common or unwritten law the Code would be disputed. It is a matter that lawyers dispute about now.

316. Would that increase the present difficulty where every case is disputed?—It seems so to me. The judges would assume that the Code is the law, and where the law as laid down in the Code did not suit any practitioner, and it came to be a question of common law, the Code would be attacked as being incorrect.

317. Is not that the case now. One lawyer cites the case of Brown and Jones, and another says that does not apply?—In any case it seems to me it would add to the difficulty because the judge, particularly in the inferior courts would be bound to assume that the Code was the law.

William Lynch, *continued*, 11th Sept. 1888.

318. Would you not approve of the adoption of the Code in either form, with or without the second clause?—I may safely express the opinion that the Code, if correct, would be an immense benefit, but with the expressed opinion that I have seen of the best experts that the Code is very inaccurate; I think it would be inadvisable to have it at all with or without the second clause.

319. Do you think from your knowledge of the profession here that we have the means at command to revise that Code so that it would be correct?—I think it might be done. It would be a slow process of necessity. I do not think any living man could undertake properly to revise that Code during his life, and I do not think it would be advisable that any single man should undertake it, because practitioners themselves follow certain branches of the law and devote their attention to those branches. It is an enormous subject to deal with I think, beyond the grasp of any single man. I think we have already proceeded in the direction of the codification in our consolidated statutes; that is practically codification, such for example, as the Criminal law.

320. How would you propose to do it, supposing Parliament were anxious to revise that Code?—I would follow, to some extent, the course referred to in England as about to be adopted by the Imperial Parliament. I think if you had men appointed as permanent Commissioners to deal with certain portions of the law and report to Parliament at certain intervals, and taking up certain subjects, we might in time get a perfect code.

321. Do you think we have men here who would devote themselves to that work?—I do not doubt it. We are apt to run away with the idea that because a man occupies a prominent position in his profession that he alone is able to do the work, but there are flowers born to blush unseen, and there may be men in the profession who perhaps will never come prominently forward who would be quite capable of doing the work. It is not altogether a difficult process for a man of ordinary ability, because he has the Code as it is here already drawn. The drawing of the Code might be a work of great difficulty, but Dr. Hearn has disposed of that by having produced a Code, and the question for a man now dealing with it would be the comparison with the existing law and the expression by the Code of the law as it now stands, and determining if it expressed the law correctly.

322. *By the Hon. Lieut.-Col. Sargood.*—You would be prepared to accept the Code in its present shape?—It seems to me the Code is a good one.

323. *By the Chairman.*—You would recommend that Parliament should vote sufficient funds to have it revised?—Yes, I should like to see that course adopted, or gentlemen appointed as commissioners to take the law part by part. It is a matter of great importance, and money might well be spent upon it.

324. You are entirely against enacting it for a short time with the second clause?—I think it would be a dangerous thing to do.

325 *By Mr Duffy.*—If there were no means of codifying it as a whole, would you be in favour of piecemeal codification?—Yes. I think that would be the most advisable method to adopt; I think it would be more perfectly done.

326. *By the Hon. Lieut.-Col. Sargood.*—Do you mean by piecemeal codification taking a portion of this Code and seeing if it was accurate?—Taking a subject?

327. You have first, as I understand, to decide what form of codification shall be pursued, if you are satisfied with the form would you take up portions of this at a time and simply revise them?—Yes, that is what I should be disposed to do. I think that might be accepted as the form—a sort of draft and compared with the existing law, and if found to be correct it might be passed in to law.

328. *By the Hon. D. Melville.*—Have you found anything wrong in this, that you could refer the Committee to?—Yes, I have seen parts in reading through it, I have noticed parts that seemed to be inaccurate, but you have already had better opinions than I can give on the subject.

The witness withdrew.

His Honor Justice Sir Henry Wrenfordsley, examined.

His Honor Justice Sir H. Wrenfordsley, 11th Sept. 1888.

329. *By the Chairman.*—Have you had an opportunity of considering Dr. Hearn's Code at all?—I have not had an opportunity of studying it.

330. You have given some attention to the question of codification?—Only in the course of my colonial experience at Mauritius, where we administered justice under the French Codes. I was Minister of Justice there for two years, as *Procureur-General*, and during that time I had an opportunity of judging of its application.

331. It was founded on the Code Napoleon?—Yes. I think codification is a somewhat arbitrary form of administering justice. I question very much whether a system of codification is applicable to the very free and liberal communities which you are likely to possess in these colonies, happily for the colonies themselves; although I think that a strict application of a code is free from many embarrassments which apply to other systems. We had to alter the codes in Mauritius, and I found on inquiry, for the purpose of reporting to the Secretary of State, that there was a marked difference in respect to the Code as between France and Belgium, and I had occasion to call attention to that fact. The difference arose in the application of the Code to real property and to personal estate. We are living in an age when personal property is increasing in value; whereas, real estate is decreasing. In new communities like the one you have here, your real property law is not complicated, but the law applicable to personal estate is becoming very technical—hence I am inclined to think that case law is not so very objectionable. The term codification is a very inviting one to statesmen, as also to lawyers. The French Code is a very beautiful instrument, but it requires technical knowledge, and it might become a very dangerous instrument in the hands of incompetent men. Assuming that you have a good code here—which I assume you would have, I still question whether a code would be advantageous to you.

332. Did you not find the code in Mauritius simplify the administration of justice?—No, certainly not; I found the same references made to cases there. With regard to real property, Mauritius being a colony by treaty, we are bound to administer French law, but the proceedings are in English, and the criminal law is, practically, the English system. I found that we had to alter the law with reference to a very important question, and it is an illustration which I may mention. By the French Code every wife had, up to the time when we introduced our ordinance, the right to dower, called in French the occult mortgage; in fact, a man could never give a first charge on his property, because the moment he became

insolvent that occult mortgage would spring into existence. A private member introduced a Bill for the purpose of doing away with the wife's right. I objected to that myself, and the consequence was that the Bill was referred home, and I advised the Government to submit the question for the opinion of the *Procureur-General* of France and the *Procureur-General* of Belgium, whose opinions were, I believe, taken. The Bill came back with certain modifications, and was subsequently passed; but on looking into the question I found this state of things—Belgium and France were at one time governed by the same code; Belgium had become in course of time a commercial country, and she had cultivated commercial interests; and she had varied real property law for the sake of giving facilities to commercial transactions. The consequence was, that she emancipated real estate from the right given to the wife. France had discussed the question in the days of some celebrated statesmen, and they never could agree to change the law, the consequence, being that there is now a difference in the application of the code as to real estate in Belgium and France. There was another objection—when I arrived in Mauritius, companies of limited liability could not be formed if they had relation to land; but, for the purpose of facilitating commercial relations, and to give holders of land an opportunity of borrowing, we changed the law. I did not do it myself; but I had instructions not to oppose the Bill, which was introduced by a private member, a gentleman of considerable ability, I refer to M. Celicourt Antelme. I supported that Bill. I thought it was a proper one.

333. They were changes in the code?—Yes; but in regard to its general application, I think that to introduce a code like this, which is at best only tentative, you would have to change your legal system altogether. The code requires a good deal of technical knowledge.

334. Have you been able to examine the Code yourself?—I have only looked through it.

335. Have you considered the effect of the second clause?—I think it is a very good clause. You could not legislate without it. It is a permissive clause. Speaking generally, I do not like permissive clauses. The effect of that clause will be to introduce a double legal system here.

336. Temporarily?—Temporarily.

337. Would it create much confusion?—I think so.

338. It has been represented to us that to adopt that second clause would be introducing a new element of confusion into litigation, that the court would first have to determine whether the Code was law. That would be always disputed, and then they would have to fall back upon the well-known uncertainty of all law; do you agree in that?—I do. I think there would be no finality.

339. Then do you approve of the second clause?—If you pass the Code, I should say "pass the clause," because, as I have said, codification is a very arbitrary form of administering judicial procedure.

340. A code at all?—A code at all.

341. Your advice would be not to adopt any code?—Yes. We considered that question in Western Australia. When I was Chief Justice I was appointed by Sir William Robinson chairman of a commission to revise the statutes. The present Chief Justice was a member of that commission, and we considered the advantages of codification, and we decided that, in a colony like Western Australia, the idea of codification was out of the question. We contented ourselves with revising our statutes. They were sent over to Victoria and were printed. We employed a gentleman of the bar here to revise our proofs, and we gave to Western Australia a very perfect edition of the local statutes. I am certainly in favour of revising the statutes.

342. Your opinion is against adopting this Code?—It is.

343. Even supposing this Code could be corrected?—A perfect thing is always better than an imperfect thing, but it is open to the objection that it is, as I have said, an arbitrary form of administering justice, not agreeable to our free institutions. Allow me to point out another objection, and one of a practical character. The magistrates of France, using the word in its widest meaning, from the judge to the police magistrate, are all trained men. A man in early life passes into that position, he never becomes an advocate, he is always a judge. Our system is directly the reverse, and I think it is the best. You select judges from the men who have had the greatest experience at the bar. In France it is the reverse, because the judge always requires an expert knowledge of the code. He never argues with the Bar, he scarcely listens to a suggestion, he simply interprets the law. I think that is not in keeping with the character of our procedure.

343*. You are against the Code?—Yes, I am. I think it will lead you into a great deal of expense. was going to notice a letter that has been received from Messrs. Freshfield and Williams. I have the greatest respect for their firm, but the idea of sending this Code, with a fee of 500 guineas, to a London barrister would, to use a mild expression, be almost useless. The man you want to supervise that Code is a very able man without any business, and it is a very difficult thing to find that sort of man. I should be sorry to see the request made.

344. You would be in favour of codifying parts from time to time?—I think so, from time to time. I think, for instance, consolidating the statutes is a most admirable thing. It is all very well to talk against case law, but I have learned to like case law. A good deal of our case law is technical. We have very few leading cases, but from our text-books the law on the whole is very well administered. The leading principles are so well defined that our leading cases are very few. A man with an ordinary knowledge of the judicature rules here, and a practical knowledge of commercial affairs, can carry on a large business as a solicitor without troubling himself much about legal principles. The moment a legal principle is discovered it is generally dealt with practically.

345. *By Mr. Officer.*—Will you explain what you mean by an arbitrary form of administering the law. The Code, as I take it, would only be recognised in so far as it agreed with the law?—The Code is a system of definition; it is a compilation of definitions.

346. Still that must agree with the law?—Yes, but it is exceedingly difficult to elucidate the law from the definitions. Where a man is possessed of any ordinary knowledge of any legal subject, that book would be of very little use. It is a valuable compendium, but when you come to every-day practice it would not be of much use.

347. Would not the point you have referred to be better termed inaccuracies in the Code?—No, I do not think it is fitted for these colonies. There is a great deal of mannerism in France which is unknown here. The general procedure of the court is distinctly arbitrary, and would not be tolerated in Melbourne.

His Honor Justice Sir H. Wrenfordsley, *continued*, 1th Sept. 1888.

348. *By the Hon. J. Service.*—That is the procedure?—Yes.

349. You seem to indicate in your early evidence that a code of any sort was not suitable to a country such as we have here?—Yes.

350. That struck me as a little peculiar, because I do not look upon the Code as being a sort of cast-iron or stereotyped statement of the law, but as being capable of amendment from time to time, and, therefore, I would like to have a little further information as to why the Code is unsuitable for these colonies?—The Code, to be perfect, must be well defined; the leading principles must be well defined. Take the subject of hypothecation or anything you like, it must be well defined; and it is very difficult for a draftsman to render in a concrete form all the decisions you will find spread over a vast number of cases, and new subjects are continually coming up. You must remember, speaking historically (I am speaking from memory), that when the Code was framed, interests with respect to land were rather well defined in France. They had what you have here, but what they never had in England, a perfect system of registration. The consequence was legal interests were well defined. It was a good escape from the remains of the feudal system to a system which obtains in the present day, but there have been great changes in the world since then. Personal property has increased to an enormous extent, and for one case affecting real property you have a thousand relating to commerce and personal estate. Those are changes which are occurring daily.

351. Is the administration of the Code less elastic than the administration of the law?—I think so.

352. Is it necessarily less elastic?—I think so.

353. Because it deals with general principles?—It stands there as a leading principle. A man would come in and say "There is a legal principle defined there, I claim upon it." In short, I think the transactions of society have become too numerous to be embodied in a code.

354. There is a question that has arisen in other minds than my own—what is codification. I noticed in looking over the procedure of the Committee last year that there were different definitions given of it. For instance, one spoke of classification as if that were codification, and another spoke as if codification were more a statement of general principles than the definite precise law, and I confess, although I have formed what I think is a pretty correct idea of it in my own mind, my own impression is (I would be glad to be corrected if I am wrong) somewhat in accordance with what you have mentioned that codification implies more a general statement of principles upon which judgment should be given than definite lines laid down to meet particular cases. I should like to have a real definition of codification if I am wrong. If we are discussing codification of the law and have formed erroneous notions of what it means we shall be rather at fault?—The practical way of dealing with the Code, whether with Real Property or the Criminal Code, is that a judge would say "This is a prosecution under Article 283 or 284," and you would see at once the nature of the charge. I look upon that as being a definition of a particular crime speaking in reference to the criminal law. That is an arbitrary form. No doubt you have something analogous to that, you have your definition in your criminal statute, and I think your Criminal Statute Act is a very perfect Act.

355. Would you not refer in the same way to section so-and-so in the Criminal Act?—I am pointing to that as an illustration of what the Code may accomplish.

[*The Hon. H. Cuthbert took the Chair in the absence of Mr. Wrixon.*]

356. What is the difference between a French judge referring to article 283 and an English judge referring to section 19 for example?—I do not think there would be a very great difference—that is why I referred to your statute law as being so very satisfactory; you have the whole of your criminal procedure embodied in one Act.

357. A kind of codification?—A kind of codification.

358. Go outside of that and take any ordinary statute law, what would be the difference between referring to any section of any statute in the book and a judge in France or Italy referring to an article in the Code?—There would not be any difference because a statute defines either a right or a wrong. You have the advantage of statute law, but there again you are met with rules and restrictions. I apprehend that is a very good illustration of what I say. You have the statute, and that statute in the hands of the judge is more or less amenable to treatment of an artistic character; because he deals with it by certain well-known or defined rules, by which he is bound to assist the Legislature, but when you come to deal with the Code as defining rights and wrongs and so forth in regard to property, matters become very complicated.

359. I am not quite sure if this course of inquiry is exactly within the scope of the Committee, but it appears to me that if codification really means the expression of principles upon which the judge should decide in particular cases, it would appear to me to be a thing in accordance with the spirit of the age, because if you take those strict principles of construction that judges give the statute law, that has been, though much modified, what the world has been groaning under for a long while. For instance, we had the strictest possible statute law, that was construed in a way that often conduced to the grossest injustice in individual cases. I think the equity law was brought into existence partly to correct this tendency to deal with things in a strictly literal sense, according to the statute. I am not quite sure whether under the Judicature Act this tendency of the age has been further developed by enabling the court to deal in an equitable fashion with what you might call the Nisi Prius cases. It appears to me that the most perfect stage at which we could arrive would be one at which every case would be certain to be decided according to the principle, and not according to scientific and arbitrary decisions of judges, which have themselves to be explained?—The intention of the Judicature Act was to give the judge full power either in law or equity to deal with a case coming before him.

360. Do you not think that, if we could establish or create a Code which should deal with those general principles, it would give us greater assurance that individual cases would be decided more in accordance with equity than mere law?—No, I do not think so. I think the tendency of most judges is to give force to the equitable principle in every case. I think the judicature system has been very much hindered by the enormous number of rules that have been made. I think the symmetry of the Act has been lost in the number of rules that the judges have made. I do not speak with regard to your own judges—I am speaking of the English system. When I was in Western Australia we introduced the Judicature Act. All the rules were prepared and adapted to the circumstances of the colony, and I did my best to simplify them. I set my face against throwing difficulties in the way of the future. My idea is that to approach a perfect legal system you want a quick decision, and the general public will put up with

errors, which are as common to judges as to the rest of mankind, rather than be delayed. I think that interlocutory applications have a tendency to retard that speedy decision which is so desirable. The moment you get a speedy decision you stop expense.

His Honor Justice Sir H. Wrenfordsley, *continued*, 11th Sept. 1888.

360*. Upon the whole you really would prefer to see us hobbling along under statute law, rather than adopt any code?—I do not object to the use of the expression, but I do not adopt the word. I do not think you are hobbling along at all. You have a very good system, presided over by a very strong Bench. I think if you consolidate your statutes you are better off than we are in England, in some respects. I think you are better off than they are in Mauritius. If you look at the appeal book you will see that many very complicated cases go home from Mauritius, which I should be very sorry to see embarrassing the courts here. That is owing, as I have said, to the state of the law as applying to real property.

361. *By the Hon. the Chairman.*—You approve of consolidating statutes in every case where it is possible?—I do. Speaking as a practical man, I should say it is possible to codify a statute or a subject with little expense, and you are more likely to get a man competent to do it, whereas, if you undertake such a gigantic thing as codification, you require a man with the mind of Justinian to make it perfect.

362. Would you be in favour of codifying particular subjects?—I would.

363. Taking it piecemeal—for instance, taking mining law?—Yes; I think that is a very practical suggestion.

364. Take the law of partnership—would there be any difficulty in dealing with that?—I think if you had your laws consolidated and sent home to the Privy Council you would do a great service to the colony.

365. Consolidation refers simply to the statute law—codification refers not only to the statute law, but to the unwritten law, and the principles to be derived from the different cases that have from time to time occupied the time of the courts?—Yes.

366. *By the Hon. J. Service.*—Could there be codification of the statute law as distinguished from consolidation of the statute law—taking the mining law for example?—Your mining laws are altogether confined to statute law; you have built up a somewhat complicated system, and it would be a great advantage to consolidate them.

367. What I want to get at is the difference between codification and consolidation. I understand consolidation, but I want to know if codification of that same statute law is a process distinct and separate from consolidation. I have been trying to find this out for a good while?—Consolidation of a statute means that you gather up all the principles of the statute law, but if you codify with reference to any particular subject that has been dealt with by that statute law, you must embrace all the legal principles which are incident, and that takes you to a very large circle. I do not think that would apply to mining law, because the rights created by that particular interest are well defined, and they are rights that you yourselves have created by statute law.

368. The judge would apply that principle to decide this particular case, but in the case of codification the principle would be laid down in the statute?—Yes.

369. Could it be laid down in a code in such a distinct fashion that no two judges could differ?—No, I do not think so, having regard to the constant references under the French Code that are made to appeal cases decided in France. A man at the French Bar quotes cases decided by the Court of Appeal just as freely as they do here questions decided in our own courts.

370. *By Mr. Duffy.*—Is there not something in the Code which restricts judges from making case law?—They are obliged to keep to the Code. I do not wish to complicate matters, but there is a system of procedure under the French law of which you have no idea here. Take the case of people under legal disability; women's and children's rights, and the rights of persons of unsound mind, they are the best illustrations. Every case that comes before a judge under the French law, having reference to persons of that class, is sent immediately to the Procureur-General. The court will not deal with those rights unless they get first of all a report from that officer. That leads to a great deal of delay. I think the judges very often take advantage of that to relieve themselves of some responsibility. Imagine our Minister of Justice here having his office inundated with petitions from relatives of people under legal disability. Every petition presented here, under your Settled Estates Act, would go, in the first instance, to the Minister of Justice for his report, and the judges would naturally shelter themselves behind it. I know I should say if a man came to me—"Go and get me a report from the *Procureur-General*, to see that the rights of the person under legal disability have not been interfered with," and then I should have no hesitation in making the order.

371. *By the Hon. Lieut.-Col. Sargood.*—That does not necessarily follow under a code?—No; but, I have had some experience under the French Code, and I do not see that we were better advised under it than we are here.

372. Does the same practice obtain in Belgium?—I cannot speak as to details. I gave a reference to Belgium which applies more to statesmanship than to anything else. Belgium being a commercial country, has led the van, and is, the foremost country in Europe in promoting legislative reform which may tend to assist trade. She is a small country with large commercial interests. France is not a commercial country in the same sense. Belgium requires legal facilities by which to borrow money, and to increase the value of land, in order to get the power of creating first charges, which she could not have done otherwise; hence she has changed her laws.

His Honor withdrew.

Adjourned to Thursday next, at half-past Two o'clock.

THURSDAY, 13TH SEPTEMBER, 1888.

Members present:

MR. WRIXON, in the Chair;

Council.	*Assembly.*
The Hon. D. Melville,	Mr. Officer,
The Hon. J. Service,	Mr. Patterson,
The Hon. Lieut.-Col. Sargood.	Mr. Gavan Duffy.

His Honor Mr. Justice a'Beckett, examined.

His Honor Mr. Justice a'Beckett, 13th Sept. 1888.

373. *By the Chairman.*—Have you had an opportunity of considering this General Code at all?—I have availed myself of the opportunity afforded by the Code being sent to me with my attention particularly directed to the second clause, proposing to give it a qualified operation. Before giving an opinion as to that clause, I thought it as well to test the Code in a few matters coming within my own professional and judicial experience. This Code of course covers every ground that a lawyer has to travel over, but I thought I could form the best opinion by consulting it on the ground with which I am most familiar, and the result of that testing was to leave me under the impression that the Code was bad, that it was untrustworthy and misleading, that it put in an attempted scientific shape matters which while intelligible in the source from which they were taken, were unintelligible in the shape in which they find themselves in the Code. It is very easy to express opinions of that kind and generalize for or against any proposal, and in order that the opinion that I have formed may be tested, I have taken certain clauses from the Code as specimens which seem to me to justify what I say, and it will take a very little time to refer to them. The members of the Committee, the lay as well as the legal members, will be able to appreciate the objections which I found to the Code, and to consider whether it deserves the strong observations which I, for my part apply to it, that it is bad, misleading and makes things which were plain originally difficult to understand. The Code professes to be a statement of the common and statutory law, and I suppose is intended to guide at all events the lawyer, if not the layman, the man of common sense, as to what he should do, how he should act in reference to a particular matter as to which he wishes to consult it. I take, to begin with, the case of a will, the Code purports to set out what is required by statute law to make the execution of a will valid. Turn to page 555, and look at clauses 3 and 4. It says "3. Every will executed in the manner hereinafter provided shall be valid without any further or other form, and every will not so executed shall be void." Then it goes on to say what is necessary and it says "The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was thereby intended to give effect to the writing as a will." I say that is altogether bad law. It is bad statute law, and it comes of the endeavour to put into condensed shape that which the statute has expressed at length. The original Act provides that a will shall be signed at the foot or end. The amending Act gave a liberal construction to "foot or end" but required that the will should be signed at the foot or end, and it does not matter how clear it may be that the testator's signature was intended to give effect to the will, if he does not put it where the statute intended it, the will is bad. I had to reject the other day the probate of a will where there was no doubt of the intention, but the testator had signed in the middle of the printed form. He thought that would do, and no doubt he meant that to give effect to the will, but statute law considered it was not well to leave matters so wide as that but that there should be a statutory restriction as to what should make a will valid. So I say that is bad law, and it comes of trying to substitute the draftsman's version of the law for the law itself which he had better have left alone; therefore the Code is more misleading than one of those common printed forms, or one of those common almanacks which tells the testator what he is to do. There is a simple plain point; therefore I say that is an instance. Before I leave the subject of wills, I may point out this, that the framers of the Code have chosen to introduce into the Code a great deal of statutory matter, and it finds its place under the head of "Interpretation of Wills." Lawyers know that there are very special statutory provisions in relation to clauses in wills. Those are repeated but they are not repeated in the language of the Act, the draftsman has adopted his own language. I give an instance that lawyers can consult. I will not occupy the time of the Committee by pointing it out myself, but I will ask any lawyer to look at section 16 of the Code, at page 21, and compare it with the statute which it purports to re-enact. It is not truly re-enacted. It is a very difficult thing to say whether those verbal alterations, as they are supposed to be, are not alterations exceedingly material, and unless you have great confidence in the framers of the Code, it is exceedingly dangerous to allow them to substitute their own phraseology for the language of an Act of Parliament dealing with a specific subject. Now I come to another branch in which I say the Code is bad and misleading; take the voluntary settlements at page 478, clause 5. Lawyers and many laymen know that when a man makes a voluntary settlement without consideration, if he afterwards sells the property for value, the voluntary settlement goes by the board, and the voluntary settlement is absolutely void under the statute of Elizabeth, a very old statute which has received a judicial construction. The law on that subject is stated in these words—"Every conveyance of land without valuable consideration shall be voidable at the option of any subsequent purchaser." That "voidable" and "option" are both fanciful, and I say incorrect, "thereof for value from the same grantor whether such purchaser had or had not notice of such conveyance." And there it stops, but it does not point out this which is a most material thing—if this is supposed to be a condensation of the law, there is an absolute statement without the qualification, which is also familiar to lawyers that, although the conveyance may have been without valuable consideration if the daughters have married husbands who have known of and considered the settlement, or if anything has been done on the basis of that settlement, then this clause does not hold good, and the subsequent sale for value does not avoid the settlement, and I venture to say that the words "voidable" and "option" are incorrect. The statement of the law is imperfect and misleading, inasmuch as it should receive that most important qualification that things done on the faith of the voluntary settlement after its execution may make it irrevocable.

374. *By the Hon. J. Service.*—Before you pass from that may I ask is the law conveyed in a recent decision, that is that in the event of a daughter being married the husband might plead he had married her on the strength of her becoming an heiress?—That has recently occurred, but it is merely putting into shape

what has been the law for more than a century, and may be found in any text-book. Now I pass to something that will be familiar to mercantile men, take the creditor's dealings; look at page 482, section 9. Of course I speak absolutely; I should speak with more diffidence if there were not means for testing my assertion, but to save time, I say the thing positively, and other lawyers can look and see for themselves. This section says "Where there is an assignment of property to specified creditors for their particular security or satisfaction, such creditors shall be deemed to be purchasers for valuable consideration. But a general assignment for the benefit of creditors generally shall be deemed to be without consideration." That is to be a voluntary deed. That is absolute nonsense. If the deed is made for the benefit of creditors generally, and is communicated to those creditors, those creditors are in the position of people from whom consideration moves, and the way in which the errors have arisen appears by the section he refers to in the margin "Story Eq. Jur. s. 1229." It is a detatched section which is dealing with another subject altogether—the subject of the vendors lien for unpaid purchase money, and he is contemplating a special case where there is a debtor who has got a legal conveyance, and who has, nevertheless, not paid all his purchase money. In such a case as that, he says that if the debtor makes a provision for a specified creditor, and enters into a direct contract with him, the vendor may lose his lien, but if it is a general arrangement in which the element of contract does not come, that vendor's lien may be preserved, but there is no such general proposition as that in the Code. That general proposition is erroneous. Any lawyer would condemn it at once, and the layman would say "Why should it be—if a man make an assignment for the benefit of creditors generally, and the effect of that is that they trust to the realisation of the security, and do not enforce payment, is that to be a voluntary deed that a man can go next day and sell over their heads?" It is bad law.

375. *By Mr. Duffy.*—Might not the idea there have been that the contemplated deed would be a deed to A. B. "pay my creditors so-and-so," not specifying any creditors and any sums but generally to any creditors?—I do not think so. I thought at first it was another branch of the law turning upon agency, that if a man makes an arrangement with an agent to pay his creditors he then merely creates an agency and can revoke the agency. But it is not so; it is turning into a general statement with reference to a very peculiar state of things something that, as it is put down in the Code, is wrong. Now go to page 481, section 2. That I can dispose of shortly. I say that is very confused. It is very elaborate and confused. "Where any settlement or disposition of property or of any valuable security is made with intent to defraud creditors whether existing or subsequent or without valuable consideration and good faith or without the consideration in good faith of blood or affection, if any person sustain damage thereby, such settlement or disposition shall at the option of the person damaged be voidable to the extent that is necessary to satisfy his claim." I will not trouble the Committee with that. I say I do not like that. I do not know exactly what it means. Then come to 533, section 6. "Where of two mortgagees one has the legal estate but not the title deeds, and the other has the title deeds but not the legal estate, the court shall not assist either party." What does that mean. I say it is nonsense. It would mean that virtually there was a deadlock; nothing could be done. When the courts were divided, when there was an equitable jurisdiction and a legal jurisdiction the man might have rights in equity which he could not enforce in a court of law; he had to come in into a court of equity, and his coming there was a confession that he wanted something the courts of law could not give him. This was the case where the plaintiff and defendant were equally meritorious from the fraud of some third person, and each party was equally at a disadvantage. The court of equity would then say, "The defendant has just as much right to say 'do not hurt me,' as the plaintiff has to say 'help me,' and therefore we leave you to your legal rights." But when we have one court it is nonsense. It is drawing out from old cases in reference to a different state of the law a position which does not hold good at the present time, and if the mortgagee brought his action the man who had the legal estate wanted to turn the man out who had possession of the land, I say it would not hold good for a moment to say that the court would not assist him. It would assist him. It is drawn from an old source without the appreciation of the change of the position which has been made. It is part of that desire which is evidenced throughout the Code to do too much. It is a wonderful work of industry. No one can read it without admiring the industry, but it is misplaced industry to my mind.

376. *By the Hon. J. Service.*—Do you think it possible that this clause may have been drawn prior to that alteration of the law which you refer to; was it before the Judicature Act when law and equity were dealt with together?—Then it would be wrong, because they should say the court of equity will not do so; the court of equity will stay its hand.

377. To a certain extent this being written before the fusion of the two courts together might have led to a certain degree of confusion in the drafting of this particular section?—It may have been, but then it is imperfect, and this professes to deal with the law of to-day. Now come to page 542, section 12. I may say I have not many more instances, but I am anxious not to generalise but to give others the means of testing the value of my opinion. "Where a person has a lien takes security for the debt, it shall be presumed unless the contrary appear that the security to the extent of the amount that it covers is in discharge of the debt. But no such presumption shall arise in the case of a bill of exchange until it has arrived at maturity." That is not so. That is wrong, possibly it may be a misprint, it may be meant for the discharge of the lien, but it is bad law as it is. Anyone can see it is nonsense. How can a man put an end to his debt by taking security.

378. *By the Hon. Lieut.-Col. Sargood.*—Only to the extent of his security?—If a man gives security is his debt gone?—"It shall be presumed unless the contrary appear that the security to the extent of the amount that it covers is in discharge of the debt." If you take a security of £100, is your debt gone?

379. No, if I take security for £50 it discharges the debt to the extent of £50?—Not legally; it is not the law. If a man owed you £1,000 and you got security for £500, you would not think £500 of that debt was discharged; it is simply bad law; the most charitable assumption is that it is a misprint.

380. *By Mr. Duffy.*—Did you refer to the marginal note upon that?—I did.

381. Did it throw any light upon it?—It led me to the conclusion that it is a misprint.

382. Now look at page 528, section 13, at the bottom:—"Where two funds are equally liable for the payment of any debt, if the creditor have been paid out of one such fund only the other fund shall be liable to the first-mentioned fund its fair proportion of such payment"?—I merely say that is an instance of where it is more misleading or confusing; you cannot speak of one fund being liable to another fund, you want to be told more. He deals with subjects which you cannot condense. I will not enlarge upon that, but that is an instance of what I call an absence of lucidity. There is an attempt to be very clear and scientific, and the result is you cannot understand what is said; at least, I cannot. These are all

His Honor Mr. Justice a'Beckett, *continued*, 13th Sept. 1888.

matters on which I have in my examination found what I say are mistakes distinctly, but there are also things which I desire to call the attention of the Committee to, that is, that the mode in which statutory provisions are included in this Code is very extraordinary. I do not think anyone could come to a satisfactory key to the selection of subjects which are included in the Code, because there is so much in the Code which is mere repetition of exceptional statutory provisions. On the other hand, where you wish something practical, where a person would expect to find the law defined, he is not told what the statute law is. As an instance of what I say, that by omission of statutory provisions the Code is misleading, take that practical one, the Code dealing with bills of sale, which is at page 543, clause 1. There are certain provisions of Bills of Sales Act which are there, and then the author of the Code says:—"The object of the registration of bills of sale and of the forms and requisites prescribed for that purpose shall be deemed to be to afford to creditors and parties interested a true idea of the position in life of the vendor, and to give such a description of the residence and occupation of the vendor and witnesses as would enable persons interested in the matter to trace out who is the person giving the bill of sale and who the witnesses are, so as to ascertain the good faith of the transaction." None of those provisions as to registration are included in the Code, and that statement of what those provisions are for entirely omits the provisions of the Amending Bills of Sale Act, by which a person who is indebted is not allowed to mortgage if his creditors object. Some members of the Committee are conversant with the provisions for giving notice of bills of sale, to give any creditor notice to caveat and stop it if he likes; it professes to tell him the object of the registration, but how would any one learn, who wanted to know what the law was, that he could not mortgage unless his creditors would let him.

383. He would have to look up Act 557?—Perhaps so; but I say this statute should tell him something about it.

384. *By the Hon. J. Service.*—I think your objection is thoroughly well grounded. I have had something to do with that myself, and the principal object of the Bills of Sales Act is not defined in this?—It gives the go-by to it completely, and throws you on the wrong policy, or only half a policy.

385. *By the Hon. Lieut.-Col. Sargood.*—It does not appear to me that clause 1 states any absolute law, it is more explanatory?—It takes out certain sections; it says—"You have got to register your bill of sale, and for the purpose of registration you must look to the Acts upon registration which we do not profess to give." It says the object of those Acts is that publicity is demanded, but it gives a man no hint that something very different is the law, and that unless he is free from debt his creditors may stop him mortgaging at all.

386. *By the Chairman.*—Do you not think he is put on his guard by clause 2?—No, the thing is misleading; I say take that absence of information about statutory provisions, and then find what extraordinary things are put into this Code. Supposing this Code was turned out on the system which I know it was not, and it was to be paid for by its length, you would expect to find padding; you will understand I do not suppose anything was put in this that was not thought necessary, but what reason is there for enacting over again such a thing as this on page 450, section 5. There you will find the repetition of a little Act of Parliament, passed a few sessions ago, enabling persons if they chose to adopt certain conditions of sale. For some reason or another, this is put in all over again, the only alteration being that, instead of the Act being where it is now, it is in the 7th division of the 12th part of the General Code; what is the reason for repeating over again this special exceptional thing. Then look at page 485, what is the use of putting in a general code of law, the provision that "Any person who now or hereafter has the lawful custody of any documents relating to the title of any real or personal estate may deposit such documents with the Registrar-General." That is part of the Real Property Act. Or why put in section 11, referring to a branch of law which is almost obsolete, what can be the use of putting in the Code this, "Where any copy of any deed of feoffment is examined and is certified," I do not suppose there has been one for fifty or sixty years.

387. *By Mr. Duffy.*—I never saw one?—What is the use of putting it in, I have never seen one myself. Then in this Code will be found all the clauses of the Settled Estates Act; that, as you know, is a kind of Supreme Court Private Bill legislation, a number of sections applying to special rights and special procedure; what is the use of that, because the Code cannot profess to show you all the statute law which you may wish to consult, and why load it with this sort of thing, particularly as the code, so far as its statutory omissions are concerned, properly omits nearly all the Transfer of Land Statutes. That being so, why insert these various clauses, that is a matter that does no harm, it is merely so much surplusage. Having regard to this examination, I do not profess to have examined it at all minutely; but I have taken such branches of the law as I am most familiar with. I have looked at it, and when a thing has struck me as odd, I have looked at it again, and I give you the result. With those views, and with views much more favourable to the Code than those I have expressed, it seems to me that to give it the qualified legal force proposed by this Bill would produce much mischief. It would, by the vagueness of its provisions create misapprenension as to the rights of suitors, and where a judge did not himself happen to be conversant with the law, it might very likely mislead the judge, and the matter could only be put right by a comparison of the Code with the law in those plainer and safer sources, not only safer channels, but channels wider and clearer than those to be found in this Code; and, of course, much increased cost and much waste of time as well as expense will arise from that. On that subject, I may remark, that there is a great deal in the Code now taken from Williams, on "Executors" and very likely, I dare say, it does correctly summarise the various propositions which may be deduced from that book; but the propositions to be found in that authority are assisted by examples, by comments, and by qualifications which the necessities of the Code exclude.

388. And by reference to the cases?—And by reference to the cases; a man would be much more likely to know what the law was and much more easily understand it by looking at Williams on "Executors" than by looking at this supposed condensation of the book. It may be correct, it is a work of infinite pain and trouble to extract the essence, and when you have got the essence it is not as intelligible. A man to learn the law of legacies by studying the Code would have a task of much greater magnitude than by learning Williams on "Executors" from which those statements are taken; in the one case he would have something tangible to grasp, in the other he would have a number of abstract propositions to grasp, though I do not say they are wrong. So I say you introduce a new and formidable danger in litigation by the introdution of this as a *primâ facie* statement of the law, and I am sure there are dangers enough without this. In reference to the observations that are made that we should introduce it, though it may be wrong,

to come to the right that by pain and suffering we may work out our Code; it seems to me that the Code is made for man, not man for the Code; there is no necessity to have the Code, no one would wish for a code unless it was good; and if we see practical mischief likely to arise from its introduction, I do not know why the present generation should be asked to endure that in order that succeeding legislation may become necessary to transform and work it out. That is merely a matter of opinion, but those are the views I have formed about the Code, I think there is a great deal in it which is correct. I think it would be of use to publish it for what it is, it would contain the essence of a good many text-books, and a lawyer would get some good out of it. He would get definitions from it; but I do not think a layman would get any out of it, but there it is, and it is unsatisfactory that nothing could be done with it. People by reading it could see if it is as good as some think it or as bad as some others think it, but in answer to the question I have been asked as to whether Parliament should declare that that is law, I should say, "No, it is not law." His Honor Mr. Justice a'Beckett, *continued*, 13th Sept. 1888.

389. *By the Chairman.*—Would you publish it as a text-book?—I merely venture to make the suggestion that it might be a useful book to have in a library, because the work covers such an immense surface, and it is generally, I have no doubt, more often right than wrong, and you will find the law laid down upon certain out of the way points. You want to refer to a statute and you may meet that bit of the statute in the Code, but if you turn it into law, I think it would be worse than useless.

390. Supposing it possible that it could be made perfectly accurate, do you think it should be made law?—I should not like to see this Code adopted even though accurate. I think it is so difficult to understand, I would rather get the law from Williams on "Executors" than from the Code giving the law about legacies, because you want examples or instances.

391. Then any code would be of little value?—I do not know about any code; there is the code of bills of exchange. That, I believe, is a success; that is complete in itself. Then you might have a code in the nature of consolidating the statute law carefully on any particular subject, as, for instance, in reference to bills of sale, but to introduce a code framed on this system as law, I do not think would be of use myself.

392. However accurate?—I speak with diffidence upon that. I do not think it would be as convenient as the law as it stands—the statute law is there and the common law, and you get the law with its instances. There are no instances in this Code.

393. That being your view, you quite disapprove of the idea of making it *primâ facie* law as the second clause proposes?—That is the condition I am considering; if it is *primâ facie* law it is difficult to say whether a particular state of facts would fall within it, that is one thing you have to find out. Then if the Code is cited to the judge he has to consider the case of whether the circumstances do or do not accord with the particular language used; it is a double inquiry, I think.

394. The proposal has been made to this Committee of taking parts of the law and codifying them—would you think that a good thing to attempt?—I think it might be, but the difficulty is in securing the services of the ablest men for the work, and the expense would be something enormous, and if codification is contemplated in England, so long as we have the Privy Council, I think it would be wise to wait until the law on the subject is codified in England. I do not myself know of any subject that presses for codification, that there is any particular special difficulty about.

395. So, on the whole, you are disposed to leave it alone?—Certainly.

396. *By the Hon. Lieut.-Col. Sargood.*—That would apply to any code?—No.

397. *The Hon. D. Melville.*—Dr. Hearn explained to the last Committee the absence of the Transfer of Land Statute; it was in a transitory state, and he though it better to wait until it was finished.

His Honor withdrew.

Emanuel Steinfeld, examined.

398. *By the Chairman.*—You are ex-president of the Chamber of Manufactures?—Yes. E. Steinfeld, 13th Sept. 1888.

399. We could not expect you to know much about the professional aspect of the General Code, but you have been deputed by the Chamber to give evidence upon the general policy of having the law codified or not?—Yes.

400. We shall be happy to learn your views?—The only information I can give upon the subject is that being a continental man I am acquainted with the Code Napoleon, and I know the code is retained on the continent. Of course to a certain extent, it is obsolete, but it makes the basis of legislation in these new constitutional countries; and we in the Chamber consider that this excellent Code might be introduced. We cannot express any opinion as to its legality, but it would be of great advantage to laymen. For instance, we are men of business, and in any transactions in regard to bills of sale and things of that sort, we could refer to it, and see what we can do. We consider it would prove a great boon to the general public to have the law codified.

401. Have you had any experience yourself of litigation under the code in the old country?—Not personally—I was too young at the time.

402. The general feeling of those you represent is that if it could be managed it would be well to have a code?—Yes, very well indeed.

The witness withdrew.

Leo. F. Cussen, examined.

402*. *By the Chairman.*—What are you?—I am a barrister, and I am also lecturer on International Law at the University of Melbourne. Leo F. Cussen 13th Sept. 1888.

403. Have you given attention to this Code or any part of it?—Only to the general scheme, and the last part of it, Part XVI., the portion dealing with what Dr. Hearn calls the recognition of foreign rights, page 585.

404. In the course of your lecturing have you had to study this?—I have, and I found it of considerable assistance.

405. Will you inform the Committee of the results of your investigation?—It states concisely, and in the main correctly, the subject of recognition of foreign rights, but I would not say it was altogether a complete statement—that I presume could be met by the proviso in the former Code, saying that if t did

Leo F. Cussen, *continued*, 13th Sept. 1888.

not express the whole law that was still to be retained. Nor would I say it was absolutely correct, but it can be easily corrected, the mistakes are very few, and it would form a very useful piece of legislation.

406. *By Mr. Duffy.*—When you say the mistakes are few you refer to this portion only?—Yes, I cannot speak of the rest of it.

407. *By the Chairman.*—The result of your investigation of this last part is that it is in the main correct?—Yes. It only states what is generally known as private international law. I have read Dr. Hearn's evidence before the former Committee, and he states quite correctly that we could not pass any code of public international law, nor could the British Legislature do so—besides which public international law for the greater part is not law at all; it is merely matter of custom.

408. Have you considered the general scheme as well as this particular part?—I have. I think the scheme is an excellent one. It may be more intelligible to me, having attended Dr. Hearn's lectures, than to the ordinary professional man, but I do not think professional men would have the slightest difficulty in understanding it; I think it fulfils what a scheme should fulfil. It is adequate, it is distinct, and it does not overlap. You must remember what the Code pretends to include—it only pretends to include the substantive general law. It does not pretend to include for instance the law of special conditions—it does not attempt to include that, and it does not pretend to include the law of procedure—that is quite apart from it. It is the law that applies to all persons—the law of procedure is only a secondary law. It is complete, because, as duties are co-extensive with commands, and as far as it is necessary for us to consider, the law is a command of the State, and as every command implies a duty, and as this scheme is based on duty, it is adequate. I might refer to other classifications that have been made—this is not based on Austin or Bentham, it is his own idea. I saw one criticism that it would be more advantageous if the rights and correlative duties were placed together. That is impossible in some cases, there is no correlative right in some cases. You say a man must not commit suicide—who has right to insist on that—no one.

409. Unless the lawgiver?—The lawgiver has the power not the right. When a duty is imposed for some other person's benefit that person has the right. Austin based his code on rights, and the consequence was he could not find any place in his codification for those duties, therefore his classification was not adequate. Bentham based his classification on sanctions; that puts the punishment before the duty itself, and while one duty which says you shall not interfere with another man's property is sufficient, you have to include numerous sanctions, and it leads to confusion. Blackstone's classification was based on a misconception, or a mistranslation of the old Roman system. They divided their law into the law of persons and the law of things. It was necessary to put the law of persons first, because the law was not generally applicable; there were a number of foreigners in Rome to whom the law was not applicable. Then what is generally translated as the law of things, or rather the rights of things, is not correct, because things have no rights. What the Romans meant was the law relating to objects which the law commands. They did not mean the rights of things at all, therefore Blackstone's system was based on a misconception. Those are the main classifications.

410. You approve of Dr. Hearn's classification?—Yes; I do not think professional men would find the slightest difficulty in understanding it.

411. *By Mr. Duffy.*—Have you read the evidence of the gentlemen who have been examined?—Yes.

412. They appear to find some difficulty in the matter?—Some of them say it is new, but I do not know that professional men as such are the best judges of classification. Perhaps they have not given very much attention to it.

413. *By the Chairman.*—Have you studied or investigated the literature of codes?—I have not, except that I noticed in my reading on private international law the codes of France, Italy, Austria, and Prussia have provisions corresponding to this one on the recognition of foreign rights.

414. You have not examined other parts of the codes in detail?—No. There was one suggestion I thought I might make to the Committee, viz., that as there seems to be some difficulty in passing the Code as a whole, owing to its not having been sufficiently accurately corrected, it might be possible to pass the first 250 pages of the Code—that is the parts relating to duties. I have seen very little criticism of that part. In the first place, it is the least difficult part to codify; it mostly deals with criminal laws and the laws of wrongs that are in nothing like so chaotic a confusion as the law of property. It would not affect the scheme—it would not be any breach of the scheme, and I think it would inflict very little injustice. It is mostly taken verbatim from the statutes, and if a case of injustice did occur under that portion it could be easily remedied.

415. *By the Hon. J. Service.*—To adopt that portion would commit Parliament to the classification adopted?—I do not know that it would, but feeling strongly that this is a good classification, if Parliament were induced to pass that portion of it there would be no breach of classification, and afterwards with more knowledge, Parliament might be induced to pass the rest.

416. We had a statement from one of the witnesses that we could not alter the classification—that if Parliament commenced to codify on this system it would be impossible to change afterwards?—I do not think Parliament would have any difficulty in changing anything it wanted to.

417. *By Mr. Duffy.*—You are not such an old practising barrister as some of those other witnesses?—No.

418. In general experience you would not set up your opinion against Mr. Higgins, for instance?—Oh, no, but I understand that Mr. Higgins did not disapprove of the general scheme.

The witness withdrew.

Adjourned to Tuesday, 25th inst., at half-past Two o'clock.

TUESDAY, 25TH SEPTEMBER, 1888.

Members present:

MR. WRIXON, in the Chair;

Council.	*Assembly*
The Hon. D. Melville, The Hon. F. Brown, The Hon. Lieut.-Col. Sargood, The Hon. J. Service.	Mr. Officer.

M. Victor Hugot examined.

419. *By the Chairman.*—This Committee understand that you have had some experience in regard to the working of the Code Napoleon in France?—I must tell you what I am, I am a judge in the Court of Commerce; it is a special jurisdiction; I suppose it belongs only to France. Of course, I can give you details only on that kind of court; it is what we call a Court of Exception; proceedings are very short—very cheap, the judgments are given very soon; but our jurisdiction is made out expressly for trading people—people who are in business, and people who not being in business have transactions of a commercial nature. Our frontier is surrounded by the code of commerce; we never get outside of that code; we have several codes in France; we only act under the prescriptions of the code of commerce. I am not a civil judge, I know all about commercial proceedings, expenses, and so forth. I can give you all the details, but as to the civil law, it is out of my frontier.

420. What is your experience of the working of the code as a whole?—I tell you I am not well acquainted with them myself, we have several codes in France. What you call the Code Napoleon is the entire binding of all those codes, but we have the civil code, the code of proceedings, the code of commerce, the penal code, and my office is to judge on the commercial cases.

421. Have you found the commercial code to work well?—Very well indeed. We judge every year 72,000 cases in the Court of Commerce in Paris; some details of that the working of code, I suppose, would be interesting to you, if you have not such a working court here. On account of the large quantity of commercial cases, the law has created a tribunal of exception. All the judges are elected by the merchants the town. Every man who is in trade for five years and has got a license, who has not failed—if he has been declared a bankrupt, he is cancelled from the list of electors in France—every man who is in trade under a license for five years, his name is inscribed on the list of electors, and they all vote every year.

422. I do not think we will trouble you as to the constitution of the court, but we want information as to the working of the code. Have you found many difficult law points arise in the code of commerce?—No, some of our judges have taken their degrees of law, and, although they are are tradesman, they all know the code in all its parts; but I can only speak in the name of the code of commerce, because I am not a civil judge, I do not belong to any court of appeal.

423. You find the code of commerce sufficient for all the law you have to administer?—Certainly; sometimes we have some cases where we have to decide upon some civil points of the Code Napoleon. Suppose a man in business dies, and leaves a widow and children, sometimes his situation is hard, and then it is not the commercial code that requires application, but the civil code, and we must know both of them; but I do not work in the civil code.

424. Are there many appeals against your decisions?—There are a great many appeals, but the most of our judgments are confirmed by the Court of Appeal; the average is in favour of the Commercial Court. Take the cases judged by the civil tribunal and the same number of cases judged by the Tribunal of Commerce, if they all appealed you will always find that the quantity of judgments confirmed by the Court of Appeal is superior in the cases of the Tribunal of Commerce.

425. Do you amend the code of commerce often?—Yes; for instance, at this very moment the law about failures, bankrupts, is very old, it is working very badly; it is a very hard law, not adequate to the present times, and we are claiming for a great change in that law. So it is with the law about bills of exchange. Our code was drawn up in 1806; at that time transactions were rather scarce, now they are very numerous, and we all find it is a very urgent necessity to change the law. I cannot tell you all the parts are good, but some are excellent. The principal advantage of the Tribunal of Commerce is that we deal with all the cases very soon and at very cheap expenses.

426. You know the way the English people have, they have the law in a number of books—does your code make the litigation easier?—Very easy and simple. It is an advantage of that kind of justice very simple, very short, very cheap, and we can deal with a great many cases in a very short time. The way our tribunal works is such that people often come to a compromise in the private room of the judge. It has two degrees, a case is called and every man can come to the bar and plead his own case, or take any one else, a lawyer or not a lawyer. If it is a simple case the bench decides at once; when it is not, all the cases are divided between judges, who control the proceedings. A fortnight afterwards we give judgment, but during the time every judge is bound to take all the papers; he calls all the people together in his private room, and if they cannot agree to compromise, then he will draw up his report; this report is discussed the day before the public sitting, and all the judgments are voted by the judges.

427. Have you any knowledge how the other parts of the Code Napoleon work in France?—Certainly.

428. Do they work well?—Very well indeed. I suppose it was a master-piece in the time it was made; now it requires a great deal of improvement. It could not be worked so well in your country, our civil law is very different from yours—for instance, with us, suppose a father has got four children, when he dies his fortune must be divided equally between all his children, even against his own will, except a small sum of which he can dispose. Suppose he is disgusted with one of the children, he is still bound to divide it equally, therefore many articles of our code which refer to that system would not be suitable here.

429. Do you find many decisions of the judges outside the code altogether, so that you cannot learn the law from the code alone?—None, a merchant can go to the civil tribunal if he does not want to save expense; the code is provided for all the cases, all the business of civil life in France.

M. Victor Hugot, *continued*, 25th Sept. 1888.

430. But it wants amendment?—No doubt. If we had not been occupied by politics a great many changes would have taken place, but sometimes Parliament postpones useful work—they do that everywhere. The law for bankrupts is very hard, quite out of the time; we judges are obliged to bring some softness into the administration of that code. When a man has failed he is deprived of his rights, he cannot vote, he is only a slave. If he is not a merchant he cannot be declared a bankrupt, a man who is not a merchant, such as a lawyer or a doctor, can make as many debts as he likes, you can seize his furniture, but he is not a bankrupt. He votes and he is the same man as he used to be, but if he is a merchant he is quite different.

431. Is that the law in France?—That is the text of the law; we try to soften that hardness of the law, but some parts of our code require great changes, and if we had time it would have been done. I hope it will be done in a short time,

432. *By the Hon. F. Brown.*—You stated there are 72,000 cases—from that fact do you think the public understand the code?—Very well. All tradesmen who have been bound under the power of that code, and brought up under the application of that code, know it very well; the very smallest tradesman knows the working of that code. That is why we have so many cases, the application of that code is so well known. When a man feels that an injustice is done he calls in the assistance of the code.

433. In every case there must be litigants who have different opinions of the code; do you think the ordinary tradesmen are in a better position than they would be under our laws?—Suppose a man has litigation with another man of his own class, where does he go here?

434. To the court?—How long does he have to wait for a judgment on the average?

435. In each of those 72,000 cases there are two parties diametrically opposed to each other, and yet they are born and brought up under the code—do you think they are better provided for under the code?—That is my opinion. I suppose if that code were suppressed our courts would be overcrowded with cases. The judges have such habits of transacting business, they can bring on a compromise; it is less judgment than settlement of cases.

436. Taking your view, that if that code were done away with, the courts would be crowded, that is further proof that the public do not understand the code, or there would not be so much litigation under it?—Litigation is often the effect of circumstances, which are quite outside the law. I remember last year I had a very very hard case. The steamer *Wellington* landed her cases just on the very day war broke out; everything was destroyed, and the cases were burnt. All the people who had the goods on board claimed for the amount of the goods, and said—"There is no proof you have landed the goods; if you have landed them you have committed a fraud, that makes you liable for the damage." This case has been the precedent of 200 cases the same year at the civil court. Sometimes it is important to settle the litigation at once, even for the man who loses. I find the best advantage for the court is to give speedy decisions. If your tribunal has litigation, and if they are long or slow, in such a case you create costs.

437. Our inquiry is as to the desirability of the Code?—I can say what I mean in one word; the Code Napoleon is most perfect, except in some articles which are old, and which must be taken out as soon as possible, which are left aside by the judges, they are no more applicable. Everything gets so in time, and those codes are almost 80 years old. It is a long time for a man, and it is very long for a code, but as to the bulk, we all agree that it needs altering in some parts.

438. *By the Hon. D. Melville.*—Has the code been altered at all by the Legislature?—In many parts; for instance, the code of commerce has been altered four years ago.

439. Is there any difficulty in securing an alteration?—No; it is in France as everywhere. When public opinion requires a change it takes place, and some times it would take place rather sooner if our parliament were not always engaged in fighting about changes of ministry and so on. We cannot help it in France. Sometimes a very useful law is postponed for five or six years. At the very moment it is about to be discussed there is a change of ministry, the Minister of Justice has something else to attend to, and our poor law is left behind; but as a collection of laws, I suppose the Code Napoleon has been really a pattern, but it requires a great many changes. It would require to be altered materially to agree with your state of society; with us the law of equality is such that an estate is divided against the will of the father and he cannot help it, and on account of that there must be in our code a great many points you cannot agree with, you have more liberty in your country than we have; for instance, the law of marriage. With us, that law is surrounded by so many steps to be taken that it is a reason why the population of France is rather decreasing instead of advancing. I have been told in your country it is like it is in England, a man can marry when he likes or against the will of his father or his parents, with us, no, he is bound to get the permission of his father, if he is dead, his mother, if she is dead, his grandfather or grandmother, and if those parents decline for one reason or another to sanction it, he is bound to take steps which take six months; he must get a judgment from the court. These points, I point out cannot agree, with the state of your society; and I tell you my feeling is they are decidedly objectionable, they are all "played out"—that is my opinion, although I am a Frenchman. If you except these points, I would say our code was perfect.

The witness withdrew.

The Chairman 25th Sept., 1888

440. *The Chairman.*—I should like to make a short statement. I think the members of the Committee are acquainted with the history of this Code. It has engaged the attention of Dr. Hearn, to my knowledge, for eighteen years. I remember, in the year 1870, Dr. Hearn speaking to me about it, and showing me part of the work which was then beginning. Dr. Hearn continued working at the Code with more or less attention for many years, and latterly he gave the main portion of his time to it. He was a man, as we all know, of great learning and with an eminent capability for this particular sort of work—for adapting and assimilating materials, and putting them into a good form. He gave nearly the whole of his time during many years to this work. Also, as the Committee are aware, there were some six or seven gentlemen of the Bar who assisted him, and the work was brought to a considerable state of efficiency. It attracted the attention of Parliament, and the Legislative Council on two occasions passed it into law. It came down to the House of Assembly and the second reading was passed there. Last year a Joint Committee of the two Houses sat upon the Bill, and took a considerable amount of evidence, including that of the Chief

Justice and Mr. Justice Webb. That Joint Committee, which was composed of gentlemen whose names certainly command respect, unanimously recommended Parliament to adopt the Bill as it stood. When the question came to this point the attention of the Government was challenged to it, and the duty was cast upon the Government of saying what they would do. Very little inquiry satisfied the Government that it would be unsafe to take the Bill as it stood, because the Bill as it stood absolutely repealed a vast mass of the statute law which dealt with the every day affairs of life, and also of the common law, and if it were enacted in this absolute shape and then found to be inaccurate the whole of the affairs of business and social life would be thrown out of gear. That was the feeling that the Government had. The first thing the Government attempted was to get a general revision of the Bill by some competent man in England. We were aware there were plenty of eminent gentlemen at the Victorian Bar fully qualified to deal with the question, but none of them were willing to give the time and attention necessary for this revision, and we, therefore, attempted to get a revision in England. This attempt failed, the letter which is before the Committee from Messrs. Freshfield and Williams shows the thing cannot be done. And there are objections to doing it also which were pointed out in taking evidence before us. In order to greater certainty as to the accuracy of the Code or otherwise we took the opinion of three leading gentlemen of the Bar, Dr. Madden, and Messrs. Hodges and Higgins, as to certain portions. The result of their opinion is before the Committee. The final conclusion which I think everyone must draw from all the facts and the evidence, and certainly it is the conclusion the Government have drawn, is that we could not safely advise Parliament to adopt the Bill in its absolute shape, the risk would be too great; and certainly we are not prepared to do it, speaking for the present Government, and I do not think any Government would. Then the question presented itself, can anything else be done. It seemed such a sad result to say we were to put the fruit of all those years of labour and attention into the waste-paper basket, that we were driven to think if some possible loophole could be devised to get out of the admitted difficulty, the situation being a choice of evils. This led to the idea of the second clause, which, I am sorry to see a number of highly competent authorities condemn. But the feeling of the Government was that if passed tentatively, perhaps with a period fixed for the operation of this loophole or safety valve, the community itself would perfect its own code. That was the idea—it is unsatisfactory we admit, but it is better than losing the Code altogether. During the evidence given here before the Committee there have been two other possible suggestions made, one is that we wait for codification in England and follow it. That is a very possible course, only no one knows when codification in England will proceed; it is like postponing the question altogether. The other is for us, ourselves, to undertake codification in parts, using this Bill as a sort of material or foundation for the attempt. The feeling of the Government—and certainly my own feeling strongly—is that any process of codifying in parts will never be carried out. Parliament will never vote the money that would be necessary for undertaking codifying here, whether partially or wholly. We would require to get the services of the leading men of the profession. There are plenty of men highly competent for the work, but they will not give up their business to undertake it; it would be quite useless to expect it; I am satisfied of that, after two or three years experience of drafting work myself. If we put this aside and say we will undertake codifying in parts it will never be carried out. Drafting is a specialty; a man may be a first-class lawyer, and a good general draftsman, but a poor Parliamentary draftsman, and the number of Parliamentary draftsmen in Victoria is not great. I am convinced it would be hopeless to undertake it. The Instruments and Securities Bill has been mentioned—that was easy to do, because we simply took what they did in England and adapted it here, and if we could be sure they would go on codifying in England it would be easy, but will codification be carried out there? Parliament will not vote the money, and the men will not give up the time to do it; therefore, the position the Government put before the Committee is whether we will take the Bill with this second clause, or put the whole thing aside. We admit it is a choice of evils, and we felt the difficulties presented by that second clause very much, but the most we say is that it is the best choice of a choice of evils; that is the reason we submitted this Bill. I merely wish to put that on record. I shall be happy to answer any questions from any member of the Committee.

The Chairman, *continued*, 25th Sept., 1888.

441. *By the Hon. Lieut-Col. Sargood to the Chairman.*—Does your own experience lead you to anticipate so much difficulty in adopting that second clause, as more than one witness has feared would arise?—No, I must say I would be prepared to vote for its adoption on the grounds I have stated. I do not anticipate such serious difficulties. I think there will be difficulties, but they have been somewhat exaggerated.

442. From your observation do you think this Code, if passed, will be practically laid aside, and the lawyers would go to the statute law and not to this?—I do not think they could do that. The law would make it *primâ facie* authority and they would be bound to accept it till shown to be wrong.

443. It would not become a mere text-book?—I do not think so—certainly not in the majority of courts—in the highest courts of all it might to some extent.

444. Do you anticipate that in ordinary cases—not cases involving a large amount—the first thing that would be done would be that the lawyers on both sides would take up various clauses and try to prove that the law as stated in the Code was not really the law, or would they not in ordinary cases, constituting nine-tenths of the litigation of the colony accept this Code as the law?—I think in the rough and tumble of litigation the Code would be accepted, but when you came to nice questions, and discriminating and high-class lawyers, holes would be picked in it, and no doubt it would often be found defective, but for the ordinary everyday purposes of litigation in the police courts, county courts, and the other lesser courts I think it would be a guide.

445. Would it be a text-book?—An authority.

446. Assuming then that in any of those cases it was pointed out that this was not a true statement of the law, would you give anybody, say the judges, power to alter those clauses to be in accord with the law?—I think it would be better to leave that to Parliament.

447. On the recommendation of the judges?—Yes, certainly. It would be the duty of the Law Department to notice every error as it was pointed out, and to be prepared with the amendment of it in the next session of Parliament.

448. *By the Hon. F. Brown.*—You contemplate periodical amendments when errors are discovered—take the case of a man going and consulting a lawyer, and acting on his advice (given on the law as laid down in the Code) in a case involving a considerable amount, and then when the case is argued it is

The Chairman, *continued*, 25th Sept., 1888.

discovered the Code is wrong. There may be fifty cases of a similar nature to be brought on immediately, and until that Code is amended how are those people to be set right?—If he is an intelligent lawyer he will see that the Code is wrong if it so, in the first instance.

449. The man goes to a lawyer, and under that Code the lawyer suggests certain steps to be taken. The decision may be given in his favour, but be upset on appeal, and in the meantime there may be twenty other cases of a similar nature, where people are suffering under exactly similar circumstances, because they cannot carry out their rights. Must they stop litigation until the amendment takes place?—It would be just like what, as you know, happens every day. The Court decides the case of Brown and Jones in a particular way—the lawyers say "That is bad law." It is appealed against, and all good lawyers know the decision will be upset. In the meantime what are you to do; you know it is bad law, but until it is upset it is good law.

450. At present, you presume the law is right because it is in the statute, but this is so altered that the error is discovered in itself ?—I admit it is an inconvenience, but after all it happens everyday. One has only to look at the law reports in England to see the appeals that are allowed time after time.

451. *By the Hon. Lieut.-Col. Sargood.*—Is not that practically our position at present—you go to a solicitor and ask advice on a certain case. I know one case in which counsel's opinion was taken, and a certain course of action against the Government was advised. We went to court and gained our case, but it was proved on appeal that we ought to have taken a different course. Nothing worse could happen under this Code I suppose ?—No. Very likely your lawyer had some good authority to go on, but it was afterwards reversed.

452. *By the Hon. J. Service.*—Are the Government in favour of passing the Code?—I am prepared to vote for it.

453. Do you think Parliament will be likely to pass it in view of the conflicting evidence?—I could not say that.

The Committee deliberated.

Adjourned.

APPENDICES.

APPENDIX A.

GENERAL CODE BILL--OPINIONS OF COUNSEL.

OPINION OF DR. MADDEN.

CASE.

Counsel is referred to copy of "The General Code 1888," sent herewith, at page 181, division 4, "Duties towards the Property of Others," subdivision (*a*), clauses 1 to 12 inclusive, and he is requested to advise:—

1. Whether those clauses correctly state the law under the head they deal with, so that they could be safely embodied in an Act as declaring the law upon the subject.

2. If incorrect or inaccurate, is the inaccuracy only upon trivial points, or is it such as to indicate serious deficiency in this portion of the Code.

3. The opinion of Counsel is sought with a view of assisting the Government in deciding whether they should take the grave responsibility of acting upon the report of the Select Committee of last session, and asking Parliament to pass the Code into law; and the Attorney-General would be glad if Counsel would add any general observations that may suggest themselves.

OPINION.

1. In my opinion the clauses referred to do correctly state the law under the head they deal with. Clause 1 deals with a subject which has always been most difficult to define, but giving it the best scrutiny I can it seems to satisfy the definitions attempted in Burroughs *v.* Bayne, 5 H. and N. 296, as limited and criticized in the House of Lords in Hollins *v.* Fowler, L. R. 7 Eng. and Ir., App. 757, see pp. 766 and 780 *et seq.*, which is the latest and most distinct effort to define "conversion." I notice that clause 1 uses the word "property," and as I cannot find any "interpretation clause" in the Bill declaring that that word is used to the exclusion of real property, its use in clause 1 is too wide, because conversion relates to personal property only and not to realty, which the word "property" would of course include. The clause 4 seems to me to be unnecessary, and therefore embarrassing in an Act like the one proposed. I cannot see that its subject matter is not fully included in clause 1 or clause 3, according to the directions or indirections of the "disturbance" or "deprivation" of the owner's possession. With these small exceptions the set of clauses referred to seem to me sufficient.

2. I see no serious deficiency in this part of the Code. It accurately defines and declares the law (in my opinion) with which it deals. I feared at first that it was defective for omission of the several duties arising out of the maxim *sic utere tuo ut alienum non lædas*, and out of negligent dealing with the property of others and relating to nuisance, but I find that these have been classified under another division at p. 288.

3. Of course, as desired, I have directed my attention to the clauses 1 to 12 of subdivision (*a*) of division 4, and as to these clauses I think the Government need not have any apprehension in passing them into law as part of the Code. I do not see anything connected with them which suggest to me any observation which could assist the Honorable the Attorney-General save that they declare the law, and, as I think, nothing but the law.

JOHN MADDEN.

5th March, 1888.

OPINION OF MR. HODGES.

CASE.

Counsel is referred to copy of "The General Code 1888," sent herewith, at page 377, division 8, "Non-consensual obligations," clause 1 to 16 inclusive, and he is requested to advise:—

1. Whether those clauses correctly state the law under the head they deal with, so that they could be safely embodied in an Act as declaring the law upon the subject.

2. If incorrect or inaccurate, is the inaccuracy only upon trivial points, or is it such as to indicate serious deficiency in this portion of the Code.

3. The opinion of Counsel is sought with a view of assisting the Government in deciding whether they should take the grave responsibility of acting upon the report of the Select Committee of last session, and asking Parliament to pass the Code into law; and the Attorney-General would be glad if Counsel would add any general observations that may suggest themselves.

OPINION.

SECTION 1.—It is somewhat unfortunate that the case of England *v.* Marsten, which is cited in the margin as the source of this section, has been so much doubted, and so strongly attacked (see *ex parte* Bishop, 15 ch. D. 400, at page 417, and Edmunds *v.* Wallingford, 14 Q.B.D., at p. 816, and the observations

of Vaughan Williams, J., in his notes to William Saunders, vol. 1, p. 361). But as the proposition contained in this section is not that in express words contained in the case of England *v.* Marsten, the proposition may be true although that case be wrongly decided. And I have to consider, apart from that case, whether this section is a correct expression of the law as it at present stands. Now there are many cases where an obligation does arise without the *knowledge and assent* of the parties thereto; the question is whether the clause "unless from the breach of some duty expressly imposed by law" covers all such cases. And I must confess to feeling a considerable difficulty in understanding what is meant to be covered by the language "breach of duty *expressly imposed* by law." If by that language is meant that wherever the law *implies* a contract there is a contract, and there is a duty "*expressly* imposed by law" to observe that implied contract, and a breach of that contract is a breach of duty *expressly imposed by law;* and if it means that wherever the law implies a duty or obligation there is a duty to conform to that duty or to discharge that obligation, and the not conforming to that duty or the failing to discharge that obligation is a "breach of a duty expressly imposed by law," then, in my opinion, the section is a correct statement of the law, though it is only the statement of the merest truism, and amounts to no more than a statement that "No obligation arises except there be an obligation." Let me take one illustration out of many that might be given to show what I mean. B becomes surety for a certain debt of A; C, without any communication from B, or any knowledge of B, being surety also, becomes a surety for the same debt of A. A makes default, and B pays and seeks contribution from C. Here there is no knowledge and assent between B and C, and therefore C is certainly not within the first part of this section, and therefore no obligation arises under that. Then how is C within the latter part? What duty *expressly imposed* by law has C broken? According to the section there is no obligation to contribute, yet if the section be a correct exposition of the law, although there is no obligation to contribute, if he does not contribute there is a breach of a *duty expressly imposed by law;* in other words there is no obligation to contribute, yet if he does not contribute there is a breach of a duty expressly imposed by law. The above leads me to the conclusion that the Court would be bound to interpret the latter part of the above section, as applying only to cases where there is a duty imposed by the Statute, or the Common Law, as a duty to fence machinery or a duty to allow lateral support to adjoining land, where there is no liability until there is the breach of duty. No liability until the omission to fence has caused damage. No liability until the removal of lateral support has brought down the adjoining soil. Whereas in the case of the surety there is an obligation to contribute before he refuses, as soon as the other surety has paid. I think the following would be a correct expression of the law. "No obligation shall arise between any parties unless with the knowledge and assent of all the parties thereto or unless imposed by law."

What appears to me to be wrong in this section is that the obligation is made to depend on the breach of duty, not the obligation to discharge any express or implied duty; and, at all events, the word "expressly" should be struck out, as with that word in I feel sure the Courts could not apply that section to the case of co-sureties, and money paid by mistake of fact, and numerous other cases, but would only apply the section to such cases as the duty to fence machinery and cases of that class.

SECTION 2.—This section states what is, in my opinion, undoubtedly the law as it exists.

SECTION 3.—I am of opinion that this section does not express the law as it at present exists; but before stating my reasons for so saying I think it right to make some verbal criticisms on the language used.

What is the meaning of the word "several" in the expression "and have brought into account their *several* items of claim"? Has the word several there reference to number, or has it the meaning which it has in the expression joint and several bond, or jointly or severally liable? I think this latter must be the meaning of the word there. And if that be so, what is the meaning of the same word immediately afterwards, "in respect of one item or of several items"? Here the word several is indicative of number, and it is certainly unfortunate to have to give the same word two such different meanings in one section. And the section would mean the same thing without the first "several," or, if desired to express the bringing in of the cross claim, this would more aptly be done by some such language as this—"And each has brought into account his or their items of claim."

The next strange part of this section is this:—When two persons have cross claims, and bring their cross claims into account, whether the account (that is the account into which they have brought their cross claims) be stated in respect of *one* item or of several items, &c. Now, if it be an account into which cross claims are brought, how can there be only *one item;* there must be two at least. And this makes the language of the section inconsistent.

I now proceed to state the extent to which this section is, in my opinion, at variance with the existing law, and my reasons for so saying:—

(*a*). This section applies when there is only one item in the account. When there is only one item that item is taken as paid and discharged, and the balance (how there can be a balance with only one item I don't know) shall be paid. Now, of course, when there is only one item there is only one side to the account, and it has been repeatedly decided that where the account has only one side, the items are not paid and are not taken to have been discharged by the statement of the account or by the account stated (see Smith *v.* Page, 15 M. & W. 683, Perry *v.* Atwood 6 E. & B. 691; see also Laycock *v.* Pickles, 4 B. & S. 497).

(*b*). In the next place the section makes this particular kind of statement of account final; there is no provision for opening the account stated in this section as there is provision for opening the account stated in the next section. The account having been stated, the only course open to the person against whom the balance appears is to pay the balance, as pointed out by the last line of the section. The account stated appears to place the parties to the account in the same position as the parties to a judgment (see the previous section). Now this is undoubtedly wrong. The very case from which the proposition appears to have been taken (Laycock *v.* Pickles, 4 B. & S.) states that when some of the items are such that if they had been actually paid, the party paying them would have been able to recover them back, as on a failure of consideration the account stated would be invalidated (see the judgment of Blackburn, J., at p. 506), and the statement of account could, in my opinion, be opened if any of the items were inserted by mistake of fact (see Townsend *v.* Crowley, 8 C.B., N.S. p. 477, and Leake on Contracts at p. 123).

SECTION 4.—The part of this section which provides that "the party who admits the correctness of an account may show that the admission was made under a mistake, or that certain items were miscalculated or founded in error" is too narrow. The numerous grounds on which an account stated may be disputed are set out in Leake on Contracts at pages 120 and 121, and the cases in support of the proposition are there enumerated.

SECTION 5.—Paragraph C provides that an account stated shall not be re-opened on the ground "That some of the claims or demands so taken into account were demands for which no action could have been maintained." This is directly contrary to the decision in the case of the Earl of Falmouth *v.* Thomas, 1 C. and M. 89, when one of the items in the account was an item respecting crops. This was an interest in land within the Statute of Frauds. No action could have been maintained in respect of that item without the written contract. There was no written contract, and the plaintiff failed in his account stated.

I am very desirous of fully examining each section before I write upon it. The task is an enormously laborious one, as it means conceiving a vast number of single instances, seeing what would be the decision of those single instances under the Code and what under the common law; and up to the present time have not been able to get beyond section 5, and thought it desirable to communicate the result of my labours so far. And so far I might summarise the result as being this:—Some of the propositions in the Code are too general to be of any value, and where the propositions become less general they are inaccurate.

HENRY HODGES.

9, Selborne Chambers, 14/4/88.

FURTHER OPINION OF MR. HODGES.

SECTION 7.—In my opinion this is not a correct proposition. It would not be correct in the following case:—A requires sureties to some bank to secure overdraft. B becomes surety, and then C also, with the knowledge and consent of B, becomes surety for the same debt. A being in default, C is compelled by the bank to discharge the debt. B was, of course, legally liable to pay the sum C has been compelled to pay. So that, in this case, B allows C to assume such a position that C may be compelled by law to discharge the legal liabilities of B, and under legal compulsion, and without neglect, C has paid the money in discharge of such liability; then, according to the section, C can recover this sum from B. But, undoubtedly, C can only recover from B one-half the amount he has paid.

As to the proviso to this section, I think the law contained in it is correct; but I cannot understand how it can be said to be any proviso or exception upon the previous part of the section. The proviso does not deal with any case of one person allowing another to assume a position under which he may be compelled to pay, but with the case of a person who, without being requested, and without being allowed, and against the will, and without the consent, pays a debt—not assumes a position under which he may become liable. The proviso is not a proviso at all, it is a new enacting clause.

SECTION 8.—This is the proposition enunciated in the notes to Lamplough *v.* Braithwaite, in Smith's Leading Cases. I feel great diffidence in saying that this is not law, but it is doubted by Pollock in his work on Contracts, p. 170; and Anson, in his work on Contracts, p. 97–99, examines the authorities for the above proposition in a masterly manner, and, in my opinion, shows that at the present time there is really no authority to support it.

SECTION 9.—The case of Boulton *v.* Jones, 2 H. and N. 564, shows that this is not a universally true proposition. In that case, one Brocklehurst had carried on business, and the defendant Jones had had dealings with him. Plaintiff bought the business from Brocklehurst. On the day on which he purchased, defendant sent an order to Brocklehurst for certain articles, which was left at the shop which had been Brocklehurst's, but in which plaintiff had that day commenced to carry on business. Plaintiff supplied the goods without informing the defendant that he, plaintiff, was supplying the goods and not Brocklehurst, and defendant used the goods. Held: Plaintiff could not recover. In this case the defendant used the property of the plaintiff, and there certainly was no intention that such use should be gratuitous, yet the plaintiff could not recover. According to the Code, section 9, he could.

SECTION 10.—The first part of this section would, in my opinion, be correct if the word "or" were omitted; wrong with it in. Suppose my garden wants doing up, and I have said so, and said I wished I could get somebody to do it. A gardener hears of this, and in my absence goes and does up my garden. Here the work would be done for me, and it was certainly not intended to be gratuitous, and yet I should be under no legal liability. But the Code says I would. In the latter part of this section, after the word "presumed," there should be inserted "until the contrary be proved," as without this limitation there would be an absolute presumption of law that the services of relatives, &c., are gratuitous.

SECTION 11.—This proposition, though correct as applied to most cases, is in conflict with such cases as Boulton *v.* Jones, 2 H. and N. 564.

OPINION OF MR. HIGGINS.

CASE.

Counsel is referred to copy of "The General Code 1888" sent herewith, at page 268, subdivisions (*b*) and (*c*), "Right of use and profit," "Right of Abuser," and he is requested to advise:—

1. Whether those clauses correctly state the law under the head they deal with, so that they could be safely embodied in an Act as declaring the law upon the subject.

2. If incorrect or inaccurate, is the inaccuracy only upon trivial points, or is it such as to indicate serious deficiency in this portion of the Code.

3. The opinion of Counsel is sought with a view of assisting the Government in deciding whether they should take the grave responsibility of acting upon the report of the select committee of last session and asking Parliament to pass the Code into law; and the Attorney-General would be glad if Counsel would add any general observations that may suggest themselves.

OPINION.

I am asked as to subdivisions (*b*) and (*c*) of division 3 of Part VII., The Right of Use and Profit, and the Right of Abuser. These rights are said to be two of the rights of ownership of property of all kinds (div. 2), and these subdivisions are meant, I suppose, to expand the summary definitions of these two rights, given at p. 266, so that people may know what is the nature of the rights which the owner of property has.

I have examined the clauses *seriatim* in the accompanying papers marked "Critical examination of clauses."

1. and 2. For the reasons stated in these papers I am of opinion that the clauses in question do *not* correctly state the law on the matters with which they deal; that the defects are of a serious character; that these subdivisions are utterly useless as a guide to knowledge of rights and duties; and that they cannot safely be embodied in a code declaring the law.

3. I have tried to confine my attention to the subdivisions submitted to me, but I have had occasionally to refer to some other parts of the Code for the purpose of understanding these subdivisions. The difficulties of codifying the English law of property are so immense that it is not necessarily a slur on the labours which have produced this draft Code to say that, if these subdivisions are a fair sample of the Code as a whole, this Code would if passed into law only make "confusion worse confounded."

I happen to be one of the counsel originally appointed to assist in codifying the law of property, and as I worked at the task for about a twelvemonth in my spare time before I gave it up owing to pressure of business, I have a good idea of the labour which such a Code requires. I am convinced that the English law of property cannot be codified properly until its several parts are codified, and in some matters amended; and that the codification of the parts will require the labour of several highly-trained men, giving their whole undivided energy to the work for several years, and carefully revising one another's labours. It cannot be done by men whose attention is distracted by active business.

1 Selborne Chambers,
25th April, 1888.

HY. B. HIGGINS.

CRITICAL EXAMINATION OF CLAUSES BY MR. HIGGINS.

Subdivision (b), Clause 1, p. 268.

1. "Every person may as he thinks fit, but subject to the rights of other persons, use his property.'

To understand this thoroughly one must find out what the Code meant by property. There seems to be no express definition. But it must mean all things which are capable of being the subjects of ownership (see division 2, clause 13); and as these things include easements, the word "property" is not limited to corporeal things. On the other hand, the word does not include life or other limited interests, for subdivision (*c*), clauses 1, 2, and 3, distinguish between full owners of property and persons having limited interests in property. Therefore "property" means the subject matter of full ownership, not interest in that subject matter. The result is that the proposition stated in the Code should be confined to "full owners." The word "person" is misleading. As for the expression "full owners," I have adopted it from the Code itself. Of course it is not a correct expression to use with regard to land. It is trite law that no subject of Her Majesty is a full owner of land; he has only an estate in it. Whether it is advisable to abolish the distinction between real and personal property is a question of statesmen; but there is no doubt that, as the law at present stands, this Code is incorrect in saying that ownership may exist in the surface of the earth (division 2, clause 1.) Take, however, the clause as corrected—"Every full owner may, as he thinks fit, use his property in its natural condition and in the ordinary manner of its use." This implies a limitation of the owner's right, which is far from true. He may also (without abusing his property) use it in its non-natural condition, and in any extraordinary manner of its use. If A owns a leather-covered table and writes on it he can hardly be said to be using the table in its natural condition, and if he lies down on it he is using it in an extraordinary manner. But in both cases he is doing what he is entitled to do. Perhaps it will be said that the natural condition of that table as a table is to be covered with leather. If that is the meaning, the words are very misleading, and even with that meaning the clause will not be correct, for the right would still exist if part or all of the leather were taken off. The clause does not really state any law. The limitations stated are not limitations. But there is a limitation of a very wide-reaching character which the clause does *not* state an owner is limited by corresponding right of other people. For instance, he may not ring his bells so as to cause a nuisance, and he may not dig his soil if by so doing he infringes his neighbour's right of support for a building.

> "Where in the course of such use any damage arises to any other person, if such damage be not caused by the intention or the rashness or the *heedlessness* or the *negligence* of the owner, such owner shall not be liable for the same."

This clause does not cover the case of a nuisance or of an infringement of the right of support, for no matter what care the ringer of the bells takes, he is liable to an injunction, and if there were no right of support no action could lie, even though the digger knew and intended that the building should fall. It appears from the margin that what the draftsman had in his mind was the principle stated in Fletcher *v.* Rylands, and this principle is the cause of the mistake in the former clause limiting the right of use to use in the ordinary manner. The truth is that the only real limitation of an owner's right of use is that contained in the maxim *sic utere tuo ut alienum non lædas*, and Fletcher *v.* Rylands merely illustrates a

qualification of that maxim, showing that in certain cases, where an owner seems to hurt his neighbour, it is not the owner but nature that does it. It is an egregious error to treat Fletcher *v.* Rylands as indicating any qualification of an owner's right of enjoyment.

2. "Any person may by agreement have the use of another's property and of the profits thereof or either of such rights. The reciprocal rights and duties of such persons and their duration shall be determined by the terms of their contract or grant."

The object of this clause seems to be to convey that one person (B) may, by agreement or otherwise, acquire from another (A) the right to use A's property. I cannot see how this principle comes under the right of use and profit as one of the rights of ownership of one's own property. It does not come under the *jus utendi fruendi* of division 2, clause 3 (*b*). If the clause means that A, as a right of ownership, may let B use A's property, then it should rather come under the right of disposition (subdivision *d*). But take the clause as it stands. It means literally that B may use A's horse if B preserved the substance of the horse. As there is no condition affixed that B shall get A's consent, the teaching of the clause is rather unwholesome. But suppose that an agreement is implied, why say "provided its substance is preserved"? The obligation to preserve the substance depends on the nature of the agreement and of the particular property. B cannot use A's wine without destroying its substance, and so with other things *quæ ipso usu consumuntur* (see Randell *v.* Russell, 3 Meriv. 194). And if B has a lease from A, it depends on the terms of the lease whether he can pull down the house or cut timber or not. Therefore, this proviso is quite wrong. The distinction between "express" and "implied" terms in the latter part of the section is unsound in any code of substantive law. If it refers to implication by construction of a document or words, then it is a mere question of construction, to be decided by the principles of construction (see Part 1); if it refers to terms added by the legislature to contracts, those terms are express and not implied.

3. "Any person may have an interest for his own life or for the life of another person in any property of which the reversion or remainder in full ownership can be vested in some other person. The reciprocal duties and rights of such persons shall be those which are hereinafter stated."

In effect, A may have a life interest, and B the interest in remainder. This does not show what is the right of use and profit of either a full owner or a limited owner, and the clause ought not, in my opinion, to have any place in this subdivision. The clause is also incomplete if it is meant to explain what life interests are allowed, for there may be life estates determinable on a contingency (see div. 4, sub. *a*, cl. 1, p. 271), and as it is quite possible to have an estate for three lives vested in one of the lives, A may have an estate for his own life and other lives. The clause is also misleading in stating, without qualification, that there may be life interests in property. Unless trustees were interposed, there could be no life interests at law in ordinary chattels. Courts of Equity modified this doctrine considerably, and by *The Judicature Act* 1883 (sec. 9, sub. 11). The rules of equity are to prevail. But a cautious writer like Joshua Williams is careful not to commit himself to such a statement as in this clause of the Code (see *Women's Personal Property*, 10th ed., 294-298). This clause also makes no exception for articles *quæ ipso usu consumuntur*.

4. "The owner of any property may by the instrument under which he derives his title, or by operation of law, or by a declaration of trust as hereinafter mentioned, consent or be required to hold the same or any part thereof for the use and benefit of some other person, and shall account for the same to the person for whom he is the trustee."

In the first place, this clause has nothing to do with subdivision. The subdivision does not profess to deal with the distribution of the collective rights of ownership as between trustee and *cestui que* trust, &c., but with the particular right of use and profit, as distinguished from the right to possess, the right to abuse, &c.

In the second place, the clause treats the *trustee* as the owner, not (as one would have surmised) the beneficiary. This is inconsistent with the plan of the Code in Division 2, for Division 2 states (cl. 3) the various rights of ownership, and a trustee never can have some of these rights, and can have others only if the particular form of the trust permit.

In the third place, the clause purports to state the different modes in which a trust can be created. This is not under the *right of use and profit*, and even if it were, the statement is very badly made. None but those versed in legal technicalities would know that the phrase "by operation of law" refers only to resulting and constructive trusts (see Part IX., div. 1, sec. 4). Nor is it correct to say (as said here) that by a declaration or trust the owner may be "required" to hold the property for the benefit of some other person. A declaration of trust is a trustee's statement or promise, not a requirement made on him as in a will or settlement.

In the fourth place, the clause is incorrect in stating the duties of the trustee. A trustee must account, not only for the *profits* (as stated here), but for the *corpus* to his beneficiaries. For instance, if the trust property were £1,000 on mortgage. Moreover, if through the default of the trustee no profits are earned, he must account to the beneficiaries for the profits which the property *ought* to have earned. And there may be trusts in which there is no necessity to account at all under the express provisions of the instrument. Anyone who wished to gather from the clause the duties and right of a trustee would be sadly misled.

Subdivision (*c*).—*Right of Abuser.*

1. "Except so far as he may be lawfully bound to any forbearance, and subject to the rights of other persons, every person who is full owner of any property otherwise than as trustee, may do any act, or observe any forbearance, or make any omission with respect thereto, although the result may be the destruction or the deterioration of the property, or a change in the character thereof."

This clause states in my opinion bad law. For instance, it omits to take into consideration the natural right to support which the owner of soil has against the owner of adjoining soil. The owner of minerals cannot remove them from the earth without leaving sufficient support for the surface if the surface belongs to a different owner (Humphries *v.* Brogden, 12 Q.B., 739). The clause also omits many cases

of *nuisance* and cases of *easements required by user* (apart from the prescription Acts), for since Dalton *v.* Angus it cannot be said that such easements rest in any implied covenant or grant (6 App. Cases, 740). Besides, even where covenants have been made to forbear, the clause does not express the law correctly, for although B has not "bound *himself*," his predecessor in title may have made such a grant or entered into such a covenant as to bind him. It is curious that this clause, like the corresponding clause in subdivision (*b*), makes no direct reference to the principle *sic utere tuo*, &c.

The clause as stated would also involve the proposition that a trustee when he is a "full owner" (as he generally is within the meaning of the Code (see div. 2, cl. 5), may destroy the property of which he is trustee. If it be said that every trustee "binds" himself to preserve the property, then the word "bind" is used in quite a novel sense, for a trustee generally enters into no covenant or bond.

2. "Any person having a limited interest in any property, unless he be expressly exempted from liability therein by the document by which his interest is created, or by agreement, may not do any act nor observe any forbearance which destroys the property or injures or alters its character, or impairs the evidence of the title thereto. Every such act is hereinafter called waste."

This clause and the three following go further than the existing law, by applying the term waste to all property, even ordinary chattels (see Comyn's Digest "Waste"). The Code itself treats the law of waste fully under the "ownership of land" (Part VIII., div. 2.)

Besides, these clauses do not in any way define or elucidate the "right of abuser" taken separately from other right of ownership. They should properly come under "qualified rights of ownership" (div. 4, p. 279), as showing the relative rights and obligations of limited owners and those entitled in remainder. This clause is wrong in saying that the exemption from liability for waste must be given "by the document by which" the limited owner's interest was "created." Suppose, for instance, A is tenant for life under a settlement, and B the remainder man. A may contract with B for liberty to cut timber. This clause is so vague as to be of no practical use. What does "alter the character of the property" mean? A tenant for life may cut some trees and not others, he may dig at some quarries and not at others, he may plough up some rabbit warrens and not others. It is of no use to say that the latter class of acts alter the character of the property and that the former do not, for there is no reason for saying that the former do not alter the character as much as the latter, except that the law forbids the latter and not the former. I know of no authority for saying that a tenant for life, who does an act which merely "*tends*" to alter the character of the property is guilty of waste; but I suppose that clause 4 of the subdivision as to trivial waste not being noticed, is meant to modify this alarming statement. If so, the mode of modification is so clumsy that it leaves the obligation of the tenant for life in a complete fog. I ought to add that no provision is made in this clause about *permissive* waste, as when a tenant for life lets a house fall into decay. It cannot yet be taken for granted that a legal tenant for life is not liable (see Williams' Real Property, 14th ed., 25). It will be noticed that the words "exempted from liability therein" must be read as "exempted from liability *for waste* therein." This is a mere clerical omission.

3. "Where by the document by which his interest was created the limited owner of any property is exempted from liability as to waste therein, if from any improper motive he deal with such property unreasonably he shall be deemed to have committed malicious waste."

This clause is meant to apply to what is described in 1 White and Tudor, L. C., Equity, 6th ed. 862, as "Interference of equity in cases of equitable waste of a malicious and destructive character by a tenant for life without impeachment for waste," *e.g.*, where a tenant for life wantonly strips the house of lead, iron, or glass, &c., or where he grubs up a wood instead of cutting the timber, or where he destroys ornamental timber. But this right of the Court to interfere, so far as it is based on sound principle, rests merely on the construction of the instrument. The Courts have in effect decided that the words "without impeachment of waste" do not cover such acts. No one doubts that express words in a settlement or will would make such acts perfectly legitimate. The clause is wrong in treating the doctrine of "equitable waste" as distinct in principle from other waste, and in speaking of the limited owner making "an unreasonable use of his authority." He really has not the authority at all (see 18 Judicature Act 1883, sec. 9, sub. 3, Tudor L. C., Real Property, 3rd ed. 112). The authority given was to use the powers of cutting timber, &c., *fairly* (see Baker *v.* Selright, 13 Ch. D. 179, 186). The same remark applies to this clause as to the last, that it is wrong in requiring the exemption from liability from waste to be granted by the instrument which creates the limited owner's interest. What is the use of stating "an improper motive" as being an essential ingredient of the offence unless it be explained what motives are improper? The expression "malicious" waste is new, but I think it is much better than the expression "equitable" waste.

4. "No act, forbearance, or omission, except when in violation of an agreement, shall be deemed to be prohibited under any of the preceding sections of this subdivision, unless it involve more than nominal damage."

So far as this clause applies to an act or omission by a full owner who has "bound" himself within the meaning of clause 1, this clause is wrong, for an action will lie for the breach of covenant even though the damage done is not substantial. But, so far as this clause applies to waste, I think that this clause is correct. It is true that what Coke says in the passage referred to in the margin, is that the lessee shall not be sued for waste unless the value amount to 40 pence. Another writer says 40 shillings (see Comyn's Digest "East," E. 1). I think, however, that there is the distinction between waste and trespass stated in this clause (see Huntley *v.* Russell, 13 Q.B., 572, 588).

5. "If any person commit waste, he may be ordered to abstain therefrom, and to account and pay for the value of any property that he has wrongfully taken, and to make compensation for any damage that he may have done or permitted."

As this clause professes to state the nature of the remedies afforded against wasters, it has no proper place under this subdivision. It certainly does not enlighten the reader on the "right of abuser." Also in lumping together the different kinds of remedies which the Court may grant in whole or in part, the clause fails to show what remedy is appropriate for what cases. It is decidedly wrong in saying that the waster may be made to account for the value of the property taken as well as to make compensation for the damage. The compensation would obviously *include* the value of the property. I know of no such distinction as is made here between the remedies for ordinary waste and for malicious (or "equitable")

waste. It is not to be found in the book referred to in the margin or anywhere else that I can see. I am of opinion that there is no such distinction.

A right to abandon "*all interest* in" property is stated to be part of the *right of abuser* as one of the right of ownership (div. 2, cl. 3 *c*). There is no definition of *abandonment*, but taking it as meaning leaving one's property or one's interest therein with the intention of having no more to do with it, I do not see what is the meaning of this clause. Of course a person with a limited interest can only abandon his interest; he cannot from the nature of the case abandon the property. The clause might as well say that A cannot abandon B's property so as to prejudice B's rights. I do not know of any authority for applying the doctrine of abandonment to real property as this clause does. If a sailor bought land at an auction sale in Melbourne 50 years ago, and sailed away, intending never to return, the estate in the land would still remain in him or those claiming under him (subject, of course, to the *Statute of Limitations*). As for the last part of the clause one would infer that surrender was in some way to be contrasted with abandonment. But they have no such relation with each other. No doubt the owner of a limited interest *may* surrender his interest to the remainder man, but he may equally well sell it to a stranger. The clause is as inconsequent as I have ever seen.

APPENDIX B.

MESSRS. FRESHFIELDS AND WILLIAMS TO THE CROWN SOLICITOR.

No. 5522.

5 Bank Buildings, London, E.C.,
11th March, 1888.

SIR,—We have the honor to acknowledge the receipt of your letter of the 27th January which reached us on the 8th inst., accompanied by a print of a proposed Bill entitled: "A Bill to declare consolidate and amend the Substantive General Law." This Bill you inform us was prepared by the Honorable Dr. Hearn, the Principal of your University, who is well known for his learning and scholarship. Dr. Hearn, we notice, was assisted by many distinguished lawyers in the preparation of this great and important work.

You have explained to us that the Attorney-General is desirous that some counsel of eminence on this side should revise the proposed Bill, and should also suggest alterations (if any), and should give his opinion as to whether it would or would not be advisable for the Government to take the Bill up and ask the Legislature to pass it into law, and you inform us that the Government has at its disposal the sum of £300 for the purpose above indicated.

Having regard to the magnitude and great importance of the work, our first impression was, more particularly as the Bill had already received the sanction of so many distinguished men on your side, that no counsel here occupying less standing than the Attorney or Solicitor-General or some leading Queen's Counsel would satisfy the necessary requirements. But we arrived at the conclusion that this would be practically impossible, as neither the Attorney nor the Solicitor-General could, consistently with their parliamentary duties, undertake the work; and we fear that no Queen's Counsel in good practice—and no other we think would be competent—would undertake the task for a less fee than 1,000 or 1,500 guineas.

We next turned to the consideration of employing a Junior Counsel of known ability and standing, and one who may have had some similar experience. We accordingly made enquiry, and in the result we find that we could not offer a competent junior less than 500 guineas; and, indeed, it is almost impossible to say, in anticipation, that that fee would represent an adequate remuneration.

We have glanced generally through the Bill, and if we may be permitted to say so, the work appears to us to have been so far accomplished, not only with consummate skill, but also with wonderful care and precision. This ought, undoubtedly, to lessen the labour of any one engaged in revising the work. But, notwithstanding this, it will, of course, be obvious to you that anyone who undertakes this task must necessarily travel over the whole field of enquiry in order to arrive at a proper understanding of the matter, and to fit himself to afford the Attorney-General the advice and assistance he asks for.

A gentleman we consulted upon the subject makes the following remark:—"Possibly they (the Government) might be content with a work involving less time and labour than that alluded to. If, as I understand, their principal object is to be advised as to whether it will be desirable to introduce the Bill, it would seem to be a necessary preliminary to examine the general frame of the measure before revising its details; and perhaps the Government would be satisfied with an opinion of this kind coupled, perhaps, as a means of testing the Bill, with a narrower scrutiny of some portions of it. This, of course, would be a much simpler task, and one might undertake it for a proportionately smaller fee."

We are not sure whether this would be of the same value to the Attorney-General. If, however, on further consideration of the matter you think the above suggestion is worthy of consideration, and you desire that it should be adopted, please telegraph to us simply the word "opinion," and we shall understand what course to adopt, and we can arrange the fee accordingly. If, on the other hand, the Attorney-General should still prefer that the Bill should be revised generally, with an opinion to the effect he proposes, please, in that case, telegraph the word "revise," and we shall understand what course to pursue.

We need scarcely say, in conclusion, that the whole subject is one, not only of great interest to us here, but also of great magnitude and importance, and it will give us infinite pleasure to place our services at your disposal.

You allude in your letter to our charges. We may explain that in a matter of this kind our professional charges would be comparatively small; and we do not see how, in any event, our costs could come to more than 20 or 30 guineas, or £50 at the outside.

We have the honor to be, Sir,
Your most obedient servants,
(Signed) FRESHFIELDS AND WILLIAMS.

P.S.—Our Telegraphic and Cable address is:—FRESHFIELD, London.

R. A. Sutherland, Esq.

APPENDIX C.

Chamber of Commerce,
25 Queen-street, Melbourne, 7th September, 1888.

SIR,

I have the honour to acknowledge the receipt of your letter of the 22nd ult., addressed to the President of this chamber, accompanied by copy of the General Code Bill, which has been referred by the Legislative Assembly to a joint committee of the two Houses of Parliament.

I am to express the regret of the President that your letter could not be replied to earlier, as he had not the opportunity of bringing it sooner under the consideration of the chamber committee.

I am now desired by the committee to express their satisfaction at finding that the Government has taken steps with a view to having the Bill in question placed on the statute-book. A former committee had recorded their sense of the obligation under which the late Dr. Hearn had placed the community by his great labours in the direction of a codification of the law, and the present committee also recognise the value of the present draft Bill as a compendium of the law, even if it remained a mere compendium and nothing more. As laymen they can scarcely express a confident opinion upon such technical questions as are suggested by the classification and arrangement of the subjects, or by the qualifying provisions of clause 2. If the latter will meet the suggested objection that the Bill if adopted *in globo* might possibly effect changes in the law not intended by Parliament, my committee cannot but regard the removal of that objection as more than a counterpoise to the admitted evil of uncertainty which the provisions of that clause involve, as that element of uncertainty must necessarily disappear as any possible discrepancies between the Code and the existing law are detected by the courts.

So also with regard to the arrangement of subjects and nomenclature of the classification. My committee would rather that the Bill should be adopted than that the opportunity should be lost of obtaining the sanction of Parliament to such a compendium of the law, although the object and desire of this chamber has always been to obtain the nearest approach possible to the advantages possessed by the mercantile communities of European countries in their commercial codes, and this could only be attained by a different classification, and by bringing together under one section all those Acts which bear upon the multiform operations of trade and commerce including shipping and insurance. With this expression of the views of the chamber, I am instructed to say that it is deemed scarcely necessary that any of their members should occupy the time of the joint committee by statements of individual opinion, but that if the committee wish to obtain from me, as secretary, any such further information as I can give them of the general opinions and objects of the chamber on the codification and simplification of the law as it effects the relations and dealings of Trade and commerce, it is the wish of my committee that I should attend for that purpose, and if the joint committee give me an intimation of that desire I shall be happy to attend when requested.

I have the honour to be, Sir,
Your very obedient servant,

B. COWDEROY, Secretary.

G. H. Jenkins, Esq.,
Clerk of the Legislative Assembly.

APPENDIX D.

Judges' Chambers,
Melbourne, 1st September, 1888.

SIR,

I have the honour to acknowledge the receipt of two letters from you, the first forwarding by direction of the Joint Committee on the General Code Bill a copy of the Bill with opinions of Counsel, and requesting to be favoured with my views on the Bill and especially on Clause 2 ; and the other transmitting a copy of a letter from Messrs. Freshfields and Newman relative to the revision of the Code in London. A critical examination of this Bill as a whole would involve a vast amount of time and labour far beyond my means to bestow upon it. To criticise isolated clauses without having thoroughly studied its scope, scheme, and language would be unfair to the author and probably of little service. I am, however, able to offer a very decided opinion upon one point. I have only glanced over the Bill very cursorily, but the most cursory glance suffices to show that it introduces into those parts of the law which it purports to codify an entirely new classification, a new set of maxims or general propositions, and a new nomenclature. It would, I think, be highly imprudent to attempt to pass a Bill of this kind into law unless it had been previously revised and approved, not by one only but by several experts, amongst whom an eminent draughtsman, scientific in method and precise in language, should unquestionably be included.

The most eminent advocates frequently lack the qualifications necessary for a draughtsman. The fee of 1,000 or 1,500 guineas mentioned by Messrs. Freshfields and Newman would, I think, be wholly inadequate. Having regard to the magnitude and difficulties of the task, I believe that a complete and effective revision of the Code could not be procured for ten times that sum. The proposal contained in the 2nd Clause of the Bill to let the old law stand side by side with the new Code, is, in my opinion, highly objectionable ; either the Code would remain a dead letter, or it would be necessary in every case to consider whether particular sections of the Code expressed, perhaps, in the most general terms, were consistent with the pre-existing law to be gathered from the Statutes or precedents, by reference to which the case would ultimately have to be decided.

I have the honour to remain, Sir,
Your obedient servant,

E. D. HOLROYD.

George H. Jenkins, Esq., Clerk of the Legislative Assembly,
Parliament House, Melbourne.

APPENDIX E.

SIR,

Supreme Court, 11th September, 1888.

In reply to your inquiry as to whether His Honor Mr. Justice Williams would like to give evidence upon the General Code Bill, I am directed to state that he has no desire to do so, as he considers that he could not sufficiently familiarize himself with a work of such magnitude under a period of two years, and that without a thorough knowledge of the Code his opinions would be of little value.

His Honor, however, does not seek to preclude the Committee from asking him such questions on the subject as they may think fit, and if they will appoint an hour and day next week, he will do himself the honour to attend before them.

His Honor desires to point out that his attendance will necessitate the adjournment of the Full Court, and that, therefore, it is desirable that if a date be fixed for his attendance it should be adhered to.

I have the honour to be, Sir,

Your obedient servant,

(Signed) J. G. T. HORNE, Associate.

APPENDIX F.

Park Gate Hotel,

MY DEAR ATTORNEY-GENERAL, Parramatta, 18th September, 1888.

I have to apologise for not sooner answering your note of the 4th, but ever since its receipt I have been so weak and prostrate that I have been unable to do anything. I have waited thus long hoping to be able to write myself. I cannot, however, delay longer, and am availing myself of an amanuensis.

I have perused the Bill for introducing the Code, which you have forwarded me; I also remember the conversation we had upon the subject before my illness, when I was partially disposed to agree with your views. But having, since your note, given the most careful deliberation to the matter, I feel compelled to revert to the opinion I at first sight expressed to you—that the disadvantages arising from the passing of the proposed Bill would far outweigh any advantage that could be derived from it. The primary object of a code is, that it shall express authoritatively what the law is, and not merely what the framer of the code imagines it to be. The main advantage of a code is, that both layman and lawyer may be able to read in clear and intelligible language what the law upon any given subject is, and shape their conduct and actions accordingly. But to pass a so-called code in the manner now proposed, leaving it doubtful whether it expresses the law rightly or not, would only furnish to the lawyer an additional text-book to add to the perplexity of already conflicting text-books and decisions, and to the layman a delusion and a snare. He doubtless would attach greater weight to the Code than under such circumstances it would deserve, and might, after shaping his conduct accordingly, perhaps find that the particular passage upon which he relied was afterwards held to be bad law. To pass the Code, as now proposed, would neither lessen litigation nor reduce costs. The law would remain as it is, the Code notwithstanding, and the necessity for obtaining legal opinions and advice would continue the same. The problem then to be solved would be, whether the Code correctly expressed the law as to which no layman who correctly understood its mode of enactment would rely upon his own opinion. I am sorry to say I find the tendency of the profession, at the present day, is to rely too much upon text-books instead of searching out the authorities, and I fear that with the *quasi imprimatur* which the Code, even though enacted in the way proposed, would have, this tendency would be strengthened. The temptation would then be to advise clients upon the basis of the Code, without undertaking the very laborious operation, in each case, of searching out and ascertaining whether the Code truly expressed the law. Upon the whole, I think it would be better, and less likely to lead to injustice, that the Code, if passed at all, should be passed absolutely rather than in the way now proposed. I believe that, mainly and substantially, the Code correctly states the law as it is, although of course there must necessarily, even after the most careful revision, be some inaccuracies. I can only say for myself that, after a very careful examination of the draft of several parts of it dealing with branches of the law with which I am more familiar than with others, I found very few instances in which it did not express the law, in my opinion, correctly, and in these instances I suggested alterations which were adopted. Of course, my opinion of what the law is may be wrong, and the Code therefore wrong, but this is a difficulty which must ever exist in any code however framed. I am aware that several members of the profession have stated that, in certain instances, the Code is erroneous. But, after all, this only amounts to saying that their opinion of what the law is differs from that of the framer and revisers of the Code, and there is a possibility at all events that the Code may be right after all. Except as to some few parts I have not critically examined the Code, but, as I said in giving evidence last year, I am prepared to accept it on the *ex uno disce omnes* principle. It must be remembered that any code, however carefully framed and revised, expresses only the opinion of its framer and revisers of what the law is, and upon many difficult points other men of equal ability may perhaps hold contrary opinions. Nothing but the omnipotence of Parliament can say authoritatively such and such is the law. The great advantage of a code is that, upon debatable points, Parliament steps in and says, such is and such shall henceforth be the law, and unless this can be said absolutely, I think the Code had better not be adopted at all. To pass the Bill as now proposed is, in fact, to subject the Code to the revision of the courts, such revision to be undertaken in a fragmentary way, and at long intervals of time, as any particular provision of the Code may happen to be involved in a case coming before the court for decision. Such a mode of revision is, in my opinion, wholly impracticable.

Believe me,

My dear Attorney-General,

Faithfully yours,

GEO. H. F. WEBB.

APPENDIX G.

County Court,
Melbourne, 25th Sept., 1888.

SIR,

I have the honour to acknowledge the receipt of your letters of the 21st August ult., and the 14th September instant, which I have to-day laid before the Judges of the County Courts, at their conference.

(1.) The Judges of County Courts are unanimously of opinion that it would be unwise and unsafe to pass the General Code Bill in its present shape.

(2.) As to the second clause, they are also unanimously of opinion that it would not meet the necessities of the case. If a Code Bill be passed with any provision of this character, they suggest that the power of declaring that any provision is repugnant to the existing law should be vested in the Full Court alone on special case stated, and that the Attorney-General should have the right to intervene to secure the proper argument of the case in the interests of the public.

The Judges refrain from entering into their reasons, but are prepared to give them should the committee so desire.

I have the honour to be, sir,

Your obedient servant,

(Signed) FRANCIS QUINLAN,
Judge of County Court for the colony of Victoria

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

REPORT

OF THE

JOINT SELECT COMMITTEE

OF THE

LEGISLATIVE COUNCIL AND THE LEGISLATIVE ASSEMBLY

ON THE

REFRESHMENT ROOMS.

Ordered by the Legislative Council *to be printed, 17th Occober*, 1888.

By Authority:
ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

D 3.—3996.

EXTRACTED FROM THE MINUTES.

WEDNESDAY, 20TH JUNE, 1888.

REFRESHMENT ROOMS COMMITTEE.—The Honorable H. Cuthbert moved, pursuant to *amended* notice, That the Honorables J. A. Wallace, J. Buchanan, Sir W. J. Clarke, Bart., D. C. Sterry, and J. G. Beaney be Members of the Joint Committee of both Houses to manage the Refreshment Rooms.

Question—put and resolved in the affirmative.

TUESDAY, 11TH SEPTEMBER, 1888.

REFRESHMENT ROOMS COMMITTEE.—The Honorable H. Cuthbert moved, by leave, That the Honorable Sir W. J. Clarke, Bart., be appointed a Member of the Refreshment Rooms Committee.

Question—put and resolved in the affirmative.

WEDNESDAY, 17TH OCTOBER, 1888.

REFRESHMENT ROOMS COMMITTEE.—The Honorable J. Buchanan, on behalf of the Chairman, brought up a Report from this Joint Committee.

Ordered to lie on the Table and to be printed.

REPORT.

THE SELECT COMMITTEE upon the Refreshment Rooms have the honor to report :—

That the charge made against the Messengers, by the Caterer, having been inquired into by the Honorable the President and the Honorable the Speaker, and they having taken evidence and brought up a Report, this Committee does not feel called upon to enter into the question at all, and have returned the Report and Papers to the Honorable the Chief Secretary.

South Library,
26th September, 1888.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

REPORTS

OF

"THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS"

ON THE

PETITIONS OF JAMES STEWART BUTTERS,

AND

JOHN HANLON KNIPE;

TOGETHER WITH THE

PROCEEDINGS OF COMMITTEE AND MINUTES OF EVIDENCE.

Ordered by the Legislative Council *to be printed*, 30*th October*, 1888.

By Authority:
ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

D 4 and **5**.—[1s.]—4273.

EXTRACTED FROM THE MINUTES.

TUESDAY, 21ST AUGUST, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President laid upon the Table the following Warrant appointing "The Committee of Elections and Qualifications":—

"VICTORIA.

"Pursuant to the Provisions of an Act of the Legislative Council of Victoria, passed in the nineteenth year of Her present Majesty's reign, intituled '*An Act to provide for the election of Members to serve in the Legislative Council and Legislative Assembly of Victoria respectively*,'

I do hereby appoint—

The Honorable James Balfour,
The Honorable Frederick Brown,
The Honorable David Coutts,
The Honorable Henry Gore,
The Honorable Sir James Lorimer,
The Honorable James Phillip MacPherson,
and
The Honorable Donald Melville,

To be Members of a Committee to be called 'The Committee of Elections and Qualifications.'

"Given under my hand this Twenty-first day of August, One thousand eight hundred and eighty-eight.

JAS. MACBAIN,
President of the Legislative Council."

TUESDAY, 28TH AUGUST, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President's Warrant appointing "The Committee of Elections and Qualifications" was again laid upon the Table by the President.

TUESDAY, 11TH SEPTEMBER, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President's Warrant appointing the Committee of Elections and Qualifications was again laid upon the Table by the President.

TUESDAY, 9TH OCTOBER, 1888.

NORTH-EASTERN PROVINCE ELECTION PETITION.—The President announced to the Council that there had been presented to him a Petition from James Stewart Butters against the return of the Honorable John Turner, a Member for North-Eastern Province, which he then laid before the Council, and is as follows:—

To the Honorable Sir James MacBain, Knight, President of the Legislative Council of Victoria.

The Humble petition of James Stewart Butters, of Melbourne, in the colony of Victoria, estate agent,

Respectfully showeth,

That on the thirteenth day of September last past an election was held for one Member to serve in the Legislative Council of the colony of Victoria to represent the North-Eastern Electoral Province, and that on the nineteenth day of September last past an adjourned polling was held at Mundoona a polling place within the said electoral province.

That your Petitioner was a candidate at the said election.

That John Turner, Esquire, and John Hanlan Knipe, Esquire, were the only other candidates at the said election.

That as the result of the said election the returning officer announced that John Turner, Esquire, received 1,292 votes, and that your Petitioner had received 1,255 votes, and that John Hanlan Knipe, Esquire, had received 1,215 votes; and thereupon the said returning officer publicly declared that the said John Turner, Esquire, had received the majority of votes, and was duly elected as Member as aforesaid, and such returning officer made his return accordingly.

That on the taking of the poll for the said election at the polling-place at Euroa, within the said electoral province, divers ballot papers were used which were written, and not printed in accordance with the provisions of *The Electoral Act 1865*," and were not in the form prescribed by the twentieth Schedule of the said Act, and that the using of such ballot-papers prevented divers electors from recording their votes at the said election, and was highly dangerous, without precedent, and contrary to law.

That at the said election no poll was taken at Peechelba, which was one of the places within the said electoral province appointed for a poll to be taken, and public notification "thereof" was given in manner prescribed by law, and that there was no lawful adjournment of such poll, whereby divers electors were prevented from recording their votes at the said polling-place or at the said election.

That such a proceeding is altogether unauthorized by the said Electoral Act, is unwarrantable, inconvenient, and contrary to law.

That at the said election a poll was held at South Bundalong, a place within the said electoral province, but of the taking of such poll at the said place no notice was given in manner prescribed by law, whereby divers persons who were entitled to vote at the said election were prevented from recording their votes thereat, and that the taking of the said poll at the said place was inconvenient and contrary to law.

Your Petitioner therefore respectfully prays:

That you will communicate the matter of this Petition to the Legislative Council in order that the same may be referred to the Committee of Elections and Qualifications.

And your Petitioner respectfully further prays:

That the said election may be declared to have been held contrary to law, and to be void accordingly.

And your Petitioner respectfully further prays:

That the said John Turner, Esquire, be declared not to have been duly elected a member of the Legislative Council for the said North-Eastern Province according to law.

And your Petitioner respectfully further prays:

That he may have such further or other relief as the circumstances of the case may require.

And your Petitioner will ever pray, &c.,

JAS. S. BUTTERS.

Dated at Melbourne this Eighth day of October, One thousand eight hundred and eighty-eight.

Witness—J. E. MCINTYRE.

The Honorable H. Cuthbert moved, That the above Petition be referred to "The Committee of Elections and Qualifications" for consideration and report.

Question—put and resolved in the affirmative.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The following Members of "The Committee of Elections and Qualifications," viz., the Honorables James Balfour, H. Gore, Sir J. Lorimer, and D. Melville, took the oath set forth in the Schedule to *The Electoral Act of 1856* at the Table of the Council before the Clerk thereof.

TUESDAY, 16TH OCTOBER, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The following Members of "The Committee of Elections and Qualifications," viz., the Honorables Frederick Brown and James Philip MacPherson, took the oath set forth in the Schedule to *The Electoral Act 1856*, at the Table of the Council, before the Clerk thereof.

The President appointed Tuesday the 23rd day of October instant, at Eleven o'clock in the forenoon, as the time, and the Committee Room as the place of the first meeting of the Committee.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The Honorable D. Coutts, a Member of the Committee of Elections and Qualifications, took the oath set forth in the Schedule to *The Electoral Act 1856*, at the Table of the Council, before the Clerk thereof.

WEDNESDAY, 17TH OCTOBER, 1888.

NORTH-EASTERN PROVINCE ELECTION.—The President announced to the Council that there had been presented to him a Petition from John Hanlon Knipe against the return of the Honorable J. Turner, a Member for the North-Eastern Province, which he then laid before the Council, and is as follows:—

To the Honorable Sir James MacBain, Knight, President of the Legislative Council of Victoria.

The humble petition of John Hanlon Knipe, of Melbourne, in the colony of Victoria, auctioneer.

Respectfully showeth,

That on the thirteenth day of December[a] last past an election was partly held for one Member to serve in the Legislative Council of the colony of Victoria to represent the North-Eastern Electoral Province, and on the nineteenth day of September last past part of the polling was held at Mundoona, a polling-place within the said electoral province.

[a] Sic.

That your Petitioner was a candidate at the said election.

That John Turner, Esquire, and James Stewart Butters, Esquire, were the only other candidates at the said election.

That as the result of the said election the returning officer announced that John Turner, Esquire, had received 1,292 votes, and that your Petitioner had received 1,215 votes, and that James Stewart Butters, Esquire, had received 1,255 votes; and thereupon the said returning officer publicly declared that the said John Turner, Esquire, had received the majority of votes, and was duly elected as Member aforesaid, and such returning officer made his return accordingly.

That at the said election no poll was taken Peechelba, which was one of the places within the said electoral province, appointed for a poll to be taken, and public notification thereof was given in manner prescribed by law, and that there was no lawful adjournment of such poll, whereby divers electors were prevented from recording their votes at the said polling-place or at the said election.

That on taking of the poll for the said election at the polling-place at Euroa, within the said electoral province, divers ballot-papers were used which were written, and not printed in accordance with the provisions of *The Electoral Act, 1865*, and were not in the form prescribed by the twentieth Schedule of the said Act, and that the using of such ballot-papers prevented divers electors from recording their votes at the said election, and was highly dangerous, without precedent, and contrary to law.

That such a proceeding is altogether unauthorized by the said Electoral Act, is unwarrantable, inconvenient, and contrary to law.

That at the said election a poll was held at South Bundalong, a place within the said electoral province, but of the taking of such poll at the said place no notice was given in manner prescribed by law, whereby divers persons who were entitled to vote at the said election were prevented from recording their votes thereat, and that the taking of the said poll at the said place was inconvenient and contrary to law.

That the above-mentioned irregularities occurred in the opinion of your Petitioner through the large number of polling-places in the province, and the fact that the said province is too large for one returning officer to manage within the time limited by the Act, and from the fact that it has not been divided into three equal parts with one representative to each part.

Your Petitioner therefore respectfully prays:

Firstly—That you will communicate the matter of this Petition to the Legislative Council in order that the same may be referred to the Committee of Elections and Qualifications.

Secondly—That the said election may be declared to have been held contrary to law, and to be void accordingly.

Thirdly—That the said John Turner, Esquire, be declared not to have been duly elected a member of the Legislative Council for the said North-Eastern Province according to law.

Fourthly—That he may have such further or other relief as the circumstances of the case may require.

Fifthly—That the said province may be divided into three parts, one representative being allotted to each of such parts.

And your Petitioner will ever pray.

JOHN HANLON KNIPE.

Witness—A. E. LAWFORD.

Dated at Melbourne this fifteenth day of October, One thousand eight hundred and eighty-eight.

Witness—

The Honorable H. Cuthbert moved, That the above Petition be referred to "The Committee of Elections and Qualifications" for consideration and report.

Question—put and resolved in the affirmative.

TUESDAY, 30TH OCTOBER, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—Sir J. Lorimer, Chairman, brought up the Reports from this Committee on the Petitions from James Stewart Butters, Esq., and from John Hanlon Knipe, Esq., against the return of John Turner, Esq., as Member for the North-Eastern Province, and the same were read by the Clerk.

Ordered to lie on the Table, and, together with the Proceedings of the Committee and the Minutes of Evidence, to be printed.

REPORT.

In the matter of the Petition of James Stewart Butters against the return of the Honorable John Turner for the North-Eastern Province.

"The Committee of Elections and Qualifications" have the honor to report to your Honorable House—

1. That the evidence shows that a poll was taken at the State School, South Bundalong, instead of at the State School, Peechelba, as appointed by the Writ, and in the advertisement in the newspapers by the Returning Officer.

That it is stated variously in the evidence that the two schools are from four to five miles distant from each other, and that they are situate in different parishes.

2. That Edward Cubbley, an elector for the said province, proceeded to Peechelba State School for the purpose of recording his vote, and was not able to do so.

3. That the allegation in the Petition, that divers ballot-papers were used at the polling-place at Euroa which were written and not printed, as required by *The Electoral Act* 1865, is sustained by the evidence.

4. That in consequence, the last election of a member to serve for the North-Eastern Province, taken in the month of September, 1888, is a void election.

5. That John Turner, Esq., is not duly elected a member to serve for the said North-Eastern Province.

6. That the Petition was not frivolous or vexatious, nor was the opposition thereto frivolous or vexatious.

7. That the Committee recommend that the sum of £100, lodged by the Petitioner, be returned to him.

Committee Room,
30th October, 1888.

REPORT.

In the matter of the Petition of John Hanlon Knipe against the return of the Honorable John Turner for the North-Eastern Province.

"The Committee of Elections and Qualifications" have the honor to report to your Honorable House that the petitioner, John Hanlon Knipe, appeared before the Committee, and stated that he would not trouble to bring his case before the Committee.

2. That the petition was not frivolous or vexatious.

3. That the Committee recommend that the sum of £100 lodged by the petitioner be returned to him.

Committee Room,
30th October, 1888.

PROCEEDINGS OF THE COMMITTEE.

TUESDAY, 23rd OCTOBER, 1888.

Members present:

The Hon. J. Balfour,
Sir J. Lorimer,
The Hon. J. P. MacPherson,
D. Melville.

The warrant appointing the Committee was read by the Clerk.

The entry in the Minutes of the Proceedings of the Members of the Committee being sworn, and of the appointment by the President of the Council of the time and place for first meeting of the Committee was also read by the Clerk.

On the motion of the Hon. J. Balfour the Hon. Sir James Lorimer was appointed Chairman of the Committee.

Room cleared.

Names of Counsel and Agents laid before the Committee.

Mr. Harington Evans Wade, the Government short-hand writer, sworn.

Parties called in.

Preliminary resolutions were agreed to as under:—

1. That Counsel will not be allowed to go into matters not referred to in their opening statement without a special application to the Committee for permission to do so.
2. That if costs be demanded by either party under 19 Vic. No. 12, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.
3. That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the parties and their agents, without the special leave of the Committee.
4. That the Committee will only allow one Counsel to address them on opening the case, and one Counsel on the summing up.
5. That if any point of law should arise requiring argument, the Committee reserve to themselves the power of hearing one Counsel only on each side.
6. That if the leading Counsel are not prepared to sum up the case on either side when the evidence is terminated, the Committee will not protract the proceedings for the convenience of Counsel who may be absent.

The Petition of James Stewart Butters was read by the Clerk.

The Petition of John Hanlon Knipe was read by the Clerk.

Mr. J. H. Knipe, the petitioner, stated that he appeared in person, and would not be represented by Counsel.

Committee decided to proceed to the hearing of the petition of Mr. J. S. Butters.

A. Grant McIntyre, Esq., opened the case for the Petitioner.

John Barker, Esq., Clerk of the Legislative Council, called, sworn and examined by Mr. McIntyre, produced writ of election for North-Eastern Province.

The Clerk, on being requested by Mr. McIntyre, was about to produce the ballot-papers.

Mr. Fink objected.

Objection over-ruled.

The Hon. H. Gore entered and took his seat.

Mr. McIntyre continued his address.

The Clerk further examined, produced ballot-papers used at the Euroa division in the electorate.

Committee adjourned till Wednesday, 24th instant, at Eleven o'clock.

WEDNESDAY, 24th OCTOBER, 1888.

Members present:

The Hon. Sir JAMES LORIMER, in the chair;

The Hon. J. Balfour,
D. Coutts,
The Hon. J. P. MacPherson,
D. Melville.

The counsel and parties were called in.

Henry Silcock Parfitt called, sworn, and examined by Mr. McIntyre.

Cross-examined by Mr. Fink.

The Hon. H. Gore entered and took his seat.

Examination continued.

Witness withdrew.

Charles Long De Boos, called, sworn, and examined by Mr. McIntyre.

Cross-examined by Mr. Fink.

Witness withdrew.

John Caddick, called, sworn, and examined by Mr. McIntyre.

Cross-examined by Mr. Fink.

Witness withdrew.

Charles Pressley, called, sworn, and examined by Mr. McIntyre.
Cross-examined by Mr. Fink.
Witness withdrew.
Edward Cubbley, called, sworn, and examined by Mr. McIntyre.
Cross-examined by Mr. Fink.
Witness withdrew.
Mr. McIntyre summed up on behalf of the petitioner.
Mr. Fink was heard in reply.
Mr. J. H. Knipe, addressing the Committee, said that he would allow his case to be decided on Mr. Butters's petition.
Room cleared.
Committee deliberated.

Committee adjourned till Tuesday, 30th instant, at Twelve o'clock noon.

TUESDAY, 30TH OCTOBER, 1888.

Members present:

The Hon. Sir JAMES LORIMER, in the Chair;

The Hon. J. Balfour,
D. Coutts,
H. Gore,
The Hon. J. P. MacPherson,
D. Melville.

Committee further deliberated.
The Hon. J. Balfour moved—

That there were irregularities in the conduct of the last election for the North-Eastern Province.
That the Electoral Act, 19 Victoria, No. 12, provides that "The Elections and Qualifications Committee" shall be guided by the real justice of the case without regard to legal forms and solemnities.
That inasmuch as there is no evidence that the result was affected by the irregularities, and inasmuch as there is no evidence of collusion between the Returning Officer and the Sitting Member. Therefore, the election is not void, and the sitting Member should retain his seat.

Question—put.
Committee divided.

Ayes, 2.
The Hon. J. Balfour,
D. Coutts.

Noes, 4.
The Hon. H. Gore,
Sir J. Lorimer,
J. P. MacPherson,
D. Melville.

And so it passed in the negative.

Proposed—

1. That the evidence shows that a Poll was taken at the State School, South Bundalong, instead of at the State School, Peechelba, as appointed by the Writ, and in the advertisement inserted in the newspaper by the Returning Officer.
   That it is stated variously in the evidence that the two schools are from four to five miles distant from each other, and that they are situate in different parishes.

Question—put and resolved in the affirmative.

Proposed—

2. That Edward Cubbley, an elector for the said province, proceeded to Peechelba State School for the purpose of recording his vote, and was not able to do so.

Question—put and resolved in the affirmative.

Proposed—

3. That the allegation in the petition that divers ballot-papers were used at the polling-place at Euroa, which were written and not printed, as required by the Electoral Act 1865, is sustained by the evidence.

Question put and resolved in the affirmative.

Proposed—

4. That in consequence, the last election of a Member to serve for the North-Eastern Province, taken in the month of September, 1888, is a void election.

Question put.
Committee divided.

Ayes, 4.
The Hon. H. Gore,
Sir J. Lorimer,
J. P. MacPherson,
D. Melville.

Noes, 2.
The Hon. J. Balfour,
D. Coutts.

And so it was resolved in the affirmative.

Proposed—

5. That John Turner, Esq., is not duly elected a Member to serve for the said North-Eastern Province.

Question put.
Committee divided.

Ayes, 4.	Noes, 2.
The Hon. H. Gore,	Hon. J. Balfour,
Sir J. Lorimer,	D. Coutts.
J. P. MacPherson,	
D. Melville.	

And so it was resolved in the affirmative.

Proposed—

6. That the petition was not frivolous or vexatious, nor was the opposition thereto frivolous or vexatious.

Question put and resolved in the affirmative.

Proposed—

7. That the Committee recommend that the sum of £100, lodged by the Petitioner, be returned to him.

Question—put and resolved in the affirmative.

Question—Proposed that the following be agreed to as the Report of the Committee, viz.:—

In the matter of the Petition of James Stewart Butters against the return of the Honorable John Turner for the North-Eastern Province.

"The Committee of Elections and Qualifications" have the honor to report to your Honorable House—

1. That the evidence shows that a poll was taken at the State School, South Bundalong, instead of at the State School, Peechelba, as appointed by the Writ, and in the advertisement in the newspapers by the Returning Officer.

That it is stated variously in the evidence that the two schools are from four to five miles distant from each other, and that they are situate in different parishes.

2. That Edward Cubbley, an elector for the said province, proceeded to Peechelba State School for the purpose of recording his vote, and was not able to do so.

3. That the allegation in the Petition, that divers ballot-papers were used at the polling-place at Euroa which were written and not printed, as required by *The Electoral Act* 1865, is sustained by the evidence.

4. That, in consequence, the last election of a Member to serve for the North-Eastern Province, taken in the month of September, 1888, is a void election.

5. That John Turner, Esq., is not duly elected a Member to serve for the said North-Eastern Province.

6. That the Petition was not frivolous or vexatious, nor was the opposition thereto frivolous or vexatious.

7. That the Committee recommend that the sum of £100, lodged by the Petitioner, be returned to him.

Question put.

Committee divided.

Ayes, 4.	Noes, 2.
The Hon. H. Gore,	The Hon. J. Balfour,
Sir J. Lorimer,	D. Coutts.
J. P. MacPherson,	
D. Melville.	

And so it was resolved in the affirmative.

In the matter of the Petition of Mr. John Hanlon Knipe,

Question proposed—That the following be agreed to as the Report of the Committee, viz. :—

"In the matter of the Petition of John Hanlon Knipe against the return of the Honorable John Turner for the North-Eastern Province.

"The Committee of Elections and Qualifications" have the honor to report to your Honorable House that the petitioner, John Hanlon Knipe, appeared before the Committee, and stated that he would not trouble to bring his case before the Committee.

2. That the petition was not frivolous or vexatious.

3. That the Committee recommend that the sum of £100 lodged by the petitioner be returned to him.

Question put and resolved in the affirmative.

Ordered that the Chairman do present the above Reports respectively to the Council.

Committee adjourned.

MINUTES OF EVIDENCE.

TAKEN BEFORE THE "COMMITTEE OF ELECTIONS AND QUALIFICATIONS."

NORTH-EASTERN PROVINCE ELECTION PETITIONS.

TUESDAY, 23RD OCTOBER, 1888.

Members present:

The Hon. Sir JAMES LORIMER, in the chair;

The Hon. J. Balfour, J. P. MacPherson, | The Hon. D. Melville, H. Gore.

The counsel and parties were called in.

Mr. McIntyre, instructed by Mr. J. E. McIntyre, appeared on behalf of Mr. J. S. Butters, the petitioner.

Mr. Fink stated that he appeared with Dr. Madden, who was not present, instructed by Mr. Theodore Fink, on behalf of the sitting member.

The room was cleared.

The Committee agreed on the following rules of procedure:—

PRELIMINARY RESOLUTIONS.

1. That Counsel will not be allowed to go into matters not referred to in their opening statement without a special application to the Committee for permission to do so.
2. That, if costs be demanded by either party under 19 Vic. No. 12, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.
3. That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the parties and their agents, without the special leave of the Committee.
4. That the Committee will only allow one Counsel to address them on opening the case, and one Counsel on the summing up.
5. That if any point of law should arise requiring argument, the Committee reserve to themselves the power of hearing one Counsel only on each side.
6. That if the leading Counsel are not prepared to sum up the case on either side when the evidence is terminated, the Committee will not protract the proceedings for the convenience of Counsel who may be absent.

The counsel and parties were again called in.

The Clerk read the resolutions that had been passed.

The shorthand writer was sworn.

Petition of James Stewart Butters, Esq., was read.

The petition of John Hanlon Knipe, Esq., was read.

Mr. Knipe stated that he intended to ask permission to appear in person.

Mr. Fink said it might save time and expense if they took both petitions together.

Mr. McIntyre objected as the petitions were not identical.

Petition of J. S. Butters.

Mr. Fink said he had no technical objections to take to the petition.

Mr. McIntyre was heard to address the Committee on behalf of the petitioner. His first point being in regard to irregular ballot-papers being used at Euroa.

Mr. Fink stated all the facts of the election would be admitted. He desired to contend that the election had been held, and regularly held. He would admit the first four paragraphs of the petition down to the word "accordingly."

The Chairman stated they would assume there had been an election.

Mr. McIntyre asked the clerk to produce the different papers.

Mr. McIntyre was heard to further address the Committee on his second point, as to the alleged irregularities in the poll being taken at South Bundalong without notice, instead of at Peechelba.

Mr. Fink asked that, as in his opinion the case was essentially a case of numbers, Mr. McIntyre should say how many voters and what voters were precluded from voting at Bundalong.

Mr. McIntyre submitted that such a course could not be taken, as it was quite different from a case of bribery and corruption, when the list of voters in question would have to be handed in. He submitted that this was a question of law.

The Chairman said it was not for Mr. Fink or the Committee to instruct the petitioning counsel how to prove his case. Mr. Fink would be heard on the point at a later stage.

John Barker sworn and examined.

1. *By Mr. McIntyre.*—You are the Clerk of the Legislative Council?—Yes.
2. You produce the writ?—Yes, issued by the President on the 21st of August last, for the election of one member to serve in the Legislative Council. The day of nomination was the 31st day of August,

and the day of polling appointed for the 13th of September, and the endorsement upon the Writ is, "I do hereby certify that John Turner, Esq., of Melbourne, was duly elected in pursuance of this Writ. Henry S. Parfitt, Returning Officer, 19.9.88."

3. Do you produce also the ballot-papers and copies of the rolls used?—I have not opened the parcel, but I presume they are there. This is the parcel that was forwarded to me by the Returning Officer—[*exhibiting the same*].

4. *Mr. McIntyre* asked that the parcel be opened and the ballot-papers at Euroa produced.

5. *Mr. Fink* objected to the opening of the ballot-papers at this time, because there had been no evidence produced that entitled the Committee to inquire into the secrecy of the ballot-papers.

6. *The Chairman.*—How can it be seen whether they are in the right form prescribed by the Act without looking at the papers.—[*The box was opened and papers searched for.*]

7. *Mr. Fink* objected to the Committee opening up the papers.

8. *The Chairman* stated that the Committee had a perfect right to search for the papers in question for the purpose already mentioned.

9. *By Mr. McIntyre* (*to the witness*).—Have you the whole of the papers there?—I have not opened them; but I see this white parcel is endorsed—"This packet contains 177 used ballot-papers. Euroa Division. Euroa Polling Booth. Date of polling, 13th September, 1888. Sealed by C. L. De Boos, Deputy Returning Officer. John De Boos, Poll Clerk. James Kirkwood, George Barrett, Scrutineers." This blue envelope is endorsed—"This packet contains one ballot-paper, set aside for separate custody, Electoral Act 1885, as informal. Euroa Division. Euroa Polling Booth. Date of polling, 13th September, 1888. Sealed by C. L. De Boos, Deputy Returning Officer. John De Boos, Poll Clerk. James Kirkwood, George Barrett, Scrutineers." Those are the only two packets I find.

10. Will you open the white packet?

11. *Mr. Fink* objected.

12. *The Chairman* overruled the objection, and said it would be competent for Mr. Fink to require proof after they were opened.

13. *By Mr. McIntyre* (*to the witness*).—Will you kindly open that.—[*The witness did so.*]

14. Is there anything on that enclosed memorandum?—There are no memoranda. Those are the ballot-papers, E. E. D. 551, and the initials of some one.

15. Are there any written ballot-papers amongst those?—I do not see any.

16. Look at the other lot; are those written?—Yes, there are some written.

17. Will you hand me those?—I produce four papers. North-Eastern province, Euroa division, they are headed, each one, with the names of the candidates—Butters, Knipe, Turner—written on each, and initials C. L. D. Two of the names have been struck out in each.

18. Are there any directions on the ballot-papers, at the foot of it?—None at all. They are initialled at the back, I suppose, with the numbers of the electors.

19. All that it contains is the North-Eastern Province?—North-Eastern Province, Euroa division. Butters, Knipe, Turner, C. L. D., and two of the names are struck out.

20. *By Mr. Fink.*—And one name left on there?—Yes.

21. *By Mr. McIntyre.*—Are those all of that lot?—No; here are some more.

22. How many are there?—Eleven.

23. What are they; are they written in the same way?—North-Eastern Province, Euroa division—Butters, Knipe, Turner.

24. Nothing else?—No.

25. There are some more there?—Yes.

26. *By the Chairman* (*to Mr. McIntyre*).—Do you want the whole number?

27. *Mr. McIntyre.*—It is enough for me to know there are a considerable number.

28. *By Mr. McIntyre* (*to the witness*).—There are a considerable number?—Yes; I have counted 35, and 15 before.

29. You have counted 50 altogether?—Yes.

30. Are there any more?—I will look; I think not.

31. How many ballot-papers are there?—There are 177 marked on the outside. I believe those are there.

32. I am instructed there are two more?—I may have miscounted them.

33. I fancy there are 52?—It is just possible I may have miscounted them.

34. *Mr. McIntyre* said he would require to ask for the attendance of the deputy returning-officer, and would have all his witnesses ready by to-morrow.

Adjourned to to-morrow at Eleven o'clock.

WEDNESDAY, 24TH OCTOBER, 1888.

Members present:

The Hon. Sir JAMES LORIMER, in the chair;

The Hon. D. Melville,	The Hon. H. Gore,
J. P. McPherson,	D. Coutts.
J. Balfour,	

The Counsel and parties were called in.

Henry Silcock Parfitt sworn and examined by Mr. McIntyre.

35. You are the Returning Officer for the North Eastern Province?—I am.

36. Do you recollect sending any ballot-papers, and other documents, in connection with the election to Euroa?—I do.

37. There was a polling-place at Euroa?—There was.
38. How many ballot-papers did you send?—125.
39. Were they initialled?—They were.

(The papers that were opened the previous day were handed to Mr. Parfitt.)

40. Did you receive that from your deputy?—I did.
41. How many ballot-papers are there?—There are 52 more than I issued.
42. More votes counted than ballot-papers that you issued?—Yes.
43. How many were there there?—177, including the 125, and I issued the 52 other papers—manuscript papers.
44. Will you open that parcel please?—[*The witness did so.*]
45. You did not send these written papers?—No.
46. Are they initialled by you?—No.
47. And there are 52 of these?—Yes.
48. Then they were used at the election?—They were.
49. And counted as valid votes?—Yes.
50. Do you produce the newspapers in which you caused advertisements to be inserted?—I have not been requested to do so.
51. You caused advertisements to be placed in the papers?—Yes, throughout the province and in Melbourne.
52. In accordance with the 87th and the 122nd sections of the Act?—Yes.
53. In one of the advertisements issued, was not the polling appointed to be taken at the State school, Peechelba?—Yes.
54. Was the polling taken at that school?—Taken at the school, always known as the Peechelba school, but since the erection of that school another one has been built some distance from it which is in the parish of Peechelba, but hitherto all previous elections have taken place at the same school as this was taken in.
55. Was it taken at the State school at Peechelba?—No.
56. Were the ballot-papers sent to the State school at Peechelba?—Yes, by my instructions the police took them to the State school at Peechelba I understand.
57. But the polling actually took place at South Bundalong?—At the school outside the parish of Peechelba, I believe it is inside Bundalong.

Cross-examined by Mr. Fink.

58. As to those ballot-papers, can you tell me roughly how many polling-places there are in this electorate?—105.
59. For which of course ballot-papers had to be provided?—Yes.
60. In your experience; you have been returning officer for how long?—About twelve years.
61. In your experience, 125 would be about an ample number for the Euroa division?—Fifty per cent. more than was ever used before at the Euroa division.
62. Has the population increased so vastly?—No, it has not, but at the election held there between Mr. Fred. Brown and Mr. Webb, they had 120 papers sent, and they did not use much more than one-half of them; that is about five years ago.
63. And so you sent the 125 in the full belief that they would be more than ample to fulfil the requirements?—I might believe so.
64. Now you learned, I believe, from your deputy, that they were not likely to be sufficient?—Yes.
65. How did you learn that?—By telegram.
66. From whom?—Mr. De Boos.
67. None of the candidates had anything to do with any of those instructions or information?—Certainly not.
68. Neither Knipe, Turner, nor Butters?—Certainly not.
69. It was simply a matter between you and your deputy?—Of course.
70. Having got that telegram, advising you of a probable deficiency, what did you do?—I considered for some few minutes. I had not time to waste much time to think over the matter, because there was a possibility, in the first instance, that I could get them down by train, and I found that was impossible. I wired to Mr. De Boos that I would authorize him to initial and issue manuscript ballot-papers.
71. And are you aware whether that telegram reached him?—Yes, I understood it did.
72. Have you seen him at all?—I saw him to-day. I never heard from him since.
73. You are aware that telegram did reach him, and he acted on your instructions?—Yes.
74. That is substantially the history of those written ballot-papers?—That is all the history I am aware of, beyond this, that after the election was over, I understood so many had been used. I wrote to the Returning Officer to ask if there had been any obstruction to any one's voting, or had any one been prevented from voting. He replied back, saying "No"; there was a short delay between the arrival of the telegram and the issuing of the manuscript papers, but in no case Mr. De Boos said had any one been prevented from their chance of voting.
75. You took care to satisfy yourself as best you could about that fact?—I did.
76. Was any complaint made?—None to me.
77. No protest forwarded to you through De Boos or any other channel?—No, certainly not.
78. I am talking about the day of the election, or a reasonable time after?—Yes.
79. No complaint from any elector?—Not one that I have heard of.
80. Or from anybody; you have had no complaint?—No; I heard they were going to protest against the election; that is all.
81. Then your deputy told you nobody was hindered from voting, and, as far as you know, nobody was?—That is it.
82. To come now to the Peechelba business, as I understand, you held elections for this identical province with those identical boundaries and divisions before?—Yes, before.
83. I mean the absolute unaltered boundary?—Yes, this is the same boundary.

84. And the same Act as you held elections under before ?—Yes.

85. At these previous elections for the Yarrawonga division, there was of course a polling taken at a place called Peechelba ?—There was.

86. Was not that polling taken at this identical school ?—It was.

87. Well known throughout the district as the Peechelba State School—it was then—that was the name it was known by then.

88. Of course the local people there know it as such—their children go to it ?—Yes.

89. You know the district well?—Yes, for this reason—the State school there was close to the Peechelba Post Office.

90. How far ?—Not more than 200 yards from the official post office, and that has given it the popular name of the Peechelba State School, though actually it is not in the Peechelba parish—it is just outside that.

91. How do you know that ?—I am informed of that. I have satisfied myself of that fact.

92. This is known as the Peechelba State School, and if formerly they were sent to the Peechelba State School, this is the place they went to, and this is the place the electors went to ?—On previous occasions they did, and on this occasion too.

93. *By the Committee.*—Do I understand that this place is now known as the Peechelba State School ?—It is generally known as that now.

94. Is there any other Peechelba State School ?—Not known by that name. There is a State school in the Peechelba parish on the Wangaratta side.

95. What do they call that ?—By its number. I do not know any local name for that school whatever.

96. *By Mr. Fink.*—So even now, with this other school built, this school is known wholly as the Peechelba State School ?—I would not say that from my own knowledge, but that was the name it was always known under, because this school has been erected since the Peechelba school was popularly so known.

97. I suppose the new school will be known by its number, 14,742, or whatever it may be ?—Perhaps it will; at any rate, there is no proper name for it.

98. The Peechelba Post Office name is not altered ?—No.

99. That remains the same ?—Yes.

100. If people are sent to the Peechelba Post Office they go to this post office near the State School ?—I suppose so. I cannot say what the parents or children would do.

101. If a letter were sent to the schoolmaster of the Peechelba State School, not the number of it, the chances are it would be taken to this old school ?—I should scarcely say that, because their knowledge must be more intimate than mine, and they would know the name of the State-schoolmaster.

102. At all events, you say previous elections have been held, and this school was the poll-booth ?—Yes. I may explain that I first heard of this school the evening before the election—the afternoon before the election, when I was giving the papers to the returning officer, and the police informed me there was a second school in Peechelba, and I said, "I do not know which school is the one we intend," but I gave my instructions to the returning officer to take the ballot-papers to the school where the elections had always been held.

103. Then the police who know the district will tell you there is a second school in Peechelba ?—Yes.

104. Really giving the old school the name "Peechelba"?—They said there was a second Peechelba school in that neighbourhood.

105. *By the Committee.*—What is Peechelba ?—A parish. One school is in the parish, the other is without the parish; but I had not any means for knowing that for a certainty at the time.

106. Is there any plan to show where Peechelba is ?——

107. *Mr. McIntyre.*—I intend to produce a map.

108. *By Mr. Fink.*—You are a very old resident of that district ?—Over 40 years.

109. You have been returning officer for that district, and travel about a good deal ?—Yes.

110. Now, suppose you were not the returning officer, but an elector going to record your vote, and going to record it "at the Peechelba State School," would not you, at that time, with your own knowledge, have gone to this place where the poll was actually held ?—I should.

111. Taking you as a fair sample of an intelligent elector?—Very well.

112. *By Mr. McIntyre.*—This parish of Peechelba is in the Yarrawonga division?—Yes.

113. Is there also a parish known as the South Bundalong?—I scarcely can say.

114. The advertisement, I see, says Peechelba is the State school; there is a State school in Peechelba ?—Yes.

115. Was the polling taken at that State school?—No, not in Peechelba.

116. *By Mr. Fink.*—Did any one protest to you?—No, I have heard that some protest was made, but none were made to me.

117. Do you know how many ?—No. There were various members interested.—[*Mr. McIntyre* objected.]

118. Is there any provision in the Act for protest?—No, not that I am aware of.

119. *By the Committee.*—Who was the deputy returning officer?—Mr. Caddick, of Peechelba.

120. Where did he intend to hold the poll ?—He came to me for instructions after the police informed him. He wanted to know the exact position of the State school, the one that I advertised, and they told him there were two schools there, and he came to me to find out which should he go to, and I said, "I have no more knowledge than you have in the matter. I only know the one school, but when you get down there you go to the school that has always been the polling-place for the Province and for the Assembly also." He went there with a policeman, before he got there they had taken the ballot box, &c., to the school within the Peechelba parish, but Mr. Caddick acted under my instructions, and went to the place where the elections had always been held.

121. Which did the deputy returning officer recommend ?—He is not a resident, and did not take any part in it.

122. Then the ballot-box was removed from the place where the police took it?—Yes.

123. To the other school?—Yes.

124. And that on your orders?—On my orders.

125. And because you believed it to be the school indicated by "Peechelba State School"?—That is what I understood it to be.

126. What is the difference in distance between the two places?—4 to 4½ miles.

127. Supposing the ballot had been held at the school within the parish of Peechelba proper, is it within your knowledge that the electors would have gone in preference to the place where it was held?—It is not within my knowledge.

128. I wanted to gather as to which they would have gone to from that advertisement?—I have no knowledge of that.

129. Is that 4½ miles by the ordinary road, or as the crow flies?—There is hardly any road to the Peechelba State School, that is within Peechelba. They can reach it by road in 4½ miles.

130. How long has the new school been established?—I could not tell you. I may state that the State school at which the poll was taken is on the main road between Yarrawonga and Wangaratta, but the school that is technically known now in the Peechelba parish is not on the main road, it is some distance off.

131. How many polling-places are there in the division of Euroa, do you know; I see by the last roll apparently twelve?—About that, I should say.

132. And you said that you thought 125 papers were enough?—I thought so.

133. That is for the polling-place at Euroa?—Yes, more than ever they received before at any election, and they never polled more than 74 votes before. They polled this time 174.

134. How many voters are there on the whole division of Euroa?—I cannot recollect; but in each case every booth received far more than the estimated number that would vote there.

135. Is the Euroa polling-place the largest polling-place in the Euroa division?—I think it would be.

136. I find there are 996 voters in Euroa division, with about twelve or thirteen polling-places?—I could not say. I searched the records of ballot-papers sent out at previous elections, and the most I have ever received there was 120. We keep a record of all the ballot-papers issued.

137. When you told the deputy returning officer to take manuscript papers, had you looked at clause 88 of the Act, as to ballot-papers, where you require to have them printed?—I could not have had them printed then; the only thing open to me besides would have been to adjourn the poll. They all objected to that; and there was objection to that, because, as you remember, in the case of West Bourke, the poll was adjourned and the election was upset. He adjourned for the very same reason.

138. Had you any old ballot-papers in your possession?—Yes.

139. And the difficulty was not getting them in time?—Yes. It is impossible to guage the number that will vote at any one booth.

140. Where were you on the day of the election?—At Wangaratta.

141. How long would it have taken you to go?—It is eighty miles. I could not get there by train,

142. Was there any means of getting to Euroa before the poll closed that day?—None whatever, or I should have taken that course.

The witness withdrew.

Charles Lane De Boos, sworn.

Examined by Mr. McIntyre.

143. You were deputy returning officer at Euroa during the last North-Eastern election?—I was.

144. Were a number of written ballot-papers used by the electors that day?—Yes.

145. How may?—51, I believe.

146. And they were counted by you in adding up the poll?—Yes.

147. Where they signed and initialled—the ballot-papers that were used by the returning officer?—The printed ones were, but the written ones were initialled by myself.

148. Did the printed ballot-papers contain the Christian name as well as the surname of the candidates?—Yes.

149. The Christian name?—Well I would not be certain whether the name was written in full.—[*The papers were exhibited to the witness.*]

150. Is that your writing there?—Yes, this is my signature.

151. Are those the ballot-papers?—Yes.

152. Did you write them?—The poll-clerk—my father—wrote them.

153. Now the printed ballot-papers—will you see if the Christian names of the candidates are opposite?—No, the surname is first and the Christian name afterwards.

154. But only the surname on the written ballot-papers?—Only the surname on the written ballot-papers.

Cross-examined by Mr. Fink.

155. Mr. Butters had a scrutineer there?—Yes.

156. Was he present all through the proceedings?—He was, and at the close of the poll.

157. He knew those written ballot-papers were being used?—Yes.

158. Did he make any protest?—No.

159. *By Mr. McIntyre.*—The scrutineer's duty is only to object to a person not duly qualified to vote?—Yes.

Mr. Fink objected to Mr. McIntyre teaching the witness the duty of scrutineers.

The witness withdrew.

John Caddick, sworn.

Examined by Mr. McIntyre.

160. Do you recollect the last North-Eastern Province election?—Yes.

161. What are you?—I was deputy returning officer.

162. What did you do on the morning of the election as to the ballot-box?—I instructed the constable to take it from the school where it was, and take it to the school where I was instructed to go.

163. That was the State school at Peechelba?—Yes, from the State school at Peechelba to another State school.

164. The other State school I believe was in South Bundalong?—I believe it is in South Bundalong.

165. How many miles is it from the State school at Peechelba?—Five miles.

166. And how many miles would it be from the nearest State school, say Keiliwarra?—There is the Peechelba State School and the other.

167. No, I mean how far would the State school at South Bundalong, where the poll was held, be from the nearest polling-place?—I should think about sixteen miles.

168. That would be on the other side of the State school at Peechelba?—Yes, that would be the Yarrawonga division.

169. So if that poll took place at the State school at Peechelba the nearest polling-place from that would be only ten miles?—The nearest place, as far as I know, would be Wangaratta, which would be sixteen miles from the Peechelba State School; from that would be the Yarrawonga polling-place—that would be from the Peechelba State School thirteen miles.

Cross-examined by Mr. Fink.

170. The old school is on the main road?—Yes.

171. It is really about the handiest place?—It is very handy; the other is about 60 or 70 yards away from the main road.

172. And four miles and a-half off?—Yes.

173. How long has it been built, is it a new place?—No, I think about five or six years. I cannot say.

174. The new place?—Yes, the Peechelba State School.

175. Are you aware that an election has been held within the last five or six years at the old school?—Yes.

176. And for the Assembly too?—Yes.

177. *By the Committee.*—Were you the deputy returning officer at the previous election?—I was not.

178. Were you in the district at the time?—I do not think so.

179. Then was this State school in existence at the date of the previous election?—What would be the date of that. If it is about two years ago, I was there then—that State school was then in existence.

180. *By Mr. McIntyre.*—Do you know to your own knowledge there has been an election in the last five years?—There was for the Assembly.

181. *By the Committee.*—What is the name—is there a post office besides this school where you had the poll?—Yes.

182. What is it called?—South Bundalong.

183. Not Peechelba?—Not Peechelba.

184. Is there a township there?—No; there is a hotel a little further on. It is all known as South Bundalong—the parish of South Bundalong.

185. Not the parish but the place?—It is one of the Yarrawonga parishes, South Bundalong.

186. Is the school known as the South Bundalong?—Yes.

187. And the post office?—Yes, the South Bundalong.

188. What is known as the Peechelba State School now was to the public understood as the Peechelba State School?—The State school, that is really sixteen miles from Wangaratta.

189. The place to which the ballot-box was first sent?—Yes.

190. That is commonly known as the Peechelba State School?—Yes.

191. How long has it been the Peechelba State School?—I suppose four or five years—as long as I have been there.

192. What is the commonly-known name of the other school?—South Bundalong school.

193. Was it always called that?—So far as I know.

194. Was it never known as the Peechelba State School?—Not that I know of.

195. You came to ask the returning officer where you would hold the poll?—Yes.

196. Why did you ask that?—Simply because I knew there were two schools, and I was not quite sure whether the two of them were in the Peechelba parish.

197. Did you make any recommendation to him?—No; none at all.

198. There were two schools, and you did not know which was the one?—I did not know which was the one, and he instructed me to go to the school where all the elections had been held before.

The witness withdrew.

Charles Pressley sworn.

Examined by Mr. McIntyre.

199. What are you?—A farmer.

200. And you are an elector, and entitled to vote for the Legislative Council for the North-Eastern Province?—I believe so.

201. Did you vote at the last election?—No, I was detained at home that day.

202. Where do you reside?—In Peechelba.

203. How far is that from the State school of Peechelba?—About a mile, I should say.

204. Did you notice an advertisement in the paper stating that the polling would be held at Peechelba?—Yes, I did.

205. Do you know, as a matter of fact, that the polling was not held there?—Yes; I am aware that it was not held.

206. Where was it held?—South Bundalong school.

207. Did you know, at the time, that it was going to be held at South Bundalong?—No, I did not.

208. If you had known it was to be held at South Bundalong you would have voted?—No; it is too far.

209. If there had been a poll at Peechelba you would have gone?—I fully intended going; but something happened and detained me at home; that prevented me.

210. Not on account of anything you heard?—No.

Cross-examined by Mr. Fink.

211. You were not very hot on voting ?—No ; I did not take much interest in it.

212. And something stopped you from going to vote when you thought you had to go a mile ?—Something came in the way at home.

213. How much would have stopped you if you had to go four miles and a half ?—I do not think I would have gone at all.

214. Are there many people up there like you ?—I do not know.

215. *By Mr. McIntyre.*—Are there a large number of electors residing in the neighbourhood of Peechelba State School ?—It is all selected round about.

216. And it is generally known in the neighbourhood as Peechelba State School ?—Certainly. It is the only State school there.

217. *By the Committee.*—How long has that been erected ?—About five or six years, I should think.

218. Has it ever been known by any other name than the Peechelba State School ?—No.

219. Has the South Bundalong school ever been known by any other name than the South Bundalong School ?—Not that I am aware of.

220. You never heard it called the Peechelba school ?—Not to my knowledge.

221. Is there a post office by the South Bundalong school ?—Yes ; the mail is taken at the school.

222. Is that called the South Bundalong Post Office ?—Yes.

223. Where have the pollings been taken hitherto for that division ?—At South Bundalong, to my recollection.

224. And was that called South Bundalong polling division ?—I fancy so.

The witness withdrew.

Edward Cubbley sworn.

Examined by Mr. McIntyre.

225. What are you ?—A farmer, residing at Peechelba

226. Are you an elector entitled to vote for the Legislative Council for the North-Eastern Province ?—Yes.

227. Do you recollect the holding of the last election ?—Yes.

228. Did you vote at the election ?—No. I went down to vote, but there was no poll at the school.

229. Where did you go to vote ?—At the Peechelba State school.

230. And you found there was no poll being taken ?—Yes.

231. That prevented you from voting ?—Yes.

Cross-examined by Mr. Fink.

232. What time of the day did you go down there ?—About half-past three in the afternoon.

233. Did you make any inquiries ?—I asked the school-teacher. I saw it advertised in the papers that we were to vote there, that that was where the polling was to be, and I asked the teacher whether we could vote, and she said "No; there was no ballot-box there nor returning officer.

234. Did you ask her nothing else ?—No.

235. Did you not inquire whether the ballot-papers had been taken to another school ?—No.

236. Were you told that the ballot-papers had been taken to the place where the elections had always been held before ?—I beg your pardon.

237. Did you not learn, or were you not told that the ballot-papers had been taken to the place where the elections had been held before ?—No, I was not told anything about that.

238. How long were you at the Peechelba State School inquiring about this ?—About five minutes.

239. On horseback ?—No, on foot.

240. Were you aware that the election was going on at South Bundalong polling-place ?—No.

241. How many people did you see that day ?—I only saw Mr. Brasley for one.

242. And nobody else ?—There was another farmer, a neighbour of mine, went down with me.

243. Do you live between Peechelba and South Bundalong ?—No.

244. The other side ?—Yes.

245. *By the Committee.*—How far do you live from Peechelba State School ?—About a mile and a half.

246. And how far from South Bundalong ?—About seven miles.

247. Have you ever voted before at any election ?—No.

248. And do you know anything about any previous election where a poll was taken ?—No; I was never there. I have recently come to the district.

249. You went by the advertisement that it would be at South Bundalong—was there any notice stuck up directing you as to where you should go to Peechelba State School ?—No.

250. Was there any other Peechelba school that you could go to ?—No.

251. Were there others disappointed ?—There was a neighbour of mine.

252. And neither of you voted ?—No.

The witness withdrew.

253. *Mr. McIntyre* stated that the rest of his witnesses were to give the same sort of evidence, and they had not yet arrived, as there had been hardly time since the notices had been sent to them.

254. The Chairman stated the Committee would like to see a copy of the advertisement of the previous election, showing how the polling-places were described at the previous election.

255. *Mr. McIntyre* asked if the Committee desired any more witnesses who would give similar evidence to that already given.

256. *The Chairman* stated that the Committee did not desire any further witnesses if the learned counsel were satisfied.

226. *Mr. McIntyre* was heard to further address the Committee.

227. *Mr. Fink* was heard to address the Committee on behalf of the sitting member.

228. *Mr. Knipe* stated that he would not trouble to bring his case before the Committee. He would leave it entirley in their hands, being quite satisfied with what had already been done.

The Committee room was cleared.

The Committee deliberated.

Adjourned to Tuesday next at Twelve o'clock.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

1888.

VICTORIA.

REPORT

OF THE

SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL

ON

INCREASE IN NUMBER OF MEMBERS OF THE LEGISLATIVE COUNCIL;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE.

Ordered by the Legislative Council *to be printed, 13th November, 1888.*

By Authority

ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

D 6.—[6d.]—2048.

EXTRACTED FROM THE PROCEEDINGS.

TUESDAY, 25TH SEPTEMBER, 1888.

INCREASE OF MEMBERS OF THE LEGISLATIVE COUNCIL.—The Honorable H. Cuthbert moved, by leave of the Council, That a Select Committee be appointed for the purpose of considering the desirability of increasing the number of Members of this Honorable House; and if such increase be considered desirable, to report to the Council as to the best means of giving effect to their views.

Question—put and resolved in the affirmative.

TUESDAY, 2ND OCTOBER, 1888.

INCREASE OF MEMBERS OF COUNCIL COMMITTEE.—The Honorable H. Cuthbert moved, pursuant to *amended* notice, That the Committee to consider the increase of Members of the Legislative Council be the Honorables the President, Lieut.-Col. Sargood, Jas. Service, N. FitzGerald, W. A. Zeal, Sir J. Lorimer, F. Brown, J. Balfour, and the Mover, three to form a quorum; that they have power to send for persons, papers, and records, to meet on days on which the Council does not sit, and to report the Evidence and Proceedings from day to day.

TUESDAY, 14TH NOVEMBER, 1888.

INCREASE IN NUMBER OF MEMBERS OF COUNCIL BILL.—The Honorable H. Cuthbert, on behalf of the Chairman, brought up the Report from the Committee.

Ordered to lie on the Table together with the Proceedings of the Committee, and to be printed.

REPORT.

THE SELECT COMMITTEE appointed to consider the increase of Members of the Legislative Council have the honor to report—

That they have carefully considered the subject referred to them, and beg to recommend to your Honorable House that, in view of the proposed increase in the number of Members of the Legislative Assembly, the number of Members of the Legislative Council be increased to six, and that these new Members be assigned one to each of the Provinces containing the larger number of electors—

Melbourne,
North-Western,
North Yarra,
Southern,
South-Eastern,
South Yarra.

Committee Room,
13th November, 1888.

PROCEEDINGS OF THE COMMITTEE.

TUESDAY, 16TH OCTOBER, 1888.

Members present:

The Hon. The PRESIDENT in the chair;

The Hon. F. Brown, H. Cuthbert | The Hon. Lieut.-Col. Sargood.

The Clerk read the extract from the Minutes.
Committee deliberated.
The Hon. H. Cuthbert moved—That contingent on an increase being made in the number of Members in the Legislative Assembly the number of Members of the Legislative Council be increased in proportion to that of Members of the Assembly, as 1 to 2, or as near thereto as possible.
Question—put and resolved in the affirmative.
Committee deliberated.

Committee adjourned till Tuesday, 23rd instant, at Three o'clock.

TUESDAY, 23RD OCTOBER, 1888.

Members present:

The Hon. The PRESIDENT in the chair;

The Hon. J. Balfour, H. Cuthbert, N. FitzGerald | The Hon. Sir J. Lorimer, Lieut.-Col. Sargood.

Committee further deliberated, and adjourned till Tuesday, 30th instant, at Three o'clock.

TUESDAY, 30TH OCTOBER, 1888.

Members present:

The Hon. The PRESIDENT in the chair;

The Hon. J. Balfour, F. Brown, H. Cuthbert | The Hon. Sir J. Lorimer, J. Service.

Committee further deliberated, and adjourned till Tuesday, 13th November, at Three o'clock.

TUESDAY, 13TH NOVEMBER, 1888.

Members present:

The Hon. The PRESIDENT in the chair;

The Hon. H. Cuthbert, Sir J. Lorimer | The Hon. Lieut.-Col. Sargood, J. Service.

Committee further deliberated.
The Hon. Sir J. Lorimer moved, That an additional Member be given to each of the undermentioned Provinces:—

Melbourne,
North-Western,
North Yarra,
Southern,
South-Eastern,
South Yarra.

Question—put and resolved in the affirmative.
Question—that the following be the Report from the Committee, viz.:—

The Select Committee appointed to consider the increase of Members of the Legislative Council have the honor to report—

That they have carefully considered the subject referred to them, and beg to recommend to your Honorable House that, in view of the proposed increase in the number of Members in the Legislative Assembly, the number of Members of the Legislative Council be increased by six, and that these new members be assigned one to each of the Provinces containing the larger number of Electors.

Melbourne,
North-Western,
North Yarra,
Southern,
South-Eastern,
South Yarra.

—put and resolved in the affirmative.
Ordered—That the Report be presented to the Council.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

1888.

VICTORIA.

REPORT

OF

"THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS"

ON THE

PETITION OF JOHN HANLON KNIPE;

TOGETHER WITH

THE PROCEEDINGS OF COMMITTEE.

Ordered by the Legislative Council *to be printed,* 18*th December,* 1888.

By Authority:
ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

EXTRACTED FROM THE MINUTES.

TUESDAY, 21ST AUGUST, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS—The President laid upon the Table the following Warrant appointing "The Committee of Elections and Qualifications":—

VICTORIA.

Pursuant to the provisions of an Act of the Legislative Council of Victoria, passed in the nineteenth year of Her present Majesty's reign, intituled "*An Act to provide for the election of Members to 'serve in the Legislative Council and Legislative Assembly of Victoria respectively,'*"

I do hereby appoint—

The Honorable James Balfour,
The Honorable Frederick Brown,
The Honorable David Coutts,
The Honorable Henry Gore,
The Honorable Sir James Lorimer,
The Honorable James Phillip MacPherson,
and
The Honorable Donald Melville,

to be Members of a Committee to be called "The Committee of Elections and Qualifications."

Given under my hand this Twenty-first day of August, One thousand eight hundred and eighty-eight.

JAS. MACBAIN,
President of the Legislative Council.

TUESDAY, 28TH AUGUST, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President's Warrant appointing "The Committee of Elections and Qualifications" was again laid upon the Table by the President.

TUESDAY, 11TH SEPTEMBER, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The President's Warrant appointing "The Committee of Elections and Qualifications" was again laid upon the Table by the President.

TUESDAY, 9TH OCTOBER, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The following Members of "The Committee of Elections and Qualifications," viz., The Honorables James Balfour, H. Gore, Sir J. Lorimer, and D. Melville, took the Oath set forth in the Schedule to *The Electoral Act of 1856*, at the Table of the Council, before the Clerk thereof.

TUESDAY, 16TH OCTOBER, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The following Members of "The Committee of Elections and Qualifications," viz., The Honorables Frederick Brown and James Phillip MacPherson, took the Oath set forth in the Schedule to *The Electoral Act 1856*, at the Table of the Council, before the Clerk thereof.

The President appointed Tuesday the 23rd day of October instant, at 11 o'clock in the forenoon, as the time, and the Committee Room as the place of the first meeting of the Committee.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The Honorable D. Coutts, a Member of "The Committee of Elections and Qualifications," took the Oath set forth in the Schedule to *The Electoral Act 1856*, at the Table of the Council, before the Clerk thereof.

TUESDAY, 11TH DECEMBER, 1888.

NORTH-EASTERN PROVINCE ELECTION.—The President announced to the Council that there had been presented to him a Petition from John Hanlon Knipe against the return of the Honorable James Stewart Butters as Member for the North-Eastern Province, which he then laid before the Council, and is as follows:—

To the Honorable Sir James MacBain, Knight, President of the Legislative Council of Victoria.

The humble petition of John Hanlon Knipe, of Melbourne, in the colony of Victoria, auctioneer,

Respectfully showeth,

That on the twenty-seventh day of November last an election was held for one Member to serve in the Legislative Council of the colony of Victoria to represent the North-Eastern Electoral Province.

That your Petitioner was a candidate at the said election.

That James Stewart Butters, Esquire, and John Turner, Esquire, were the only other candidates at the said election.

That as the result of the said election the returning officer announced that James Stewart Butters, Esquire, had received 1,865 votes, that John Turner, Esquire, had received 1,495 votes, and that your Petitioner had received 447 votes; and thereupon the said returning officer publicly declared that the said James Stewart Butters, Esquire, had received the majority of votes, and was duly elected as Member as aforesaid, and such returning officer made his return accordingly.

That your Petitioner has been informed, and believes, that the said James Stewart Butters was at the time of his said election incapable of being lawfully elected a Member of the Legislative Council of Victoria, and is incapable of sitting or voting in the said Council by reason of his not having been possessed at the time of his election of the qualification required by law necessary to entitle him to be elected as a member of the said Council, in that he had not for one year previous to such election been legally or equitably seised of or entitled to an estate of freehold in possession for his own use and benefit in lands or tenements in Victoria of the annual value of One hundred pounds above all charges and incumbrances affecting the same respectively, within the meaning of the eleventh section of the Act for the Reform of the Constitution No. DCCII., 1881.

That your Petitioner is advised and believes that by reason of the said James Stewart Butters having been so unqualified as aforesaid, and that your Petitioner having been informed by John Turner Esquire, who received the

next highest number of votes, that he the said John Turner, Esquire, did not intend to take any action in the matter, and that he has not done so, therefore your Petitioner is entitled to be declared duly elected a Member of the Legislative Council for the North-Eastern Province, and to have his name inserted in the return to the said Writ in the place of the said James Stewart Butters, Esquire.

Your Petitioner, therefore, respectfully prays that you will communicate the matter of this petition to the Legislative Council of Victoria in order that the case of your Petitioner may be referred to a Committee of the said Council duly authorized to receive, inquire into, and report upon the same according to law.

And your Petitioner further prays that, in the event of the said Committee reporting that the said James Stewart Butters, Esquire, was not at the time of the said election possessed of the necessary qualification to entitle him to be so elected, that the said Council will be pleased to declare the said returning officer's return void as respects the said James Stewart Butters, Esquire, and to amend the said return to the said Writ by taking out the name of the said James Stewart Butters, Esquire, and inserting in its place the name of your Petitioner, and to declare your Petitioner duly elected as a Member of the Legislative Council of Victoria for the North-Eastern Province.

And that your Petitioner may have such further or other relief as the circumstances of the case may require, or as to the said Committee or the said Legislative Council may seem meet.

And your Petitioner will ever pray, &c.,

JOHN HANLON KNIPE.

Witness—A. E. LAWFORD.

Collins-street west, Melbourne, the eleventh day of December, One thousand eight hundred and eighty-eight.

The Honorable H. Cuthbert moved, That the above Petition be referred to "The Committee of Elections and Qualifications" for consideration and report.

Question—put and resolved in the affirmative.

TUESDAY, 18TH DECEMBER, 1888.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The Honorable Sir J. Lorimer, Chairman, brought up a Report from this Committee.

Report read, ordered to lie on the Table, and, together with the Proceedings, to be printed.

REPORT.

In the matter of the Petition of John Hanlon Knipe against the return of the Honorable James Stewart Butters for the North-Eastern Province.

"The Committee of Elections and Qualifications" have the honor to report to your Honorable House—

1. That the Petition of John Hanlon Knipe, Esquire, was withdrawn at the request of the petitioner.

2. That the Committee decline to declare that the petition was frivolous or vexatious.

3. That the Committee recommend that the sum of £100, lodged by the petitioner, be returned to him.

Committee Room,
18th December, 1888.

PROCEEDINGS OF THE COMMITTEE.

TUESDAY, 18TH DECEMBER, 1888.

Members present:

The Hon. Sir JAMES LORIMER in the Chair;

The Hon. H. Gore, J. P. MacPherson, | The Hon. D. Melville.

Committee deliberated.

Parties called in.

The Petition of J. H. Knipe was read by the Clerk.

Names of Counsel and Agents laid before the Committee.

A. Grant McIntyre, Esq., Barrister-at-Law, appeared for the Honorable J. S. Butters.

G. Godfrey, Esq., appeared as agent and applied for leave to conduct the case for Mr. Knipe as Counsel, to which Mr. McIntyre objected.

The Committee decided not to hear Mr. Godfrey.

Room cleared.

Committee deliberated.

Preliminary resolutions were agreed to as under :—

1. That Counsel will not be allowed to go into matters not referred to in their opening statement without a special application to the Committee for permission to do so.
2. That if costs be demanded by either party under 19 Vic. No. 12, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.
3. That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the parties and their agents, without the special leave of the Committee.
4. That the Committee will only allow one Counsel to address them on opening the case, and one Counsel on the summing up.
5. That if any point of law should arise requiring argument, the Committee reserve to themselves the power of hearing one Counsel only on each side.
6. That if the leading Counsel are not prepared to sum up the case on either side when the evidence is terminated, the Committee will not protract the proceedings for the convenience of Counsel who may be absent.

Parties called in.

Shorthand Writer sworn.

The Chairman read the preliminary resolutions.

The Petitioner stated that he would conduct his own case.

Mr. McIntyre addressed the Committee, and raised preliminary objections against the Petition and asked that it be dismissed.

Mr. Knipe proceeded to address the Committee.

The Chairman stated that a communication had been addressed to him by Mr. Turner, stating that he had not abandoned any claims that he might have. The letter was read to the Committee.

The Chairman asked Mr. Knipe whether he desired to say anything about his right to petition.

Mr. Knipe replied that he would leave that question in the hands of the Committee; he had followed the form of the Petition of the Hon. Alexander Fraser against Joseph Henry Abbott, Session 1876.

Mr. McIntyre was heard in reply.

Room cleared.

Committee deliberated.

Parties called in.

The Chairman stated that the Committee had agreed that Mr. Knipe had the right to petition, but that from the prayer of the petition the Committee could only determine whether the Returning Officer's return was or was not void.

Mr. Knipe then withdrew his Petition.

Mr. McIntyre applied for costs.

Mr. Knipe was heard in reply.

Room cleared.

Committee deliberated.

Parties called in.

The Chairman stated that the Committee declined to declare that the Petition was frivolous or vexatious, and that they would recommend that the £100 deposited by the petitioner be returned to him.

Report agreed to.

Chairman to present report to Council.

MINUTES OF PROCEEDINGS

TAKEN BEFORE THE SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL ON ELECTIONS AND QUALIFICATIONS.

NORTH-EASTERN PROVINCE ELECTION PETITION.

TUESDAY, 18TH DECEMBER, 1888.

Present:

The Hon. Sir JAMES LORIMER, in the Chair;

The Hon. D. Melville, J. P. MacPherson, | The Hon. H. Gore.

The Counsel and parties were called in.

Mr. Godfrey, solicitor and Parliamentary agent, appeared on behalf of the petitioner.

Mr. McIntyre, instructed by Mr. J. E. McIntyre, appeared on behalf of the sitting Member

Mr. McIntyre objected that, this being the highest Court in the realm, there was no right of audience to attorneys, and that Mr. Godfrey could not address the Committee, but could only appear to instruct Mr. Knipe, or by Counsel.

Mr. Godfrey submitted that the Committee could hear either an agent, an attorney, or a barrister. He handed in his declaration that he was the agent in the matter of this petition.

The committee room was cleared.

The Committee deliberated.

1. *The Hon. the Chairman* said that the Committee had decided to adhere to the invariable practice of previous committees on this question. He read the resolutions passed for their guidance in their proceedings.

   1. That Counsel will not be allowed to go into matters not referred to in their opening statement without a special application to the Committee for permission to do so.
   2. That if costs be demanded by either party under 19 Vic. No. 12, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.
   3. That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the parties and their agents, without the special leave of the Committee.
   4. That the Committee will only allow one Counsel to address them on opening the case, and one Counsel on the summing up.
   5. That if any point of law should arise requiring argument, the Committee reserve to themselves the power of hearing one Counsel only on each side.
   6. That if the leading Counsel are not prepared to sum up the case on either side when the evidence is terminated, the Committee will not protract the proceedings for the convenience of Counsel who may be absent.

2. The Shorthand Writer was sworn.

3. *Mr. McIntyre* was heard to address the Committee, making preliminary objections to the form of the Petition. He submitted that even if the Committee found that the sitting Member was disqualified, they could not give the seat to Mr. Knipe, who was third on the poll. The Petition did not ask for the disqualification of the sitting Member, or for his election to be declared null and void, but only for the return to be declared void. He argued that Mr. Knipe had no right to be heard before the Committee. Mr. Knipe would have to prove that he had the majority of votes after the sitting Member, if the latter were disqualified, which Mr. Knipe could not do. He submitted further, that the petitioner had no right to petition for the relief he asks for, and the Committee should dismiss the Petition as frivolous and vexatious.

4. *Mr. Knipe* was heard to address the Committee. He quoted the last clause of his Petition, "And that your petitioner may have such further relief or other relief as the circumstances of the case may require, or as to the said Committee or the said Legislative Council may seem meet." He submitted that it was impossible for him to deal with the qualifications of the second highest member. His position was a very simple one. Mr. Turner informed him that he did not intend to take any action in the matter, and he acquiesced in his doing so.

5. *The Chairman* stated a communication had been received from Mr. Turner to the Chairman of Elections and Qualifications Committee, dated 17th December, 1888, in which he stated that his attention had been called to a statement in the petition of Mr. Knipe which contained an inaccuracy as far as he was concerned; he had not at any time agreed to waive any privileges he might have by virtue of his having polled the second highest number of votes, and should the Committee decide to grant Mr. Knipe's petition, he claimed that he would be entitled in law and equity to have the seat.

6. *Mr. Knipe* said that was all right as far as it went, but whether the Committee could award the seat to Mr. Turner on his petition or not he would have no objection to their doing so, or he would have no

objection to the Committee ordering another election. He thought some action should be taken by some one. He was prepared to prove that Mr. Butters did not possess sufficient qualification.

7. *Mr. McIntyre* objected to that point being gone into at present.

8. *The Hon. the Chairman* asked whether the petitioner desired to say anything about his right to petition.

9. *Mr. Knipe* said he would leave that entirely in the hands of the Committee. His Petition followed the exact form of the Petition of the Hon. Alexander Fraser in 1876, and taking that as correct he followed it as near as possible. As to the small number of votes polled by himself, he refused to have any agents or committees; and did not visit the district because he thought there was a likelihood of the election being upset.

10. *Mr. McIntyre* read out the Fraser Petition to show the difference.

The committee room was cleared.

The Committee deliberated.

11. The Counsel and parties were again called in.

12. The Chairman stated that the Committee had agreed that Mr. Knipe had the right to petition, and that the Committee had the right to finally determine on all questions referred to it, and that the questions referred to it were, first: "Whether the Returning Officer's return was or was not void in respect to the said J. S. Butters; and next, whether, in the event of so finding that the return could be amended by substituting Mr. Knipe's name for Mr. Butters'.

13. The Committee had determined that they could so amend the return; therefore the question must be simply as to whether the Returning Officer's return was or was not void. It would be competent for the Counsel for the sitting Member to object to the question of qualification; it was not the duty of the Returning Officer to decide whether the qualification was or was not sufficient; that question would come in afterwards.

14. *Mr. Knipe* said that taking all matters into consideration he would withdraw his Petition with a view to presenting another in proper form at a future date.

15. *Mr. McIntyre* asked that costs be awarded to his client on the ground that the Petition was frivolous and vexatious.

16. *Mr. Knipe* was heard to address the Committee on the point.

The committee room was cleared.

The Committee deliberated.

The Counsel and parties were again called in, and the Chairman stated that the Committee had decided to decline to declare the Petition frivolous, and they would recommend that the £100 deposit be returned to the petitioner.

Ordered that the Committee be adjourned.

By Authority: Robt. S. Brain, Government Printer, Melbourne.

1888.

VICTORIA.

NOXIOUS INSECTS BILL.

PETITION.

TO THE HONORABLE MEMBERS OF THE LEGISLATIVE COUNCIL IN PARLIAMENT ASSEMBLED.

We, the undersigned Petitioners of Castlemaine and surrounding district, being fruit-growers, having read with great alarm the provisions of the "Noxious Insects Bill," now before your honorable Council, beg to say—

That, whilst recognizing the importance of such united action as can only be obtained by legislation, pray that only such methods may be adopted and enforced in the endeavour to eradicate noxious insects as may be approved of by practical fruit-growers.

We also pray that no inspector or other person shall be empowered to uproot or destroy any fruit-tree whatever for the following reasons :—

1st. That an orchard takes from fifteen to twenty years to rear into a payable condition, and that the orchards of fruit-growers are their living, and to uproot and destroy their trees is absolute ruin to the orchards and also to their owners, and the fruit-growing industry will certainly be destroyed for many years to come.

2nd. That the fruit-growing industry is increasing in importance yearly, and should receive very careful legislation so as not to paralyze or destroy it.

3rd. That the insects named in the Noxious Insects Bill do not require the tree to be destroyed for their eradication, nor to be uprooted for their detection.

4th. That, should the insect *(aphis lanigera)*, the woolly aphis, be brought under the operation of the Noxious Insects Bill, there is not an orchard in the colony that will not be for the most part, if not entirely, destroyed, because the apple, peach, pear, and other kinds of fruit-tree, are all subject to it, and all in the colony have the insect, more or less, with the exception of about six varieties of apple trees.

5th. That the finest apples grow on those trees most subject to this aphis, and realize the highest price in the market, while the fruit of the very few kinds not subject to it is less esteemed and sells at lower rates. Whilst there are some 500 or 600 kinds of apple trees subject to this aphis, there are only 5 or 6 kinds which resist it.

6th. That this aphis or woolly aphis does not injure the fruit, nor is it transmitted from one place to another by the fruit, nor does it materially affect the fruitfulness of the tree when it is properly managed.

We, therefore, again pray that fruit trees may not be uprooted or destroyed, and that planting fruit-trees in diseased districts will not be prohibited, as it will not be found impossible to eradicate the various diseases without destroying the whole of the trees in the colony, and then there would be no source of re-planting from, except from that which gave the disease at first.

We pray that provision may be made to compensate all fruit-growers who are directly or indirectly injured by the operations of inspectors or others in carrying out the provisions of any Noxious Insects Bill which may be passed, since the diseases affecting fruit trees are not the result of the neglect of fruit-growers, but have come from other countries in the ordinary course of commerce, on the one hand by persons importing improved varieties, and, on the other hand, by the importation of fruit, both of which actions have benefitted the colony.

We pray that as the attention of fruit-growers is only beginning to be directed to the importance of the Noxious Insects Bill, that the said Bill, now before your honorable Council, shall be thrown out, and another Bill, called "The Codlin Moth Bill," be introduced next session of Parliament, to deal with the codlin moth alone.

We further pray that in any Bill for the eradication of noxious insects provision may be made in it for the creation of Boards in each district, composed entirely of fruit-growers, to whom all regulations and proposed methods of destroying insects may be submitted for their approval before being adopted.

And your Petitioners will ever pray.

(Here follow 264 signatures.)

Ordered by the Legislative Council *to be printed*, 21*st November*, 1888.

By Authority: ROBT. S. BRAIN, Government Printer, Melbourne.

E 1.—[6d.]—5290.

VICTORIA.

VOTES AND PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

SESSION 1888.

COUNCIL CHAMBER