

BIOGRAPHICAL MEMOIR  
OF  
JOHN MONTAGU.

WITH A SKETCH OF SOME OF THE PUBLIC AFFAIRS CONNECTED WITH  
THE COLONY OF  
THE CAPE OF GOOD HOPE,  
DURING HIS ADMINISTRATION AS COLONIAL SECRETARY,  
FROM 1843 TO 1853.

BY  
W. A. NEWMAN, M.A.,  
DEAN OF CAPE TOWN, AND SENIOR COLONIAL CHAPLAIN.

---

*"Disponendo me, non mutando me."*—MONTAGU MOTTO.

---

London;  
HARRISON, 59, PALL MALL.

Cape Town;  
A. S. ROBERTSON, ADDERLEY STREET.  
V. L. SAMMONS, PLEIN STREET.

1855.

# CONTENTS.

## CHAPTER I.

### EARLY LIFE.

PAGE

- Descent.—Education.—Enters the Army.—Characteristic Anecdotes.—Promotion.—Accompanies Sir George Arthur to Van Diemen's Land . . . . . 1—12

## CHAPTER II.

### SERVICES IN VAN DIEMEN'S LAND.

- Arrival in Van Diemen's Land.—Successive appointments there.—Sir George Arthur relinquishes the Government.—His Successor.—Cordial co-operation between Sir John Franklin and Mr. Montagu.—Mr. Montagu visits England in 1839.—His return to Van Diemen's Land, and Public Labors there.—Misunderstanding between the Lieutenant-Governor and the Colonial Secretary.—Suspension of Mr. Montagu from the Office of Colonial Secretary.—Takes Measures for returning to England.—Testimonials on leaving Van Diemen's Land.—Arrives in England.—Addresses himself to Lord Stanley, Secretary of State for the Colonies . . . . . 13—27

## CHAPTER III.

### CAPE OF GOOD HOPE.—FINANCE.

- Arrival at Cape of Good Hope.—New System of Finance.—Debt and Difficulties of the Colony.—External State of the Country.—Mr. Montagu's Scheme for the removal of the Colonial Debt.—Results of his Measures.—Steady increase of Public Revenue.—Decrease of Expenditure.—Improvements in the Colony.—Immigration, its urgent necessity.—Strongly advocated by Mr. Montagu.—Sir Peregrine Maitland's despatch on this Subject.—Immigration still absolutely required.—Revenue from Guano at Malagas Island.—From Customs' returns.—Healthy state of the Revenue in July, 1844.—Progress of the Colony.—Sir P. Maitland's acknowledgment of Mr. Montagu's services in the Financial Department at the Cape . . . . . 28—61

## CHAPTER IV.

### PERSONAL DIFFICULTIES.

- Position of Mr. Montagu at the Cape Colony.—Hospitality.—Losses in Van Diemen's Land.—Noble conduct under his Difficulties.—Letter to Sir J. Stephen, detailing his embarrassments.—Interesting Memorandum.—Letter to Sir P. Maitland explaining his painful circumstances, and the inadequacy of his salary to enable him to extricate himself.—Letter to Lord Stanley.—Favorable testimony to Mr. Montagu's services, from Governors Sir P. Maitland, Sir H. Pottinger, and Sir H. Smith, seconding application for increase of Salary.—Considerate reception of



	PAGE
his application by Earl Grey.—His Lordship's announcement to Sir H. Smith, that an increase had been granted.—Letter of acknowledgment from Mr. Montagu to Sir H. Smith.—Opinion in the Colony of the justness of this Grant	62—90

## CHAPTER V.

### ADMINISTRATION OF SIR P. MAITLAND AND SIR H. POTTINGER.

Arduous duties of Mr. Montagu during Sir P. Maitland's absence on the frontier.—Deputy Commissary General's testimony of the assistance he received from Mr. Montagu's exertions throughout the Kaffir War of 1846 and 1847.—Arrival of Sir H. Pottinger as Governor.—Questions regarding the Eastern Frontier and Provinces.—Mr. Montagu's accumulating labors at this time.—Despatch of Sir H. Pottinger to Earl Grey, giving a summary of Public Measures during his Administration.—Letter from Sir H. Pottinger acknowledging Mr. Montagu's services	91—102
---	--------

## CHAPTER VI.

### ROADS AND CONVICT LABOUR.

State of roads in the Cape Colony.—Effects of this.—Mr. Montagu's energies directed to their Improvement.—System of Convict Labor.—Importance of the subject.—Convict Stations at the Cape.—Their great design to reform the Criminal.—Robben Island, formerly a Penal Station.—Report on the state of Convicts there.—Comparison between the Old and New Systems.—Mr. Montagu's active diligence in the management of the New System.—His own report of the working of the system of Convict Discipline.—Testimony of Sir H. Smith to its success, in his despatch to Lord Grey.—Lord Grey's reply, and recorded gratification at the favorable results of the system.—Lord Stanley's testimony before the House of Lords to Mr. Montagu's able and efficient services in carrying out Convict Discipline.—The two great points of Mr. Montagu's system, Practical Usefulness and Moral Improvement	103—157
--	---------

## CHAPTER VII.

### ROADS AND PASSES.

Passes open in the Colony previous to the present system of Convict Labor.—Hottentot's Holland Kloof.—Sir Lowry's Pass.—Cape Flats, formerly almost impassable.—Description of.—Hard road formed across the "Flats."—Difficulties of preserving it from the encroaching sands.—Mr. Montagu's diligence to effect this.—Method adopted to arrest the sands.—Old road over Cradock's Kloof, description of.—Present Montagu Pass.—Report of the "George Agricultural Society," of its benefit to the District.—Great Brak River Height.—Michell's Pass.—Its effect on the surrounding Districts.—Line of Road from Port Elizabeth to Graham's Town.—The Zuurberg.—Bain's Kloof, what suggested the idea of opening it.—Description of the Labor in constructing the new Road through.—Completion of.—Central and Divi-
--

	PAGE
sional Road Boards, Constitution and Powers of.—Similar plan for the management of Roads, approved by the late Sir Robert Peel.—Mr. Montagu's tour to survey the state and capabilities of the Roads of the Colony.—Memorandum addressed by him on the subject to the Commissioners of the Road Board.—The Board's Minute on the same.—Mr. Montagu's experience of the difficulties and dangers of Cape travelling.—Description of modes of travelling at the Cape.—Horse-wagon.—Bullock-wagon.—Horseback.—The amount of credit due to Mr. Montagu in the improvement of the Public Roads.—Extract from Cape Magazine.—Result of better Roads; Old and New Postal arrangements.—Rates of Postage.—Present Post Lines and despatch in carrying the Mail.—Harbour Improvements.—The Governor's despatch to the Secretary of State for the Colonies on the subject.—Remarks on the present State of Table Bay	158—218

## CHAPTER VIII.

ROBBEN ISLAND.—HOSPITAL FOR LUNATICS, CHRONIC SICK AND LEPERS.

Robben Island, its position, and to what appropriated.—Mr. Montagu's visit of inspection to.—Report on its salubrity and general fitness as an Asylum for Chronic Sickneses.—Robben Island converted to this use.—Appearance of the Island, and the present Buildings there.—Departments for the Sick and diseased Lunatics.—Incurables.—Striking kindness of the Sick one to another.—Lepers.—Grateful recollections of Mr. Montagu expressed by the Sufferers at Robben Island.—Testimony of a visitor to the Island, as to its admirable management.—Somerset Hospital.—Other Public undertakings for the relief of Suffering Humanity.—Life-boats.—Light-houses	219—233
---	---------

## CHAPTER IX.

JUDICIAL REFORM.

Judicial Institutions of the Colony.—Judicial Reform suggested.—Committee appointed to inquire into the System of administering Justice throughout the Colony.—Meeting of the Legislative Council to debate on the Report of the Committee.—Speech of Mr. Montagu on the occasion.—Outline of the scheme of alterations in the administration of Justice.—In what respects the scheme of the majority was received favorably by the Secretary of State, and in what respects disapproved	234—279
--	---------

## CHAPTER X.

ECCLESIASTICAL GRANTS.

Ecclesiastical Grants in the Colony.—Various Churches there acknowledged by the Government.—Appointment of a Bishop over the English Church.—Grant proposed for the Travelling expenses of the Bishop, and for an Archdeacon.—Speech of Mr. Montagu in defence of these Grants.—State of the Members of the English Church before the appointment of a Bishop.—This Memorial to the Committee of the Colonial Bishops' Fund	
---	--

	PAGE
Letter to the Bishop of London from Sir J. Brenton on the spiritual wants of the Colony.—Many of the evils mentioned in this letter, now removed.—Progress of the English Church at the Cape since the Bishop's arrival.—Contrast in its position within a period of eight years.—Energetic labors of the Bishop of Cape Town.—Grants of Land made to the English Church.—Grants made to the Dutch Church, to Missionary Societies, and other Religious Bodies in the Colony.—Mr. Montagu's conduct in Ecclesiastical Matters	280—308

## CHAPTER XI.

### GOVERNMENT SCHEME OF EDUCATION.

At what Education should aim.—Former lack of the means of Education in the Colony.—Defective and pernicious State of Instruction.—Efforts made to introduce a System for Public Instruction by Sir J. Bell and Sir J. Herschel.—These efforts seconded by the Governor, Sir G. Napier, and by the Home Government.—New System introduced.—Superintendent-General of Education.—Government Report of Schools.—Conditions on which Government allowances are granted.—First Class Schools.—Second Class Schools.—Aid to Parish Schools.—Mission Schools.—South African College.—Bishop's College.—How far Mr. Montagu was concerned in the Public Scheme of Education.—School of Instruction for Girls in Cape Town	309—319
---	---------

## CHAPTER XII.

### SIR H. SMITH'S GOVERNMENT.—ANTI-CONVICT AGITATION.

Arrival of Sir H. Smith as Governor.—His Measures on the Frontier.—Mr. Montagu left in charge of the Civil Administration.—Increase of labor in Mr. Montagu's Department.—Sir H. Smith's Despatch referring to the onerous duties of the Colonial Office.—Insurrection under Pretorius.—Sir H. Smith proceeds to the Orange River.—Battle of Boem-Plaats.—Causes which led to the Anti-Convict Agitation.—Reasons why the Cape was unfitted for Convicts with "Tickets of Leave."—Alarm of the Colony at the proposition to send them.—Good intentions of the Secretary of State for the Colonies.—Extract from Despatch in proof of this.—Anti-Convict Association.—The Pledge.—The "Neptune" enters Simons Bay.—Proceedings of the Colonists on this occasion.—Conduct of Mr. Montagu.—Allegation that he was instrumental in the proposal to introduce Convicts into the Colony.—His Speech in reply.—Acquitted by the Secretary of State for the Colonies of having taken any initiative steps in this matter	320—346
---	---------

## CHAPTER XIII.

### REPRESENTATIVE INSTITUTIONS.

Projected change in the Constitution of the Colony.—Vast importance of the question to the Colonists.—Mr. Montagu's view of this question.—Application of the Colonists of the Cape of Good Hope to the Home Government for a Representative form of	
--	--

AGE

Government.—Extract from a Despatch to Sir H. Pottinger from the Secretary of State for the Colonies with reference to this application.—Sir H. Smith, on his return from the Kafir war, March, 1848, takes steps to further the New Constitution.—His Minute to the Judges and Members of the Executive Council, asking for any remarks on an accompanying Memorandum as to the Form of Representative Government.—Mr. Montagu's Memorandum on the subject.—Draft of a Constitution prepared by the Board of Trade and Plantations.—The vacancies in the old Legislative Council filled up.—Meeting of the newly formed Council.—Resignation of the four elected Members.—Remaining Members appointed a Commission by the Governor.—Their scheme for a New Form of Constitution.—Draft of the four retiring Members.—Chief points of difference in the two schemes.—Additional Instructions.—Order from the Governor.—Its result.—Mr. Montagu's conduct on this occasion.—Arrival of Sir G. Cathcart as Governor, and C. H. Darling, Esq., as Lieutenant-Governor.—Mr. Montagu advised to seek rest and a restoration of health in England.—Vindication of Mr. Montagu's proceedings during this critical period.—His firmness and high sense of duty.—Petition for his removal from Office.—Secretary of State's Reply.—Review of the part taken by Mr. Montagu on the Constitution Question.—Concluding remarks and expressed wishes on this period of the Political History of the Cape of Good Hope . . . . . 347—396

## CHAPTER XIV.

## KAFIR WAR OF 1850-51.

Apparent Peace in Kafraria at the commencement of the year 1850.—State of the Kafirs.—Drought.—Umlanjeni the Wizard Doctor.—Police sent to take him.—Secret Meetings of the Kafir Chiefs.—Apprehensions on the Frontier.—Sir H. Smith embarks for Kafir Land.—Meets the Kafir Chiefs.—Returns to Cape Town.—After fifteen days hastens to Kafir Land.—Issues a Proclamation.—Decisive motives amongst the Kafirs.—Sir H. Smith moves forward to Fort Cox.—Conflict with the Kafirs.—Colonel Mackinnon's account of this.—Desertion of Kafir Police.—Sir H. Smith hemmed in by the enemy at Fort Cox.—Description of the Fort and Kafir Scenery.—Colonel Somerset sends relief to the Governor.—The supply and escort intercepted.—Description of the encounter.—Sir H. Smith sallies forth from the Fort and proceeds to King William's Town.—Hottentot Rebellion.—Mr. Montagu's exertions in raising and equipping Levies.—Sir H. Smith's acknowledgment of his services.—Letter showing the active duties which devolved on Mr. Montagu at this time.—Testimony of Colonel Eyre to the great aid rendered by his exertions to the troops. . . . . 397—417

## CHAPTER XV.

## LAST ILLNESS AND DEATH.

Onerous duties of Mr. Montagu during the years 1851-52.—His diligence and application to the various requirements pressing

	PAGE
upon him.—His high sense of duty.—Consents to seek rest in England.—Sails from the Cape, May 2.—Lands in England in June.—State of his health on landing, and for some months after his cessation from business.—His own description of his state of health and mental depression.—Letter on his behalf from Sir G. Napier.—Serious attack.—Symptoms that his illness was more alarming than he had anticipated.—His firmness of mind on hearing this.—Removes to Brighton.—His sickness causes further apprehension.—His frame of mind during his illness.—His disposal of his time and thoughts.—Close self-examination.—Rev. Mr. Maitland's account of his state of mind in his sickness.—Testimony of the Bishop of Cape Town.—Nearer approach of Death.—He solemnly nerves himself to meet it.—Great bodily exhaustion.—Tranquil Death.—His end premature.—His funeral.—The news of his decease received with every mark of regret at the Colonial Office.—Generous conduct of the Duke of Newcastle.—His Despatch to Governor Sir G. Cathcart.—Regret and sympathy manifested at his Death, and for his Widow and Children.—Testimony of Sir George Arthur.—Memoir from Cape Merchants resident in London, on behalf of the bereaved family.—News of his death how received at the Cape.—Sermon preached in Cape Town, referring to his character and decease.—Closing remarks	418—448

## CHAPTER XVI.

## CHARACTER.

Public character—Self-reliance.—Grasp of conception.—Capabilities for public service.—Firmness.—Steady vigilance.—Great influence.—Sensitiveness in discharge of duty.—Great honesty of purpose.—Private character.—Decision and energy.—Simple unostentation.—Blameless integrity.—Steady friendship.—Extreme sensibility.—Depth of religious feeling.—General Conclusion	449—470
APPENDIX	471

## ERRATA.

- p. 41, l. 25, for 1,401*l.* 17*s.* 11½*d.* read 34,001*l.* 17*s.* 11½*d.*  
 p. 72, l. 34, for *son* read *sons*.  
 p. 159, l. 21, for *Table Bay* read *Fulse Bay*.  
 p. 166, l. 13, for *parelled* read *parallel*.  
 p. 202, l. 7, for *effected* read *affected*.  
 p. 215, l. 5, for *give* read *given*.  
 p. 235, l. 20, for *analagous* read *analogous*.  
 p. 254, l. 30, for *called for* read *called on*.  
 p. 313, l. 15, for *a shape* read *the shape*.  
 p. 399, l. 25, before *add* insert *they*.  
 p. 441, l. 32, for *local* read *Colonial*.  
 p. 458, l. 20, for *the* read *his*.  
 p. 460, l. 28, for *sacrifed* read *sacrificed*.





BIOGRAPHICAL MEMOIR  
OF  
JOHN MONTAGU.

WITH A SKETCH OF SOME OF THE PUBLIC AFFAIRS CONNECTED WITH  
THE COLONY OF  
THE CAPE OF GOOD HOPE,  
DURING HIS ADMINISTRATION AS COLONIAL SECRETARY,  
FROM 1843 TO 1853.

BY  
W. A. NEWMAN, M.A.,  
DEAN OF CAPE TOWN, AND SENIOR COLONIAL CHAPLAIN.

---

*"Disponendo me, non mutando me."*—MONTAGU MOTTO.

---

London;  
HARRISON, 59, PALL MALL.

Cape Town;  
A. S. ROBERTSON, ADDERLEY STREET.  
V. L. SAMMONS, PLEIN STREET.

1855.

1197  
India Office  
31.3.22.



QU'ON EXAMINE SA VIE, SON ÂME, SES ACTES, SES PENSÉES, SES PAROLES; ON N'Y TROUVERA PAS . . . . . UN SEUL INSTANT DE LAISSER ALLER. IL A CONSTAMMENT LUTTÉ, LUTTÉ JUSQU'À LA FATIGUE ET LA TRISTESSE, CONTRE SES EXIGENCES. NUL HOMME N'A ÉTÉ PLUS PROFONDÉMENT IMBU DE L'ESPRIT DE GOUVERNEMENT, DU RESPECT DE L'AUTORITÉ. IL N'A JAMAIS EXCÉDÉ LES DROITS DU POUVOIR SELON LES LOIS DE SON PAYS; MAIS IL A AFFERMI ET MAINTENU CES DROITS, EN PRINCIPE COMME EN FAIT, AUSSI FERMEMENT, AUSSI FIÈREMENT QU'IL L'EUT PU FAIRE DANS UN ÉTAT ANCIEN.

GUIZOT.



## PREFACE.

---

A PREFACE is an author's friendly introduction to the readers of his publication. It procures him the privilege of speaking to them more familiarly, or, at least, less formally than he would presume to do without such introduction. The main portion of his work is ordinarily devoted to the subject of which it treats, but his preface is a kind of neutral ground on which he deems himself at liberty to speak of himself. Nevertheless, I will not use this liberty without first asking the reader's indulgence, which will, I trust, be granted me, whilst I say a few words in explanation, first, as to my connection with this publication; and secondly, with reference to the assistance and favor I have received in its preparation.

Shortly after the decease of Mr. Montagu had been made known at the Cape, and when the public mind was recovering from the painful surprise which it occasioned, the thought suggested itself to the minds of several of his friends, that a sketch of his life would be a pleasing remembrance to themselves, and a just tribute to his memory; and that it might be so composed that whilst it would obtain the interest of his many friends in England and elsewhere,

it might also be instrumental in removing or reconciling much of the misunderstanding and adverse feeling which circumstances at the Cape had, in the moment and struggle of party excitement, raised against him in the minds of those who were politically opposed to him.

This task, when first proposed to me, I hesitated to undertake, from the conviction that others would do it far more ably than I could; but when it was suggested that some who might be requested to draw up the memoir, if I declined, would probably enter upon it with a strong party bias, and so rather excite than allay animosities,—then, both from a desire to heal divisions in a community to which I was a proclaimer of peace, and also,—as the most grateful tribute to the memory of my deceased friend, and what his spirit, could it speak from the sacredness of its repose, would desire,—to render manifest his love and labor for the interests of that community,—I consented to arrange such materials as could be furnished, into a short sketch of his life and character.

But when I entered on the collection and examination of records, facts, published papers and letters connected with the subject of the memoir, as well as many *data* from his own notes and manuscripts, I found that instead of a pamphlet of a few sheets, which had been originally contemplated, the biography of John Montagu claimed a volume. Nevertheless, I felt no inclination to shrink from it in consideration of its magnitude, or on account of the

toil it might occasion me, though I confess I was almost inclined to do so, for the reason that my unsettled residence, incident on leave of absence from my charge, as well as other incapacities, would render my attempt a failure, or at least undeserving the memory of him whose high deeds and signal worth I had undertaken to record.

As the work proceeded my difficulties increased. Most of the public officials and other persons, with whom Mr. Montagu served, have survived him; to speak highly in his praise in some instances seemed to detract from that of others; in other cases it might be thought that too much prominence was given to him, to the prejudice, or at least to the overlooking, of those to whom he was subordinate. Difficulties of another character also arose—a fair record of Mr. Montagu's opinions must bear more or less on political and party questions; in some cases the long-sleeping emotions of old rivalry might be aroused; in others the smothered embers of an expiring antagonism be stirred anew. Surrounded with these perplexities, I felt, again and again, that I must tread with cautious steps, and the sentence has been on my lips, as a kind of warning to me, I may safely say a thousand times—*incedo per ignes*. I can, however, affirm with the strictest truth and most perfect consciousness of fair intentions, that I have scrupulously endeavored to avoid any reflection, or insinuation, or criticism, which I imagined could give pain or offence. I have recorded the acts and the opinions of my friend with the most watchful intention not to involve others, or to throw myself open to the impu-

tation of unfairness, or of speaking unbecomingly of those in authority. How I have succeeded the perusal of the work must testify. If in my endeavour I have failed, I regret it, and crave pardon.

As to the assistance I have received, and the authorities to which I have trusted, I may state that I have mainly relied on public documents for information as to Mr. Montagu's public acts. Papers printed by the order of the Parliament of Great Britain, and Blue Books published by authority at the Cape, have been my great stand-by, and I have labored through some thousands of pages for the *précis*, extracted from such documents, inserted in the body of the work. In one or two cases I have given almost the words of the Parliamentary Reports, although not notified by the marks of quotation: for instance, in the chapter on "Judicial Reform," the greater portion is supplied from a Parliamentary Paper, entitled "Reports exhibiting the Past and Present State of Her Majesty's Colonial Possessions." The reports issued by the "Central Road Board" at the Cape, have also been extensively used in the chapter describing the roads which that body was instrumental in constructing. In some instances public papers not hitherto printed, and letters from persons in authority have been quoted, and sometimes given *in extenso*,—for the use of these I must express my acknowledgments for the courteous permission granted to me by those to whom it belonged to accord it. To the heads both of the Colonial Office and the War Office I must avow my thankful obligations.

The illustrations of Mountain Passes are from the pencil of a lady who has employed it repeatedly for the benefit of the Colony. They were taken on the spots delineated. They need no further explanation than this grateful record of thanks for the use of them.

To the Subscribers to the present work I must also express acknowledgments. Many of them being of rank, authority, influence, and learning, I can only ascribe to their high appreciation of the late Mr. Montagu, that they have condescended to further this undertaking,—yet the kindness, the sympathy, the generous readiness with which most of them have signified their willingness to preserve the memory of that zealous and faithful public servant call for special mention.

But to one in particular my thanks are due for his co-operation and labor in this undertaking,—to Major Bower. This gentleman, who knew Mr. Montagu intimately in his days of health and vigorous service, who travelled with him in some of his arduous undertakings, who corresponded with him when absent, proved himself to him and to his family in their sorrows, all that a brother could be. Selected by the wish of his dying friend to be one of those who should bear his pall, and lay him to his rest, he was not only the first, but also one of the most unwearied, in his exertions to promote whatever could add honor and esteem to the memory of the departed, and alleviation and support to those he has left behind him. To Major Bower I am indebted for obtaining sub-

scribers, procuring private letters and public documents, for making arrangements with printers and publishers, and for aiding in every manner in his power the present undertaking. But this is not all,—this assistance required time and trouble, but he shrunk not from that which cost him more, that which appealed to his warm heart and sincere and steady love for his deceased friend. It is only just to record, that to him and to the indefatigable labors of the Bishop of Cape Town, it is in a great measure owing that the widow and orphan children of *him* whom they esteemed when living, have now that competence which has been in so noble a manner granted to them. For to these two kind helpers and advocates “of the fatherless and widow in their affliction,” must we attribute that earnest appeal and that documentary evidence which prove how strong was the claim of John Montagu, for a pension for his family, on the gratitude of the country he so faithfully and indefatigably served.

It is with unfeigned pleasure that I have recorded in the subsequent pages the loyalty and devotion of John Montagu to his Sovereign, and his unflagging zeal and labors for his country; but it is with stronger feelings of unfeigned thankfulness, that I here most humbly mention that Her Majesty has been graciously pleased, through Her noble advisers, to signify by a pension to his widow, Her sense of his services, and his country’s ready token of its gratitude.

W. A. N.

Torquay,

Jan. 16th, 1855.



# CONTENTS.

## CHAPTER I.

### EARLY LIFE.

PAGE

- Descent.—Education.—Enters the Army.—Characteristic Anecdotes.—Promotion.—Accompanies Sir George Arthur to Van Diemen's Land . . . . . 1—12

## CHAPTER II.

### SERVICES IN VAN DIEMEN'S LAND.

- Arrival in Van Diemen's Land.—Successive appointments there.—Sir George Arthur relinquishes the Government.—His Successor.—Cordial co-operation between Sir John Franklin and Mr. Montagu.—Mr. Montagu visits England in 1839.—His return to Van Diemen's Land, and Public Labors there.—Misunderstanding between the Lieutenant-Governor and the Colonial Secretary.—Suspension of Mr. Montagu from the Office of Colonial Secretary.—Takes Measures for returning to England.—Testimonials on leaving Van Diemen's Land.—Arrives in England.—Addresses himself to Lord Stanley, Secretary of State for the Colonies . . . . . 13—27

## CHAPTER III.

### CAPE OF GOOD HOPE.—FINANCE.

- Arrival at Cape of Good Hope.—New System of Finance.—Debt and Difficulties of the Colony.—External State of the Country.—Mr. Montagu's Scheme for the removal of the Colonial Debt.—Results of his Measures.—Steady increase of Public Revenue.—Decrease of Expenditure.—Improvements in the Colony.—Immigration, its urgent necessity.—Strongly advocated by Mr. Montagu.—Sir Peregrine Maitland's despatch on this Subject.—Immigration still absolutely required.—Revenue from Guano at Malagas Island.—From Customs' returns.—Healthy state of the Revenue in July, 1844.—Progress of the Colony.—Sir P. Maitland's acknowledgment of Mr. Montagu's services in the Financial Department at the Cape . . . . . 28—61

## CHAPTER IV.

### PERSONAL DIFFICULTIES.

- Position of Mr. Montagu at the Cape Colony.—Hospitality.—Losses in Van Diemen's Land.—Noble conduct under his Difficulties.—Letter to Sir J. Stephen, detailing his embarrassments.—Interesting Memorandum.—Letter to Sir P. Maitland explaining his painful circumstances, and the inadequacy of his salary to enable him to extricate himself.—Letter to Lord Stanley.—Favorable testimony to Mr. Montagu's services, from Governors Sir P. Maitland, Sir H. Pottinger, and Sir H. Smith, seconding application for increase of Salary.—Considerate reception of

	PAGE
his application by Earl Grey.—His Lordship's announcement to Sir H. Smith, that an increase had been granted.—Letter of acknowledgment from Mr. Montagu to Sir H. Smith.—Opinion in the Colony of the justness of this Grant	62—90

## CHAPTER V.

### ADMINISTRATION OF SIR P. MAITLAND AND SIR H. POTTINGER.

Arduous duties of Mr. Montagu during Sir P. Maitland's absence on the frontier.—Deputy Commissary General's testimony of the assistance he received from Mr. Montagu's exertions throughout the Kaffir War of 1846 and 1847.—Arrival of Sir H. Pottinger as Governor.—Questions regarding the Eastern Frontier and Provinces.—Mr. Montagu's accumulating labors at this time.—Despatch of Sir H. Pottinger to Earl Grey, giving a summary of Public Measures during his Administration.—Letter from Sir H. Pottinger acknowledging Mr. Montagu's services	91—102
---	--------

## CHAPTER VI.

### ROADS AND CONVICT LABOUR.

State of roads in the Cape Colony.—Effects of this.—Mr. Montagu's energies directed to their Improvement.—System of Convict Labor.—Importance of the subject.—Convict Stations at the Cape.—Their great design to reform the Criminal.—Robben Island, formerly a Penal Station.—Report on the state of Convicts there.—Comparison between the Old and New Systems.—Mr. Montagu's active diligence in the management of the New System.—His own report of the working of the system of Convict Discipline.—Testimony of Sir H. Smith to its success, in his despatch to Lord Grey.—Lord Grey's reply, and recorded gratification at the favorable results of the system.—Lord Stanley's testimony before the House of Lords to Mr. Montagu's able and efficient services in carrying out Convict Discipline.—The two great points of Mr. Montagu's system, Practical Usefulness and Moral Improvement	103—157
--	---------

## CHAPTER VII.

### ROADS AND PASSES.

Passes open in the Colony previous to the present system of Convict Labor.—Hottentot's Holland Kloof.—Sir Lowry's Pass.—Cape Flats, formerly almost impassable.—Description of.—Hard road formed across the "Flats."—Difficulties of preserving it from the encroaching sands.—Mr. Montagu's diligence to effect this.—Method adopted to arrest the sands.—Old road over Cradock's Kloof, description of.—Present Montagu Pass.—Report of the "George Agricultural Society," of its benefit to the District.—Great Brak River Height.—Michell's Pass.—Its effect on the surrounding Districts.—Line of Road from Port Elizabeth to Graham's Town.—The Zuurberg.—Bain's Kloof, what suggested the idea of opening it.—Description of the Labor in constructing the new Road through.—Completion of.—Central and Divi-
--



	PAGE
sional Road Boards, Constitution and Powers of.—Similar plan for the management of Roads, approved by the late Sir Robert Peel.—Mr. Montagu's tour to survey the state and capabilities of the Roads of the Colony.—Memorandum addressed by him on the subject to the Commissioners of the Road Board.—The Board's Minute on the same.—Mr. Montagu's experience of the difficulties and dangers of Cape travelling.—Description of modes of travelling at the Cape.—Horse-wagon.—Bullock-wagon.—Horseback.—The amount of credit due to Mr. Montagu in the improvement of the Public Roads.—Extract from Cape Magazine.—Result of better Roads; Old and New Postal arrangements.—Rates of Postage.—Present Post Lines and despatch in carrying the Mail.—Harbour Improvements.—The Governor's despatch to the Secretary of State for the Colonies on the subject.—Remarks on the present State of Table Bay	158—218

## CHAPTER VIII.

ROBBEN ISLAND.—HOSPITAL FOR LUNATICS, CHRONIC SICK AND LEPERS.

Robben Island, its position, and to what appropriated.—Mr. Montagu's visit of inspection to.—Report on its salubrity and general fitness as an Asylum for Chronic Sickneses.—Robben Island converted to this use.—Appearance of the Island, and the present Buildings there.—Departments for the Sick and diseased Lunatics.—Incurables.—Striking kindness of the Sick one to another.—Lepers.—Grateful recollections of Mr. Montagu expressed by the Sufferers at Robben Island.—Testimony of a visitor to the Island, as to its admirable management.—Somerset Hospital.—Other Public undertakings for the relief of Suffering Humanity.—Life-boats.—Light-houses	219—233
---	---------

## CHAPTER IX.

JUDICIAL REFORM.

Judicial Institutions of the Colony.—Judicial Reform suggested.—Committee appointed to inquire into the System of administering Justice throughout the Colony.—Meeting of the Legislative Council to debate on the Report of the Committee.—Speech of Mr. Montagu on the occasion.—Outline of the scheme of alterations in the administration of Justice.—In what respects the scheme of the majority was received favorably by the Secretary of State, and in what respects disapproved	234—279
--	---------

## CHAPTER X.

ECCLESIASTICAL GRANTS.

Ecclesiastical Grants in the Colony.—Various Churches there acknowledged by the Government.—Appointment of a Bishop over the English Church.—Grant proposed for the Travelling expenses of the Bishop, and for an Archdeacon.—Speech of Mr. Montagu in defence of these Grants.—State of the Members of the English Church before the appointment of a Bishop.—This Memorial to the Committee of the Colonial Bishops' Fund	
---	--

	PAGE
Letter to the Bishop of London from Sir J. Brenton on the spiritual wants of the Colony.—Many of the evils mentioned in this letter, now removed.—Progress of the English Church at the Cape since the Bishop's arrival.—Contrast in its position within a period of eight years.—Energetic labors of the Bishop of Cape Town.—Grants of Land made to the English Church.—Grants made to the Dutch Church, to Missionary Societies, and other Religious Bodies in the Colony.—Mr. Montagu's conduct in Ecclesiastical Matters . . . . .	280—308

## CHAPTER XI.

### GOVERNMENT SCHEME OF EDUCATION.

At what Education should aim.—Former lack of the means of Education in the Colony.—Defective and pernicious State of Instruction.—Efforts made to introduce a System for Public Instruction by Sir J. Bell and Sir J. Herschel.—These efforts seconded by the Governor, Sir G. Napier, and by the Home Government.—New System introduced.—Superintendent-General of Education.—Government Report of Schools.—Conditions on which Government allowances are granted.—First Class Schools.—Second Class Schools.—Aid to Parish Schools.—Mission Schools.—South African College.—Bishop's College.—How far Mr. Montagu was concerned in the Public Scheme of Education.—School of Instruction for Girls in Cape Town . . . . .	309—319
---	---------

## CHAPTER XII.

### SIR H. SMITH'S GOVERNMENT.—ANTI-CONVICT AGITATION.

Arrival of Sir H. Smith as Governor.—His Measures on the Frontier.—Mr. Montagu left in charge of the Civil Administration.—Increase of labor in Mr. Montagu's Department.—Sir H. Smith's Despatch referring to the onerous duties of the Colonial Office.—Insurrection under Pretorius.—Sir H. Smith proceeds to the Orange River.—Battle of Boem-Plaats.—Causes which led to the Anti-Convict Agitation.—Reasons why the Cape was unfitted for Convicts with "Tickets of Leave."—Alarm of the Colony at the proposition to send them.—Good intentions of the Secretary of State for the Colonies.—Extract from Despatch in proof of this.—Anti-Convict Association.—The Pledge.—The "Neptune" enters Simons Bay.—Proceedings of the Colonists on this occasion.—Conduct of Mr. Montagu.—Allegation that he was instrumental in the proposal to introduce Convicts into the Colony.—His Speech in reply.—Acquitted by the Secretary of State for the Colonies of having taken any initiative steps in this matter . . . . .	320—346
---	---------

## CHAPTER XIII.

### REPRESENTATIVE INSTITUTIONS.

Projected change in the Constitution of the Colony.—Vast importance of the question to the Colonists.—Mr. Montagu's view of this question.—Application of the Colonists of the Cape of Good Hope to the Home Government for a Representative form of	
--	--

	PAGE
Government.—Extract from a Despatch to Sir H. Pottinger from the Secretary of State for the Colonies with reference to this application.—Sir H. Smith, on his return from the Kafir war, March, 1848, takes steps to further the New Constitution.—His Minute to the Judges and Members of the Executive Council, asking for any remarks on an accompanying Memorandum as to the Form of Representative Government.—Mr. Montagu's Memorandum on the subject.—Draft of a Constitution prepared by the Board of Trade and Plantations.—The vacancies in the old Legislative Council filled up.—Meeting of the newly formed Council.—Resignation of the four elected Members.—Remaining Members appointed a Commission by the Governor.—Their scheme for a New Form of Constitution.—Draft of the four retiring Members.—Chief points of difference in the two schemes.—Additional Instructions.—Order from the Governor.—Its result.—Mr. Montagu's conduct on this occasion.—Arrival of Sir G. Cathcart as Governor, and C. H. Darling, Esq., as Lieutenant-Governor.—Mr. Montagu advised to seek rest and a restoration of health in England.—Vindication of Mr. Montagu's proceedings during this critical period.—His firmness and high sense of duty.—Petition for his removal from Office.—Secretary of State's Reply.—Review of the part taken by Mr. Montagu on the Constitution Question.—Concluding remarks and expressed wishes on this period of the Political History of the Cape of Good Hope	347—396

## CHAPTER XIV.

## KAFIR WAR OF 1850-51.

Apparent Peace in Kafraria at the commencement of the year 1850.—State of the Kafirs.—Drought.—Umlanjeni the Wizard Doctor.—Police sent to take him.—Secret Meetings of the Kafir Chiefs.—Apprehensions on the Frontier.—Sir H. Smith embarks for Kafir Land.—Meets the Kafir Chiefs.—Returns to Cape Town.—After fifteen days hastens to Kafir Land.—Issues a Proclamation.—Decisive motives amongst the Kafirs.—Sir H. Smith moves forward to Fort Cox.—Conflict with the Kafirs.—Colonel Mackinnon's account of this.—Desertion of Kafir Police.—Sir H. Smith hemmed in by the enemy at Fort Cox.—Description of the Fort and Kafir Scenery.—Colonel Somerset sends relief to the Governor.—The supply and escort intercepted.—Description of the encounter.—Sir H. Smith sallies forth from the Fort and proceeds to King William's Town.—Hottentot Rebellion.—Mr. Montagu's exertions in raising and equipping Levies.—Sir H. Smith's acknowledgment of his services.—Letter showing the active duties which devolved on Mr. Montagu at this time.—Testimony of Colonel Eyre to the great aid rendered by his exertions to the troops.	397—417
---	---------

## CHAPTER XV.

## LAST ILLNESS AND DEATH.

Onerous duties of Mr. Montagu during the years 1851-52.—His diligence and application to the various requirements pressing	
--	--

	PAGE
upon him.—His high sense of duty.—Consents to seek rest in England.—Sails from the Cape, May 2.—Lands in England in June.—State of his health on landing, and for some months after his cessation from business.—His own description of his state of health and mental depression.—Letter on his behalf from Sir G. Napier.—Serious attack.—Symptoms that his illness was more alarming than he had anticipated.—His firmness of mind on hearing this.—Removes to Brighton.—His sickness causes further apprehension.—His frame of mind during his illness.—His disposal of his time and thoughts.—Close self-examination.—Rev. Mr. Maitland's account of his state of mind in his sickness.—Testimony of the Bishop of Cape Town.—Nearer approach of Death.—He solemnly nerves himself to meet it.—Great bodily exhaustion.—Tranquil Death.—His end premature.—His funeral.—The news of his decease received with every mark of regret at the Colonial Office.—Generous conduct of the Duke of Newcastle.—His Despatch to Governor Sir G. Cathcart.—Regret and sympathy manifested at his Death, and for his Widow and Children.—Testimony of Sir George Arthur.—Memoir from Cape Merchants resident in London, on behalf of the bereaved family.—News of his death how received at the Cape.—Sermon preached in Cape Town, referring to his character and decease.—Closing remarks	418—448

## CHAPTER XVI.

## CHARACTER.

Public character—Self-reliance.—Grasp of conception.—Capabilities for public service.—Firmness.—Steady vigilance.—Great influence.—Sensitiveness in discharge of duty.—Great honesty of purpose.—Private character.—Decision and energy.—Simple unostentation.—Blameless integrity.—Steady friendship.—Extreme sensibility.—Depth of religious feeling.—General Conclusion	449—470
APPENDIX	471

## ERRATA.

- p. 41, l. 25, for 1,401*l.* 17*s.* 11½*d.* read 34,001*l.* 17*s.* 11½*d.*  
 p. 72, l. 34, for *son* read *sons*.  
 p. 159, l. 21, for *Table Bay* read *False Bay*.  
 p. 166, l. 13, for *parellel* read *parallel*.  
 p. 202, l. 7, for *effected* read *affected*.  
 p. 215, l. 5, for *give* read *given*.  
 p. 235, l. 20, for *analagous* read *analogous*.  
 p. 254, l. 30, for *called for* read *called on*.  
 p. 313, l. 15, for *a shape* read *the shape*.  
 p. 399, l. 25, before *Add* insert *they*.  
 p. 441, l. 32, for *local* read *Colonial*.  
 p. 458, l. 20, for *the* read *his*.  
 p. 460, l. 28, for *sacrifed* read *sacrificed*.

## LIST OF SUBSCRIBERS.

	COPY.		COPY.
Earl of Aberdeen . . . . .	1	Mrs. Domville . . . . .	1
Lady Aberdour . . . . .	1	Hon. and Rev. Henry Douglas . . . . .	1
C. A. Adderley, Esq., M.P. . . . .	1		
Miss Adams . . . . .	1	Marquis of Exeter . . . . .	1
General Sir George Arthur . . . . .	2	William Earle, Esq. . . . .	1
Major Arthur . . . . .	1	Mrs. Richard Earle . . . . .	1
Miss A. Arthur . . . . .	1	Miss H. Ebden . . . . .	1
Rev. Thomas Anderson . . . . .	1	Thos. Erskine, Esq., Linlathen . . . . .	1
Duke of Buccleuch . . . . .	1	Gordon Forbes, Esq. . . . .	1
Captain F. W. Balfour, Rifle Brigade . . . . .	1	Mrs. Scrymesoure Fotheringham . . . . .	1
Captain Bance, R.N. . . . .	1	Mrs. B. Frere . . . . .	1
Miss Barrington . . . . .	1	Rev. James Fussell . . . . .	1
Sir George Barrow . . . . .	1		
A. Barwell, Esq. . . . .	2	Earl Grey . . . . .	1
Charles Bayley, Esq. . . . .	1	Countess Grey . . . . .	1
W. Butterworth Bayley, Esq. . . . .	1	Gorden Gairdner, Esq. . . . .	6
Captain Bolton . . . . .	1	John Godfrey, Esq. . . . .	1
Captain J. P. Bower, R.N. . . . .	1	Lady Gore . . . . .	2
Miss Graham Bower . . . . .	1	Miss Gore . . . . .	1
Major Bower . . . . .	1	Robert Goff, Esq. . . . .	1
James Bristow, Esq. . . . .	1	John Gould Gent, Esq. . . . .	6
General Sir Henry Bunbury . . . . .	1	J. E. Gray, Esq. . . . .	1
Charles Busk, Esq. . . . .	1		
Joseph Busk, Esq. . . . .	1	Countess Howe . . . . .	1
		W. H. Hamilton, Esq. . . . .	1
Lord Bishop of Cape Town . . . . .	5	Mrs. General Hamilton . . . . .	1
Lord Charles P. Clinton . . . . .	1	Benjamin Hawes, Esq. . . . .	1
Hon. Lady Inglis Cochrane . . . . .	1	E. J. Harrington, Esq. . . . .	1
Lord Colchester . . . . .	1	William Hawkins, Esq. . . . .	1
Miss Rochfort Clark . . . . .	2	Mrs. Walter Hemming . . . . .	1
William Cosens, Esq. . . . .	3	C. Higgs, Esq. . . . .	1
Cape Town, Subscribers at . . . . .	61	Colonel B. Hitchins . . . . .	1
		Lady Worsley Holmes . . . . .	1
Earl of Derby . . . . .	1		
Lady Emily Drummond . . . . .	1	Lord Frederic Kerr . . . . .	1
Mrs. Denerkie . . . . .	1		
William Dickson, Esq. . . . .	1	S. I. Leake, Esq. . . . .	1
William Drummond Esq. . . . .	1	Captain Littlehales . . . . .	1



	COPY.		COPY.
Duke of Manchester . . . . .	6	Marchioness of Queensbury . . . . .	1
Viscount Mandeville . . . . .	1	Duke of Richmond . . . . .	1
Lady Sarah Maitland . . . . .	2	Sir Frederick Roe . . . . .	1
Major-General Maitland (Gren. Guards) . . . . .	1	John Round, Esq. . . . .	1
Major Marsden . . . . .	1	Lady Alexander Russell . . . . .	1
Herman Merivale, Esq. . . . .	1	General Sir Harry Smith . . . . .	5
John Milford, Esq. . . . .	1	Lord Bishop of Sydney . . . . .	1
W. H. Mitchell, Esq. . . . .	5	Wm. Salmon, Esq. . . . .	1
Admiral John Montagu . . . . .	1	Mr. Bower St. Clair . . . . .	1
Admiral James Montagu . . . . .	1	Mrs. Valentine Smith . . . . .	1
Major George Montagu . . . . .	5	Doctor Squibb . . . . .	1
Alexander Montgomerie, Esq. . . . .	1	Colonel Stuart . . . . .	1
Mrs. Montgomerie (Anwick Lodge) . . . . .	1	Miss Stuart . . . . .	1
Duke of Newcastle . . . . .	1	Lady Thomas . . . . .	2
General Sir George T. Napier . . . . .	1	Lady Troubridge . . . . .	1
Lord Bishop of Natal . . . . .	1	Mrs. J. S. Tanqueray . . . . .	1
Lady Georgina Needham . . . . .	4	Mrs. Turner . . . . .	2
Richard Nation, Esq. . . . .	2	Miss Thain . . . . .	2
Mrs. Nation . . . . .	1	George Todd, Esq. . . . .	1
Rev. J. Newman . . . . .	1	Miss Townsend . . . . .	1
Lord Bishop of Oxford . . . . .	1	Captain Tucker, R.N. . . . .	1
Lady Louisa Oswald . . . . .	1	L. B. Twentymen, Esq. . . . .	1
Alex. Oswald, Esq. (Auchincruive) . . . . .	1	Charles Tyssen, Esq. . . . .	1
Sir John Pakington . . . . .	5	Doctor Van der Byl . . . . .	1
Lady Pakington . . . . .	2	Hon. Henry Walpole . . . . .	1
Rev. W. Parish . . . . .	1	Colonel W. Watkins . . . . .	1
W. Parke, Esq. . . . .	1	Richard Pelham Warren, Esq. . . . .	2
Rev. T. Pearse . . . . .	1	R. Woosnam, Esq. . . . .	1
Admiral the Hon. J. Percy . . . . .	1	Francis Worsley, Esq. . . . .	1
Hon. Mrs. Josceline Percy . . . . .	1	Leonard Worsley, Esq. . . . .	1
Mrs. Heber Percy . . . . .	1	Miss Worsley . . . . .	1
Hon. Mrs. Bertie Percy . . . . .	1	Colonel Wroughton . . . . .	1
General Sir Henry Pottinger . . . . .	1	Captain Wyvill, R.N. . . . .	1
Major-General Porter . . . . .	1	Major-General Yorke . . . . .	1
Rev. Charles Porter . . . . .	1		
Captain Porter, R.N. . . . .	1		

MEMOIR  
OF  
JOHN MONTAGU.

CHAPTER I.

EARLY LIFE.

DESCENT. — EDUCATION. — ENTERS THE ARMY. — CHARACTERISTIC ANECDOTES. — PROMOTION. — ACCOMPANIES SIR GEORGE ARTHUR TO VAN DIEMEN'S LAND.

TO let an honest name shine out with the influence and lustre of the great virtues which adorned it,—to call public gratitude to public worth,—to place on record a striking example of how much may be effected by steady honesty of purpose, beneficial enterprize, and unwearied industry—to render manifest that, in the course of what some may deem the monotonous and beaten path of official life, there is ample room for active usefulness, watchful public spirit, and the exercise of vigorous talent,—and, above all, to set forth, as a contrast to the spirit of self, which in our age of eagerness too much characterizes our aims and activities, one who forgot self in his labors and sacrifice for the public good—is the simple and acknowledged design of this Memoir.

The name of JOHN MONTAGU is one which needs no adventitious or borrowed circumstance to make it illustrious: his character was essentially self-formed, and asked no stamp of ancestry to give it worth; and if he bore in honored memory the names and services of those from whom he was descended, it was not to glory in what they did, but as an incitement to himself to add splendor to those names and continuance to those services.

The name of MONTAGU\* has, nevertheless, been for many centuries in honor; and those who have borne it in long succession "have done the state some service:" it can be traced back to the time of the Norman Conquest. From DROGO DE MONTEACUTO was descended nearly five centuries after Sir EDWARD MONTAGU, Chief Justice of the Court of King's Bench, in 1539; he was appointed by the king one of the sixteen executors of his last will, who should be Regents of the kingdom and governors of his son Edward VI. Sir HENRY MONTAGU, his descendant, was one of the representatives of the City of London in the Parliament called by James I. upon his accession; and acquired great distinction as a parliamentary orator. In 1616, he was appointed Lord Chief Justice of the King's Bench, and in 1620 constituted Lord Treasurer of England; in 1620 he was also elevated to the peerage as Baron Montagu of Kimbolton and Viscount Mandeville. On the accession of Charles I. he was raised to an earldom as Earl of Manchester. His son, EDWARD, second Earl, was a successful general in the Parliamentary army during the Civil Wars; but he refused to sanction the death of the king, and retired from Par-



liament until 1660, when he assisted at the meeting of the peers for bringing back Charles II, and was chosen to be speaker to congratulate him on his restoration; his address he concluded in these words: "Great King, give me leave to speak the confidence as well as the desires of the peers of England; be you the powerful defender of the true Protestant Faith, the just assertor and maintainer of the laws and liberties of your subjects, so shall judgment run down like a river, and justice like a mighty stream; and God, the God of your Mercy, who hath so miraculously preserved you, will establish your throne in righteousness and peace."

From JAMES, the third son of the first Earl of Manchester, descended JOHN, the grandfather of the late John Montagu: he was an Admiral in the Royal Navy. Among his sons were JAMES, Captain in the same service, killed in action; and EDWARD Montagu, Lieutenant-Colonel of Artillery in the service of the Honorable East India Company, who fell at Seringapatam 1799: the latter was the father of the subject of the present Memoir.

To Lieutenant-Colonel Montagu's services and high military character, at the siege of Seringapatam and on other occasions, noble testimony is given in Beatson's "Seringapatam," and the "Asiatic General Register" for 1800; from which authorities the following account is extracted:—

"During the storming of Seringapatam, Lieutenant-Colonel Montagu's arm was shattered near the shoulder, on the 2nd May, while in the battery, and required immediate amputation; for some days he appeared to be going on in a fair way; a contusion, however, on his chest, occasioned by the same shot, produced mortification, which caused his

officer of whom they may be deservedly proud. His talents, improved by a regular military education, and his long experience in active service, rendered him invaluable. In the early part of his career, his skill in his profession, his zeal and indefatigable activity, having been displayed on various occasions, he was afterwards selected for every important service. With General Goddard, with Sir Eyre Coote, and at the siege of Cuddalore, he was particularly distinguished; and in the campaigns of Lord Cornwallis, he not only confirmed but increased his established reputation. He was called forth on the projected expedition against the Isle of France and Manilla, and finally was chosen to command the Bengal Artillery destined for the glorious enterprize against Seringapatam.\*

“Lieutenant-Colonel Edward Montagu ‘was the fourth son of Admiral J. Montagu, and brother of the late Captain James Montagu, who commanded the ship *Montagu* on the glorious 1st of June, in which action he was killed by a cannon shot while closely engaged with two of the enemy’s ships; the *Impétueux* of 74, and *Le Républicain* of 110 guns.’

“Being originally designed for the army, he was placed in the academy at Woolwich, from whence he was sent out as a cadet to Bengal in the year 1770. On his arrival at Calcutta, there being a superabundance of officers, he was placed in a separate corps formed for the cadets of that year, and called the Select Picquet. In this situation he attended chiefly to his improvement in military knowledge and discipline; and, from the gracefulness of his person, as well as an uncommon activity, he was soon distinguished by a superior skill and address in the performance of all military duties.

“After serving twelve months in this corps, he attached himself to the artillery. While he was a lieutenant-fireworker, by the strict attention he paid to his duty, the interest he took in his profession, and the ardour with which he pursued every branch of it, he greatly improved himself in the knowledge of tactics, and his practice was proportion-

\* Beaton’s Seringapatam.

ably advanced by being on several occasions employed on actual service.

“About the year 1781 he was promoted to the command of a company. He was sent to join General Goddard who was employed to demolish various forts in the Rohilla country, several of which were defended with the most obstinate bravery. In attacking one of them he was wounded by an arrow (while attempting to force the gates) which, entering just below the eye, penetrated obliquely through part of the jaw, and almost reached the opposite cheek. Without a moment's hesitation, he broke the arrow off close to the iron barb, and continued at the head of his corps till the object of the attack was accomplished. The barb remained in his face several days, and was at length extracted with great skill by Dr. Brinch Harwood. In these active scenes Captain Montagu completely established his military character, gained the confidence and recorded approbation of his commanding officer, and greatly advanced the good opinion and regard which General Goddard had already entertained for him.

“In the year 1782, Captain Montagu was called forth to join Sir Eyre Coote, on the coast of Coromandel. Captain Montagu was in every engagement, and in services where so much real military merit was displayed, it is no common praise to say he was always peculiarly distinguished. He obtained the rank of Major, and at Cuddalore, in 1784, he was appointed to command the artillery of one of the wings of the army, and there manifested his superior judgment by taking post on an eminence which produced the greatest advantages, and it was honourably acknowledged by a French officer of rank who was stationed to oppose him. On his return to Bengal, he was employed in Oude until the memorable expedition of the Marquis Cornwallis to Seringapatam. On this important service Major Montagu was selected to attack the stupendous fortresses of Nunderdroog and Ramah-droog.

“The chief engineer having reported Nunder-droog to be a fortress of uncommon strength, the Marquis ordered Major Montagu to proceed with his best train of artillery

from Bangalore to join the army, encamped about half-way to the place of attack. The expedition with which he performed that duty excited the astonishment, as it called forth the applause, of Lord Cornwallis; and though he was the youngest artillery officer with the army, he was entrusted with the conduct of the artillery employed in the reduction of that important fortress. His skill, courage, and talents, were crowned with complete success; and the thanks of the Commander-in-chief expressed in the strongest terms the sense he entertained of his eminent services. The manner, also, in which he was entrusted with the command of the artillery employed against Severn-droog, manifested the great confidence which the Marquis Cornwallis possessed in his military enthusiasm and professional abilities.

“In the year 1794, Major Montagu was advanced to the rank of Lieutenant-Colonel, and was third on the list of artillery officers when he was chosen to direct the artillery attached to the Bengal army, and was destined to join General Harris, Commander-in-chief, in the late glorious enterprize against Seringapatam, where this gallant and most distinguished officer found an honourable grave.

“If it is true, as has been asserted, that the commander of the artillery, Colonel Smith, a brave and deserving officer, had, from a long succession of illness, become too infirm to be continually in the trenches, the executive duty must have necessarily devolved upon Lieutenant-Colonel Montagu, who was next in command. But be that as it may, it is certain that three days previous to the capture of Seringapatam, a cannon ball shattered his arm while he was in the trenches, in such a manner as to require immediate amputation, and it was taken off within an inch of the shoulder. In this state, however, such was his zealous, active, and unconquerable spirit, he insisted upon being carried into the trenches, where he continued to the last to encourage, by his presence, the troops who adored him. During three or four days, it was hoped and believed that he was in a fair way of recovery; but having by the same shot received a contusion in his chest, it turned to a mortification, and carried him off on the eighth day after he had received his wound.

“Thus fell Lieutenant-Colonel Edward Montagu, in the forty-fifth year of his age, lamented as he was beloved by the whole army, leaving a widow\* and three orphans: He served the Honourable East India Company with zeal, fidelity, and superior military talents, during an honourable course of twenty-nine years; had been in more engagements than usually happens even to an active soldier, and had been noticed with the most flattering distinction by every commanding officer under whom he had served.

“In private life he was not less distinguished than in his public services. He was benevolent and generous, possessing at the same time the most frank and candid disposition. He was an affectionate husband, a tender father, and a dutiful son. He loved his country with a patriotic ardor, and he died in the contest to extend its dominion and its glory.

“He will live long in the remembrance of all who knew him; and it remains for the nation whom he served so well, and for whom he died too soon, to transmit his name to the times that are to come.”

The above account of the public services of Lieutenant-Colonel Montagu is quoted in full, that it may be seen in how many respects the subject of the present Memoir sustained the character of his illustrious and patriotic father; and how in several touching points of resemblance their lives were assimilated, especially in premature death from a devotion to their duties, and in each leaving behind a widow and orphan children to lament a loss, which sympathy and generous acknowledgment may alleviate but cannot repair. At the time of his father's death John Montagu was not two years old; he was sent early to school at Cheam, in Surrey, and, though then very young, quickly took a good position in the highest class, and obtained several first

\* He married a Miss Fleetwood at Musulipatam in 1792, when on his return to Bengal from the first Campaign against Tippoo.



prizes. On leaving Cheam, he was sent to a school of higher stamp, at Parson's Green, near Knightsbridge, at which he continued until the circumstance of one of his brothers being articled to a Solicitor at Devizes, occasioned his mother to remove with her three sons to that town, where John was placed under the charge of a private tutor. Edward, the eldest son, subsequently practised as a Solicitor in London; George, afterwards a Major in the Army, has for some years been a resident in America, and John, the youngest, fulfilled the career to be recorded in this biography.

One who knew him intimately in his early years, speaking from lively recollection of him, says:—"as a youth John Montagu showed no indications of talent;" if so, his standing in his classes at school must have been attained by that perseverance which through life always attended him in the pursuit of any object he undertook: the same authority also testifies "that his astonishment was great when he first read some of Montagu's state papers, bearing the evidence of being the production of an intellect of the highest order:" and expresses it as his conviction "that to a great degree he was self-cultivated after he left school."

It is probable that the change from a school, where there were many scholars, to the closer supervision of a private tutor, was at this time thought necessary for the better forming and restraining of his character, which from its impulsiveness required judgment, decision, and firmness, to direct it into steady growth, and to guide it to some worthy object. It is the acknowledgment of one who watched his boyhood, that until the time he entered the army he

was "a restless, high-spirited, troublesome, daring boy;" but when it was decided that he should serve his country in arms, and he had an object set before him, and his young spirit was attracted to

"The royal banner; and the quality,  
Pride, pomp, and circumstance of glorious war,"

then his restlessness became energy, his daring ripened into the eager heroism of the young soldier, and a disregard for truthfulness, which had for some time rendered his mother extremely anxious on his behalf, gave place to an honesty of purpose, and a decided straightforwardness of action which through the subsequent years of his public life were the marked features of his character.

On the 10th of February, 1814, young Montagu, then seventeen years of age, was appointed to an ensigncy without purchase, in the 52nd regiment; and was present at the battle of Waterloo in 1815, with the same regiment, which distinguished itself so nobly at that engagement.

Two circumstances quite characteristic of him, which are still in the remembrance of some of his friends, will serve to show the bent and promptness of his disposition, at this time; and his firmness in following up any course which he conceived to be both honorable and necessary. When he joined his regiment at Brussels, he was ordered to the rear with a detachment of invalids. He had gone back a day's march when he met a party proceeding to join his own regiment: as an engagement was daily expected he was extremely anxious to be present, and with this view asked to see the date of the commission of a young man of the party he met: finding he was junior to himself he commanded him to take charge of the

invalids, and next morning astonished his commanding officer by making his appearance before him, as his regiment was marching from Brussels to Waterloo. The officer was much amused at his story and told him he hoped he would not suffer for having played the senior officer. The other circumstance occurred shortly after the battle : when the army was quartered near Paris, young Montagu, for the first time in his life, was tempted to the gaming table, and, after some playing, lost what to him was a considerable sum of money ; this he felt he was bound in honor to discharge, and thus found himself in serious pecuniary difficulties : but his was neither a mind to despair, nor a heart to shrink under embarrassments,—and difficulty to him was but an occasion of contriving how he should overcome it. Nor was he long in determining how to repair his losses,—for he formed at once the resolution to withdraw from the mess of his regiment until his debt should be defrayed. With this determination he went to his commanding officer, Sir John Colborn, acquainted him with his position, and requested that he might be allowed three months' advance of pay, and to live by himself, on his rations, until he had paid off his losses. His request being acceded to, he lived alone in his tent, for six months, during the whole of that time refusing all invitations to parties ; and nothing could induce him to break through his purpose of living upon the smallest possible allowance, until his debts were honorably liquidated ; or of ever again being drawn into the excitement and ruin of the gaming-table.

This early disciplining of himself, and this self-denying firmness in retrenchment, immediately occasion rendered it necessary, were alike very discernible in the conduct of Mr. Montagu in subsequent years,



when heavier losses and sacrifices called upon him to live on less than one-half of his income, in order to meet difficulties which he foresaw, but to which he yielded from his devotedness to the public good.

After the battle of Waterloo, Ensign Montagu was promoted to a lieutenancy by purchase, on the 9th November, 1815; he also purchased his company in the 64th foot, Nov. 1822; after which he exchanged into the 40th regiment.

In 1823, Captain Montagu married Jessy, daughter of Major General Edward Vaughan Worsley, R.A., and proceeded to Van Diemen's Land, with Colonel, afterwards Sir George, Arthur, and on arrival there was nominated private secretary, which office he retained until 1827, still holding his captaincy in His Majesty's army, on half-pay: but three years after he retired from the service, under circumstances which will be elsewhere stated, and with the impression that he could then be more actively employed in the civil department of government.

We may indulge the speculation what the career of John Montagu might have been had he continued in military service. He possessed all the qualities requisite for a soldier. Of strict discipline, cool intrepidity, steady perseverance and great physical energy, a path of glory lay open before him: in this he might have fallen, as his father did, in the dangerous and bloody trench; or he might have been decked with medals, and rewarded by titles and honors as many of those who were his fellows in his youthful campaign survived to be: but other services were then more congenial to his mind; a long prospect of peace lay before the eye of the young soldier, and his active thought and persevering spirit preferred labor to ease, and the employment of public life to the mere

parade which occupies the young officer during a lengthened peace. He may have seen that colonial life had incitements for his adventurous spirit; that the formation of new societies and new centres of civilization opened out opportunities for those public improvements, and for the development of those powers for taming the savage waste, and of turning rugged mountain-passes into highroads of commerce which were stirring within him. At least, we may conclude that his energies were not easily to be restrained, since the first opening of his official career was in a settlement, which at that time could attract few, and which would have raised up insuperable obstacles to a resolution less bold, and a heart more readily discouraged than his own.

## CHAPTER II.

## SERVICES IN VAN DIEMEN'S LAND.

ARRIVAL IN VAN DIEMEN'S LAND.—SUCCESSIVE APPOINTMENTS THERE.—SIR GEORGE ARTHUR RELINQUISHES THE GOVERNMENT.—HIS SUCCESSOR.—CORDIAL CO-OPERATION BETWEEN SIR JOHN FRANKLIN AND MR. MONTAGU.—MR. MONTAGU VISITS ENGLAND IN 1839.—HIS RETURN TO VAN DIEMEN'S LAND, AND PUBLIC LABORS THERE.—MISUNDERSTANDING BETWEEN THE LIEUTENANT-GOVERNOR AND THE COLONIAL SECRETARY.—SUSPENSION OF MR. MONTAGU FROM THE OFFICE OF COLONIAL SECRETARY.—TAKES MEASURES FOR RETURNING TO ENGLAND.—TESTIMONIALS ON LEAVING VAN DIEMEN'S LAND.—ARRIVES IN ENGLAND.—ADDRESSSES HIMSELF TO LORD STANLEY, SECRETARY OF STATE FOR THE COLONIES.

In 1823, Colonel Arthur was appointed Lieutenant-Governor in Van Diemen's Land, and Captain Montagu (then of the 40th regiment) who accompanied him, was, on arrival there in 1824, nominated, as has been already noticed, Private Secretary, under which designation, he discharged the threefold duties of Public, Military, and Private Secretary.

In 1826, Van Diemen's Land, which had until that period been a dependency of New South Wales, was constituted a separate Colony, and Captain Montagu became Clerk of the Executive and Legislative Councils, which formed a part of the extended system of Government. In that office he continued

until 1829, when he was called upon by military duty to proceed to England; and thereupon the Lieutenant-Governor issued, unsolicited, the following notification:—

“On the occasion of Captain Montagu’s departure, his Excellency cannot avoid expressing that his zeal, intelligence, and discretion in conducting the business of the Council since its first appointment have merited the unqualified approbation of the Lieutenant-Governor and insured him the entire confidence of the Council.”

In 1830, Sir George Murray, Secretary of State for the Colonies, offered to reappoint Captain Montagu to the Clerkship of the Councils, on the condition of his quitting the army; this condition he promptly acceded to, and then returned to Van Diemen’s Land for the purpose of devoting himself, as throughout the remainder of his life he did, to offices of civil administration, for which his steady application, method, and aptitude for business admirably fitted him.

In 1832, he was directed to take charge, temporarily, of the Colonial Treasury. This he held for a year, and, on being relieved from it, received most flattering testimonials of the efficient manner in which he had conducted its affairs, and discharged the trust reposed in him.

In 1834, the Colonial Secretaryship became vacant by the retirement of the gentleman who had filled it from its creation in 1826, and Mr. Montagu was placed therein until the pleasure of the Secretary of State should be known. To that office he was, in the same year, permanently appointed by the Earl of Aberdeen, and, as stated by his Lordship, “on public grounds only.”

In October, 1836, Sir George Arthur relinquished the Government of Van Diemen's Land to Sir John Franklin, and in doing so recorded the following opinion of Mr. Montagu, in his confidential report to his successor :—

“From the Colonial Secretary you will derive all that assistance which can be expected from an experience in Colonial matters of thirteen years' duration, from thorough habits of business, and from assiduous application to office duties, combined with an integrity of character that can be entirely relied upon.”

In the successive offices above enumerated,—offices discharged with so much zeal, intelligence and versatility of talent on his own part, and acknowledged with so much approbation and confidence on the part of those under whom he served,—Mr. Montagu was schooling and disciplining himself, and acquiring that vast information, energy of character, and grasp and capability in the discharge of official duties, for which he became afterwards so eminent ; and which in future years enabled him to project and conduct those great and varied public works, in the Cape Colony, with which his name will ever be honorably associated. With him thirteen years' public service was not the mere routine of the same daily recurring discharge of measured duties staked out, and marked off, to be executed as his official task : there was ever about him that constant and elastic vigor which did not suffer him to do anything simply as a task ;—he threw life and a desire for progress, and the reaching after improvement into all that he did : whatever his duty was, he executed it promptly and energetically, simply because his heart was in it, and because he looked upon it as duty,



not-as work. The principle which seemed to actuate him was this: "whatever is worth doing" (and assuredly whatever is our duty is so) "is worth doing well," and in this spirit he acted; and the result was, that in all his public acts, there were discernible such understanding, comprehension, and vigor that an intelligent observer could at once mark there had been an earnest and active mind at work there.

For the first four years of Sir J. Franklin's government in Van Diemen's Land, there appears to have existed the most cordial co-operation and strict confidence between his Excellency and the Colonial Secretary; and during these years Mr. Montagu applied his energies to those considerations, and to that deep knowledge and improvement in Convict Discipline, which afterwards attached such merit to his name and value to his services. In 1838, Sir John's testimony was to this effect:—"It is only due to the Colonial Secretary that I should record the zeal, ability and singleness of purpose with which he devotes himself to promote the interests of my government, and to carry into effect, as soon as they are made known to him, my measures for the advancement of the institutions of this Colony, and for the improvement of Convict Discipline. I feel very much indebted to Mr. Montagu for his unwearied co-operation, and for the very important assistance which I have received from him in the discharge of his duties, ever since I assumed the administration of the Colony."

In February, 1839, Mr. Montagu again visited England, and on his obtaining leave of absence, received not only from his Excellency a government notice recording "the unwearied zeal for the public good which had distinguished the performance of his

duties" in Van Diemen's Land;—but also a very complimentary address from the Colonists expressing their anxious desire for his speedy return to the office of Colonial Secretary, which they stated, "he had so long conducted with advantage to the Colony and honor to himself." On his return to Van Diemen's Land, in March, 1841, Mr. Montagu received the most marked expression of general approbation, and confidence in his public and private character, which could be paid to any government functionary. A public dinner, with the largest company that had ever, up to that time, been assembled in Van Diemen's Land, on a like occasion, was given in compliment to him, by the most intelligent and influential of the Colonists, collected from every quarter of the island, and who represented every shade of political opinion. Sir John Franklin was present, and openly expressed the pleasure it gave him to witness the honor conferred on the Colonial Secretary on his return, and testified to the efficient and zealous manner in which he had invariably discharged the duties of his office.

The energies of Mr. Montagu were at this time especially turned to establishing the Probation System of convict discipline, in room of the Assignment System, which had been abolished by the Home Government. This new system was a national experiment upon a large and expensive scale, and it therefore became a matter of vast importance to administer it effectively. It was exactly the undertaking to give full scope to Mr. Montagu's talents, as well as to afford opportunity for the exercise of his great activity. With most painstaking assiduity he prepared all the instructions necessary for its operation, and furnished full and detailed orders to the several

departments for its execution : and besides this, at Sir John Franklin's request, visited the several stations chosen for the parties, in order to see that his instructions were properly understood, and duly carried out. Thus matters proceeded smoothly, and there existed both publicly and privately the most perfect cordiality between Sir John Franklin and his subordinate, the Colonial Secretary, when in Oct., 1841, arose, unexpectedly, one of those casual misunderstandings which, gathering to themselves importance from undesigned trifles and untoward coincidences, at length grow to such magnitude and vehemence that they distract counsels, and divide governments.

It is far from my intention to open afresh a wound which time has well-nigh healed in the feelings of those once closely connected with the circumstances alluded to ; and further still is it from my intention to sit in judgment, or cast blame on actions with the merits of which I am but imperfectly acquainted ; it is simply my purpose, as a biographer, having documents before me, to record, as faithfully and fairly as I can, whatever may vindicate the character of him whose biography I write. With those opposed to him, in Van Diemen's Land, I am wholly unacquainted. I question not their motives, I censure not the steps they took, I desire not to cast one unjust reflection, to speak one unkind word, to think even one uncharitable thought regarding them. I wish to stand clear of all design, of doing more than to note historically as a fact, an important circumstance in the life of him whose memoir I am relating. The two leading parties in the contention, can now contend in it no more. One of them certainly the other in all probability is beyond

the reach of strife; and their liberation from the struggles, and jealousies and fluctuations of this uncertain life, may well teach us how vain and transitory are all our differences when viewed from the dim and remote bourne of life's last scenes and moments. Trackless seas and impassable barriers, if we may conjecture, lie between the *two* now alike at rest. Whatever their once differences, the after career of each was one of public confidence, enterprize, and honor. The name of one will fix a mark of melancholy interest to Arctic scenes, where there is little doubt he has met the resolute adventurer's death; the name of the other is graven on the rocks of Afric's southern climes, where his indefatigable energies opened a passage through the fastnesses of pathless mountains. Both noble, both generous, both forgiving, could they have met in death's solemn hour, on the one grave's brink, after their long separation, and life's strange vicissitudes,—their last grasp would have been one of forgiveness,—their last words of reconciliation. Their lives were for their country, their deaths surrounded with sad and striking associations, and their bones repose far from the scenes in the far Australian world, where they once acted in unison, but parted in variance, to meet in this world no more. They rest! may their differences rest with them! and the bare record of the biographer, without blame and without reproach, simply state that these differences existed, and that from various causes they opened so great a breach between Sir John Franklin and Mr. Montagu, that it resulted in the suspension of the latter from office, and in his sudden return to England. His suspension was notified to him, by the Lieutenant-Governor, on the 25th January, 1842.

By some of Mr. Montagu's warmest advocates, it may probably be deemed unjust to his memory, not to detail in full the charges which were preferred against him: but the recital and re-consideration of them would necessarily involve a discussion now perfectly fruitless, and evoke from their silence and obscurity, matters now buried in oblivion. It is enough for the vindication of Mr. Montagu, and for the honor of his memory to record, that Lord Stanley, then Secretary of State for the Colonies, after going most diligently and painfully through all the documentary evidence, and giving the subject his most unbiassed attention, pronounced his decisive opinion in exculpation of the accused.

Immediately after his suspension, Mr. Montagu took steps for his return to England, with the intention of appealing to the Minister for the Colonies, and for that end embarked in the "Calcutta," Feb. 8, 1842. His unexpected suspension and departure from the Colony were subjects of regret on every hand; and persons of all ranks and stations, private individuals and public bodies, were eager to testify their sympathy. The following testimonial was set on foot by the Commercial Community of Hobart Town, and circulated through the Colony. It obtained 800 signatures, including those of almost every person of influence, and respectability. This testimonial was also accompanied by the request that Mr. Montagu would be the bearer of a sum of money (2000*l.*) for the purchase of a piece of plate, which substantial gift, as well as the attendance of a deputation, he thought it expedient to decline.

"We whose names are attached to this address have heard, with deep sorrow, that His Excellency the Lieutenant-Governor was yesterday pleased to suspend you in the exe-



cution of your duties as Colonial Secretary. Into the causes which have led to a measure so deeply affecting the public interests, we feel that it would be in us unbecoming to inquire, or if ascertained, to offer thereupon a single observation.

“We are under no such restraint, however, in asserting that the zeal, efficiency, honor, and independence, which you have ever exhibited in the public service cannot be supplied, and in this feeling, learning that you are speedily about to depart from these shores, we request that you will bear with you to England the sum which your delay of a few days here has enabled us to collect, there to be expended in the purchase of a piece of plate, upon which we are desirous of having engraven this motto—*‘Magna est vis veritatis.’*”

“Signed by nearly 800.”

To which Mr. Montagu returned, through the Chairman of the Committee, the subjoined reply:

“Newlands,

“5th February, 1842.

“Sir,—I beg to acknowledge the receipt of your letter of this day’s date, in which you are so good as to acquaint me that it is proposed to present me with a testimonial and subscription for the purchase of a piece of plate, previously to my leaving the Colony, and that a deputation of the subscribers would present the same.

“In reply to your kind communication, I do not lose a moment to request that you will convey my warmest thanks and acknowledgments to the gentlemen who have thus taken so kind a mode of expressing their esteem for me.

“I assure you I deeply feel the motives which have given rise to such an expression of kindness, but the position in which I unexpectedly find myself, and the consideration that my case should stand upon its merits, unsupported by any extraneous assistance, preclude me from accepting that which, under other circumstances, would be a lasting source of pride and gratification to me.

“I need scarcely add, that I shall ever feel the strongest

interest in the welfare and prosperity of Van Diemen's Land, to which objects I have already devoted so much of my life.

“ I have the honor to remain, Sir,

“ Your most obedient servant,

“ (Signed) J. MONTAGU.

“ To ———, Esq., J.P.”

Similar testimony to that furnished by the Commercial Community was also conveyed to him by the members of the Legislative Council, as follows:—

“ Van Diemen's Land,

“ *February 1, 1842.*

“ Sir,—We whose names are attached to this address, having had constant opportunities of witnessing the zeal, ability, and honorable deportment, with which you have invariably acted in the Legislative Council, cannot suffer you to depart from this Colony without expressing the high regard which we entertain for your public character and official conduct.

“ You have performed the duties of your high office with a just and consistent attachment to the rights of the crown. The untiring industry, too, which you have ever exhibited in the Council, and the desire you have at all times manifested to make every portion of the public expenditure intelligible, demand from us a distinct acknowledgment of your claims to our approbation.

“ (Signed by) THOMAS ANSTEY, M.L.C.,

“ and six others.

“ To John Montagu, Esq.”

#### REPLY.

“ Gentlemen,—I beg to acknowledge the receipt of your kind address, which has been presented to me this morning. That my public conduct should have secured such a testimonial from those who have had such frequent and good opportunities of judging of it is, under the circumstances in

which I am so suddenly placed, most gratifying to my feelings; and I am very glad that the consideration evinced by you enables me to accept this mark of distinction at your hands.

“I have now lived amongst you, Gentlemen, in official life, with little intermission, for eighteen years. I am conscious that during that period I have devoted all my energies to support the honor and dignity of the Crown, and to the best interests of this country; and it is a proud satisfaction to me to be thus assured by the unofficial members of the Legislative Council, that although frequently differing from you politically, my motives and exertions are appreciated by you all.

“With every good wish for the health and happiness of yourselves and families, and the prosperity of Van Diemen’s Land.

“I have the honor to remain, Gentlemen,

“Your most obedient servant,

“ (Signed) JOHN MONTAGU.

“To Thomas Anstey, Esq., M.L.C.,

“and others.”

The following letter, to the same purport, will be read now with additional interest, as the writer of it, after a life of thirty years, uprightly and honorably passed in the public service, as Chief Justice of the Supreme Court at Van Diemen’s Land, has just received his well-merited retirement:—

“Hobart Town,

“February 5, 1842.

“My dear Captain Montagu,—You know my objection to joining in public addresses to Government officers placed in the circumstances in which you now are, and if it is true, as I have heard, that an address is to be presented to you, I hope you will not impute it to any diminution of the great regard I have always professed and really felt for you, that I still adhere to the rule which I laid down for myself at a time when I could not have anticipated its application to you.

“But since you are pleased to think that the opportunities which I have had, during eighteen years, of forming a just estimate of your merits as a public officer have been such as would render my testimony satisfactory to your friends and to others in England, who may hear of your case, I cannot refuse to comply with the wish you have expressed, that I should give it in the more private form of a letter, which you are at liberty to show whenever and to whomsoever you may judge it useful to do so.

“Of your management of the business of the Town Adjutant’s Office I can say nothing, for it never came under my observation, and I might pass over the period when you were Clerk of the Council, by saying that you executed that office with fidelity to the Government and with regularity and despatch—the only qualifications the office requires; but it was during that time, if I mistake not, that the Government and the Colony reaped the benefit of the great services you rendered to them when you took over the charge of the Treasury . . . and when you projected and carried into execution those reforms in the administration of the Post-Office which proved so eminently useful.

“But it has been chiefly since you became Colonial Secretary that this community has been able to estimate your true value as a public officer; and I am sure even your enemies will admit your thorough knowledge of every branch of the public service; your unceasing application to business,—your quickness of apprehension,—your patient attention to the claims and representations which the settlers have had occasion to make to you, or through your office; your punctuality and despatch,—your zealous advocacy of all works of public utility, and the plain, open, intelligible and effective manner in which you have brought forward and conducted all the measures of the Government in the Legislative Councils.

“I know that the facility with which the great variety and large amount of the public business which has passed through your hands has been transacted, especially since your last return from England, has been the subject of very general admiration; and while on the one hand you have

the honor and the interest of the Government, you have, on the other hand, won the very great share which you enjoy of the public esteem, without ever condescending to run after popularity.

“ But what, according to my observation, was your chief value as a servant of the Government, consisted not in the ability with which you discharged one, or other, or all of the many duties of your office, but in your character, in the very high opinion generally entertained of your talents, your diligence, your sound judgment and your honor, and in the general confidence in you which resulted from that opinion, — a confidence which few Colonial public servants have been fortunate enough to acquire, at least to the same degree.

“ I have often witnessed its effect in the Legislative Council, and am enabled to say how great a benefit the Government has derived from it, and I know it has had effects equally beneficial out of the Council. Of the latter I could mention two instances which are probably unknown both to the Government and to you, which have come to my knowledge very recently.

“ But I must close this, I fear, too long letter; one can say much more of a man than to his face, and I could say much more of you were I writing to another; but I could not say less, even when addressing myself to you. God bless you, and those who belong to you; and in the confident hope that we may ere long meet again.

“ I am, my dear Montagu,  
“ Your faithful and most attached friend,  
“ J. L. PEDDER.”

Numerous letters of like character with the above reached Mr. Montagu from every quarter, as the tidings of his departure for England were received; many friends hastened from great distances, for the purpose of taking leave of him, previous to his embarkation; and every unequivocal demonstration of public opinion and private feeling and regard which could be manifested, testified, by the strongest



proofs, that Mr. Montagu left Van Diemen's Land honored and regretted by all.

On his disembarkation in England, the 24th June, 1842, he reported his arrival to Lord Stanley; and at once communicated to his lordship all the particulars of his suspension: the relation of them was manly, straightforward, confident; and concluded, after a full and circumstantial statement of all that could be offered in explanation and justification of his conduct, with these earnest words:—

“ In your Lordship's hands I leave my case with the most perfect confidence. My character, my happiness, my fortune, the prospects, the welfare and the advancement in life of my children depend upon your Lordship's decision; but I rest satisfied that truth, innocence, and honorable deportment will not be overlooked by your Lordship, when reviewing the conduct of a gentleman whose public life of upwards of twenty-eight years in the military and civil services of his Sovereign has hitherto been not only untarnished, but the subject of the highest commendations from every public functionary under whom he has served.”

The result of his appeal was, that his character was vindicated from any intentional disrespect towards the Governor; that he was acquitted by Lord Stanley of the charges laid against him; and that he was relieved from every censure which could impugn the integrity or the propriety of his conduct.

Such was the immediate issue of this misunderstanding; but its remote consequences influenced the whole of Mr. Montagu's after career. For many reasons, Lord Stanley thought it expedient that he should not return to his former office at Van Diemen's Land; yet, at the same time, his Lordship readily availed himself of an opportunity of showing in the plainest manner how fully he appreciated his

talents, and how confidently he could entrust to him a field of labor in which those talents could be exerted. The office of Colonial Secretary at the Cape of Good Hope was then vacant, and it was at once offered by Lord Stanley for Mr. Montagu's deliberation. The appointment he cheerfully accepted, under a sense of duty, although, as will be after seen, he had cause to anticipate that in one sense, it would not be to his advantage. One point, however, is clear, that this step was the turning point in his public history, for his new office gave full scope for energies and abilities of the highest order, and to fit himself for its full demands, was henceforth Mr. Montagu's untiring aim. How far he succeeded, the great public works and acts of lasting usefulness which he was instrumental in accomplishing at the Cape, must testify.

## CHAPTER III.

## CAPE OF GOOD HOPE—FINANCE.

ARRIVAL AT CAPE OF GOOD HOPE.—NEW SYSTEM OF FINANCE.—DEBT AND DIFFICULTIES OF THE COLONY.—EXTERNAL STATE OF THE COUNTRY.—MR. MONTAGU'S SCHEME FOR THE REMOVAL OF THE COLONIAL DEBT.—RESULTS OF HIS MEASURES.—STEADY INCREASE OF PUBLIC REVENUE.—DECREASE OF EXPENDITURE.—IMPROVEMENTS IN THE COLONY.—IMMIGRATION, ITS URGENT NECESSITY.—STRONGLY ADVOCATED BY MR. MONTAGU.—SIR PEREGRINE MAITLAND'S DISPATCH ON THIS SUBJECT.—IMMIGRATION STILL ABSOLUTELY REQUIRED.—REVENUE FROM GUANO AT MALAGAS ISLAND.—FROM CUSTOMS' RETURNS.—HEALTHY STATE OF THE REVENUE IN JULY 1844.—PROGRESS OF THE COLONY.—SIR P. MAITLAND'S ACKNOWLEDGMENT OF MR. MONTAGU'S SERVICES IN THE FINANCIAL DEPARTMENT AT THE CAPE.

WITH a character well established for zeal, comprehensiveness of view, and well-directed energy of official talents, and with a general acquittal from the charges preferred against him from Van Diemen's Land,—nay, as a “mark” of Lord Stanley's “undiminished confidence in his disposition and ability to render effective public service,” and with the honorable declaration of that eminent statesman, that it could “not be too distinctly understood that Mr. Montagu retired from the situation he so long filled with his public and personal character unimpaired, and with his hold on the respect and confidence of Her Majesty's Government undiminished,” Mr. Montagu was appointed Colonial Secretary at the

Cape of Good Hope ; where he arrived, and entered on office, April 23rd, 1843.

Previous to his departure from England, he had received instructions that he should direct his attention to the best means of placing the finances of the Colony, which had long been in an unsatisfactory state, on a new footing. The old system was a bad one ; and under it not only were the energies of the Colony embarrassed, but the British Treasury was subject to a heavy guarantee, on a large circulation of promissory notes. There was also a considerable debt against the Colony, which had been contracted from time to time, and the liquidation of which appeared very remote.

During the administration of Government by Sir George Napier, his Excellency, with the advice of the then Colonial Secretary, Colonel (now Sir John) Bell, and aided by the Executive Council, had drawn up, and submitted for the approval of the Secretary of State for the Colonies, a new finance system for the Cape of Good Hope ; but Mr. Montagu having, shortly after his arrival, furnished his Excellency with another project for financial improvement, Sir George Napier readily and frankly allowed it was better than the one in contemplation, and gave his full approval that it should be acted upon, which was subsequently done.

Previous to Mr. Montagu's arrival as Secretary, by the careful administration of Sir G.<sup>c</sup> Napier, 61,612*l.* of guarantee notes were withdrawn from circulation and cancelled ; and steps were in progress for the retrieval of a further sum of 25,000*l.* ; but, as will be seen hereafter, by a statement drawn up by Mr. Montagu, and from other documents,\*

\* See Appendix

the liabilities of the Colony were great and burdensome, amounting in all to 182,851*l.*; and this not only stood as a demand against the Colony, but as an insuperable obstacle to every large improvement or considerable expenditure for its advancement; for it is understood, that the Governor of the Colony received positive instructions not to allow any portion of the general revenue to be devoted to the encouragement of emigration, or to the furtherance of extensive public works, until the cancellation of the paper debt was completed; and that the local government was debarred from incurring further debt "upon any plea of utility or demand," until the resources for carrying on public works had been realized.

It is clear, then, that Mr. Montagu could not recommend, however desirable it might be, any large undertaking for public improvements at the Cape, till the liabilities of the Colony were discharged. To remove the colonial debt was, therefore, his first endeavour, and in it he had the full sanction and support of Sir George Napier, under whose government 131,612*l.* of the guarantee notes were eventually cancelled.

So clear was the new system devised by Mr. Montagu for paying off the debt and increasing the revenues of the Colony, and so strenuous and successful the operation and progress of his measures, that in two years and a half the whole debt was liquidated; and this by means as fair and easy to the inhabitants of the Colony, as just and simple in their arrangement, requiring no new impost, no burdensome tax, but a vigorous application of the Colony's available resources.

It will be well, in order to place in a true light



the Secretary's talents and unwearied exertions in removing the financial difficulties of the Cape, and laying a foundation for its future prosperity, to give an outline of the position of affairs previous to his arrival, and the measures adopted by him for their amendment. There was, as stated above, a heavy debt of 182,851*l.* The mountain barriers of the country were, with two exceptions, unopened, save here and there, where the unassisted farmers had made such passes as could be traversed with hazard of life, and destruction of the lumbering wagons which, with tedious delays, were dragged over them. The lines of communication between the distant parts of the Colony were little more than natural roads, and those of the roughest and most ruinous description, — unformed, unlevelled, unrepaired, — causing communication from place to place to be unthought-of except by extremest necessity. The rivers were unbridged, and only to be crossed at uncertain *drifts*, which, in summer, were rough causeways of broken rocks and immense boulders, and, in winter, hazardous rapids, swoln and turbid from strong mountain torrents. Thus was a country, in extent equal to Great Britain and Ireland, almost untraversable, and yet hopelessly debarred from improvement, owing to the want of funds, and from a heavy debt, "threatening," as was written in one of the journals of the day, "to seal the Cape down in irreclaimable barbarism." This deplorable state of the Colony's external aspect and impassable condition was on more than one occasion, represented by Mr. Montagu's predecessor, Sir John Bell, in the very strongest and most earnest terms; and the Governor, Sir George Napier, in the year 1840, when meetings were held both in the Western and

Eastern provinces, expressing a wish that the amount arising from quit rents on Government land should be appropriated for the introduction of emigrant labor, objected to such appropriation, on the consideration that all such available proceeds should be applied for the opening of roads, the construction of bridges and lighthouses, and such public works as would tend to remove the physical ruggedness and obstructions of the country.

The exact nature of the debt of the Colony, and the means devised by the new Secretary for its discharge will be most readily understood from the following statement, drawn up by himself shortly after his arrival at the Cape. This is given *in extenso*, as affording the most lucid account which can be furnished; and also as showing, in his own way of stating it, Mr. Montagu's plan for extricating the Colony from its perplexity:--

“ Colonial Office, Cape Town,  
“ 27th October 1843.

“ Sir,—In attention to your Excellency's directions, that I should prepare and lay before you a statement of the Colonial Paper Money Debt, as it stood at the beginning of this year and as it now stands, and also should submit for your consideration the course to be observed for liquidating it, I have the honor to inform your Excellency that I have, in consequence, perused with great attention the whole of the voluminous correspondence on this subject which has taken place since the year 1839 with Her Majesty's Government and the Departments here, as well as the numerous documents and complicated accounts connected therewith.

“ It would be difficult to prepare a synopsis of those papers, with a view to report upon the comparative merits of each of the schemes proposed for the extinction of the debt; but happily, it is not necessary, Her Majesty's Govern-

ment having decided the principle upon which the funds are to be obtained for the object in question. The arrangement definitively laid down is, that the Colonial Government should issue at par, to the holders of any Government paper which may be tendered for the purpose, in sums of not less than 100*l.*, or some other given amount, debentures to bear interest at five per cent. per annum, and that there should be made a gradual issue of new notes (in lieu of such amount of the existing paper as may not be converted into debentures) to be exchanged, at par, at the Treasury for specie, on demand. This new issue is to be regulated with reference to the amount of specie balance that may accrue in the Treasury, in such manner as shall not lead to inconvenience, and is to be limited hereafter to such amount as the Government may see reason to conclude will remain in circulation on the same terms, without leading to large and fluctuating demands for specie, or inducing the necessity of considerable balances being retained in the Treasury to meet them. Should the debentures not be applied for at the rate of interest proposed, it must be increased, or the debentures must be disposed of by tender, in exchange either for specie or the outstanding paper, as may be found most advantageous. These issues are to be upon the understanding that the debentures and the notes are to be called in and paid off, as rapidly as the accruing surplus revenue of the Colony will admit. The Government is to reserve the option of calling in the debentures at any time, and paying them off according to numerical order and date.

“Blank forms of the notes, to the amount of 100,000*l.*, which it is proposed to issue, and the medallions for striking off more when required, were received from England on the 10th instant, having been there prepared under the direction of the Secretary of State, in accordance with your Excellency's suggestion, and it now, therefore, becomes necessary to take immediate steps for calling in and redeeming the outstanding Government notes.

“Before reporting, however, upon the details necessary for effecting that purpose, I will point out the exact amount and nature of the debt as it stood in January last, and as it at present stands; and will then bring under

review the probable means which will be available for discharging it.

“By the enclosure No. 1,\* it will be seen that the amount of outstanding Government notes which remained to be cancelled on the 1st January, 1843, was 141,086*l.*, and that which remains at this date 71,086*l.*, being the balance now in circulation of the promissory notes issued at various times by the Government for the conversion of the rix-dollar paper currency.

“I would here remark, that the exigencies of the service and the public want compelled the Government of the Colony in 1782 to create a paper currency in rix-dollars. This first creation was increased by various issues made at different periods both by the Dutch and English Governments, as occasion rendered necessary. At the period when so much of the old rix-dollar paper money, as had been created for the service of the Colonial Government, was exchanged for British promissory notes, the value of sterling notes, issued from time to time by the Colonial Government in conversion of their portion of the old paper between the years 1832 and 1837, amounted to 202,698*l.* Of this sum there have been withdrawn from circulation and cancelled from time to time, since 1841, notes to the value of 131,612*l.*, leaving a sum of 71,086*l.* yet to be redeemed.

“Of this paper currency of the Colony a sum of 98,269*l.* 2*s.* 9¾*d.* sterling value was administered by the late Lombard Bank, under the denomination of the Long Loan Fund, and a further sum of 37,500*l.* by the same bank, under the name of the Rds. 500,000 Fund, which latter was specially created for the erection of public works. The difference between those two sums and the total issue of 202,698*l.* viz., 66,929*l.* consisted of rix-dollar notes, which had been issued for various Colonial services at different periods, and included the sums required to cover the frauds and forgeries which had been committed upon that currency to the extent of 36,588*l.* 16*s.* ¾*d.*, the particulars of which, so far as they could be ascertained, have from time to time been reported to the Home Government.

\* See Appendix.



“ In January last, securities of the Long Loan Fund, to the extent of 50,000*l.* had been realized, and had been applied to redeem and cancel an equal amount of Government notes; and in May last, a further amount of notes, to the extent of 25,000*l.* was cancelled by similar means, leaving at that time outstanding in original securities upon loans made to individuals from that fund, a sum of 14,632*l.* 13*s.* 0<sup>3</sup>/<sub>4</sub>*d.* A sum of 8,331*l.* 7*s.* 10*d.* which had been lent in like manner from that fund, was paid off some time ago, but it was re-lent on cash credits and bonds to individuals by the Discount Branch of the Lombard Bank, prior to April, 1839, and those securities were also outstanding in May. These two sums amount together to 22,964*l.* 0*s.* 10<sup>3</sup>/<sub>4</sub>*d.*, and if they are added to the 75,000*l.* of notes cancelled with the proceeds of the Long Loan Fund up to May last, and to a sum of 305*l.* 1*s.* 11*d.* which has been carried to account of profit and loss, the proceeds and assets of the Long Loan Fund at the time last-mentioned, will be under review.

“ I now proceed to notice, as connected with the redemption of the paper money, the other liabilities of the Colonial Government. I must explain that in the year 1823, the Local Government, under the authority of the Home Government, drew upon the Treasury for the sum of 35,097*l.* 10*s.* 7*d.*, which was lent to the Colonists, under the name of the *Storm Fund*, for the relief of persons who had suffered by the storms which had at that time devastated the Colony. From this fund a sum of 15,000*l.* was lent to a Colonial fund which previously existed, called the Agricultural Fund, to replace moneys borrowed to that amount from other sources for its formation for the relief of the agriculturists. Of the sum originally advanced from this fund of 15,000*l.* (and which is also known by the name of the Agricultural Fund) 12,314*l.* 8*s.* 11*d.* have been repaid to this Government, but that amount has been placed out again on cash credit through the Discount Bank. The Government held original bonds for this fund, to the extent of 2,360*l.* 14*s.* 6*d.*; and if to these two sums be added 324*l.* 16*s.* 7*d.* carried to account of profit and loss the whole of the Agricultural Fund will also be accounted for, up to the month of May last. Of the Storm Fund, properly so called, a sum of



3,396*l.* 13*s.* 7¼*d.* has also been repaid to the Government, and again placed out through the Discount Bank.

“ The securities, then, which were available for the redemption, in part, the paper debt in May, were—

Original bonds outstanding on account of the Long Loan Fund, . . . . .	£14,632 13 0¾
Amount repaid on account of said fund, and reinvested through the Discount Bank (including cash realized of those reinvestments) . . . . .	8,331 7 10
Original bonds outstanding on account of the Agricultural Fund . . . . .	2,360 14 6
Amount repaid on account of the said fund, and reinvested through the Discount Bank (including cash realized of those reinvestments) . . . . .	12,314 8 11
Amount repaid on account of the Storm Fund, properly so called, and reinvested through the Discount Bank (including cash realized by those reinvestments)	3,396 13 7¼
	<hr/>
Total assets	£41,035 17 11

“ Of the bonds forming part of these assets 14,334*l.* 1*s.* 0*d.* have been realized since May last; which with the sum of 2,665*l.* 19*s.* 0*d.* of those assets in cash, were applied towards the cancellation of the notes on the 25th instant, leaving the assets at 24,035*l.* 17*s.* 11*d.* of which 23,910*l.* 6*s.* 2¼*d.* are in bonds, and 125*l.* 11*s.* 8¾*d.* in cash.

“ In the amounts realized since May, are included the sum of 12,631*l.* 6*s.* 0*d.* of securities the Master of the Supreme Court recently selected and took over, and for which he paid the Government their value out of a part of the balances in his custody to the credit of the Guardian's Fund. Of the sum of 23,910*l.* 6*s.* 2¼*d.* of securities, returned to the hands of the Government, 5,412*l.* 1*s.* 5½*d.* consist of unpaid vendue acceptances, received by the Treasurer, and carried to the credit of the public between the 8th of October, 1830 and 26th March, 1835, instead of being placed

to the account of cash credits, leaving actually only 18,498*l.* 4*s.* 8 $\frac{3}{4}$ *d.*, of which it will be seen by enclosure No. 2,\* that 5,398*l.* 12*s.* 10*d.* are of doubtful character; 7,469*l.* 3*s.* 10*d.* bad, and only 5,630*l.* 8*s.* 0 $\frac{3}{4}$ *d.* likely to be recovered.

“The money obtained by the arrangement with the Master, added to the funds which I stated have been realized since May last, and by the addition, likewise, of some surplus revenue, enabled your Excellency to destroy a further sum of 20,000*l.* of notes on the 20th instant. This, with the cancellation which was effected on the 10th instant of notes to the extent of 25,000*l.* by the appropriation of surplus Colonial revenue, has reduced the amount of paper money to be redeemed by debentures, to the sum of 71,086*l.*

“It must not, however, be lost sight of, that this Government is responsible to the Home Government, on account of the Agricultural and Storm Fund, in the sum of 18,396*l.* 13*s.* 7 $\frac{1}{4}$ *d.*, which it will have to repay, after the debentures to be issued in redemption of the existing paper money shall have been all called in and paid off.

I have mentioned that the sum of 35,097*l.* 10*s.* 7*d.* was obtained from the Home Government in 1823 for the Storm Fund; but I have only accounted for 18,396*l.* 13*s.* 7 $\frac{1}{2}$ *d.* A portion of the difference has been remitted to Her Majesty's Government, and the remainder of it, still due by individuals, will be paid direct into the military chest, as the several sums are, from time to time, recovered. The accounts of this fund appear to be in such a state of confusion, that it will take a considerable time to rectify them, and prepare a satisfactory statement of it.

“Of the Rds. 500,000 Fund, viz., 37,500*l.* in sterling value—a sum of 1,125*l.* was destroyed on the 4th March, 1814; and a further sum of 11,612*l.* in notes, was destroyed in April 1842. 24,762*l.* 12*s.* 2*d.* has been invested in the erection of public buildings, &c., in different parts of the Colony, and is not likely ever to be realized; the balance, 7*s.* 10*d.* has been recently paid into the Colonial Treasury, and the accounts of this fund have been closed.

\* See Appendix.

“The Government debt, then, now stands thus, viz. :—

	£.	s.	d.
Outstanding notes -	71,086	0	0
‘Due to H.M’s. Government	18,396	13	7½
	<hr/>		
Total - - -	£89,482	13	7½
	<hr/>		

“To meet this debt there are now outstanding securities to the amount of 23,910*l.* 6*s.* 2¼*d.*; of which only 5,630*l.* 8*s.* 0¼*d.* are estimated as likely to be realized and applicable to its payment: leaving a sum of 83,852*l.* 5*s.* 6¾*d.* to be provided from other sources.

“What those other sources are, and what aid may be expected from them, I will now proceed to detail.

“Your Excellency will remember that I laid upon the table of the Legislative Council, on the 21st June last, a return of arrear taxes, due by the inhabitants of Cape Town, up to the 31st December, 1840, (at which time the taxes ceased) which were unpaid at the date of that return, amounting to 25,146*l.* 6*s.* 11¾*d.*, and on the 31st July, I laid a similar return upon that table for all the divisions of the Colony, the unpaid amount at that date being 5,066*l.* 19*s.* 5¼*d.* By these two returns it appeared, that the sum of 5,055*l.* 16*s.* 6½*d.* was due to the Municipality of Cape Town; and that 5,708*l.* 2*s.* 5½*d.*, from the various causes assigned in the returns, were considered irrecoverable; thus leaving 19,449*l.* 7*s.* 5½*d.* to be collected by the Government. Since that time about 1,359*l.* 7*s.* 6¼*d.* of the arrears due to Government have been collected, leaving 18,089*l.* 19*s.* 10¼*d.* to be collected.

“On the 28th August, I submitted to your Excellency the accompanying Memorandum and Abstract, respecting the land rents which were in arrear at that date. They then amounted to 20,233*l.* 1*s.* 6½*d.* Of that sum 1,935*l.* 1*s.* 0¼*d.* were, it will be seen, not available, and about 3,025*l.* 6*s.* 9¼*d.* have since been collected. There remains, therefore, 15,272*l.* 13*s.* 8*d.* to be collected.

“The third source is from the Guardian’s Fund. Your Excellency having requested to be furnished with a brief history of the origin, progress, and present state of the Orphan

Fund and Guardian's Fund, I avail myself of this opportunity of supplying it.

"The Orphan Chamber was established by the Dutch Government in the year 1691. Its object was the administration of testate and intestate estates, in which there were minors or heirs resident abroad.

"Previous to 1691, the property of minors and absent persons was administered by officers appointed by the Government. It was not until the year 1714, that the members of the Orphan Chamber were furnished with definite instructions for their guidance. Those then issued were modified in 1793. In 1804, revised instructions were furnished to them, under which they continued to act until the year 1828; when the Ordinance, No. 42, dated 25th February, 1828, with the instructions last mentioned, superseded those previously in force. The Orphan Chamber was abolished on the 1st March, 1834; from which date testate and intestate estates have been administered by executors testamentary and dative, appointed under the provisions of Ordinances, Nos. 104 and 105. The duties of the Orphan Chamber have been performed by the Master of the Supreme Court, under the provisions of the Ordinance, No. 105, and the affairs of that department are now in a course of progressive liquidation.

"The capital of the Orphan Chamber arose from monies invested at interest and belonging to minors, absent, or unknown persons, major heirs, or unpaid creditors. It was administered under the instructions above mentioned, and under the Ordinance, No. 42., until the 1st March, 1834, when it was paid over to the Master of the Supreme Court, by whom it continues to be administered, in virtue of the provisions of the Ordinance, No. 105, under the denomination of the 'Guardian's Fund.' As portions of this fund are repaid, they are, from time to time, reinvested by the Master. The monies paid into this fund since March, 1834, consist of the inheritances of minors, lunatics, and persons unknown or absent from the Colony. During the last ten years it has been augmented by a sum of about 24,000*l.* On 30th June, 1843, the fund amounted to 225,388*l.* 16*s.* 8*d.*, including the amount held in bonds, by usufructuaries (the survivor of



joint estate, by the late Orphan Chamber, passed in bond for the filial portion of the minor children, and being allowed the usufruct or profits of the estate, was called the Usufructuary). Interest at the rate of one per cent. less than the rate received, is paid on the moneys of minors and lunatics, and one half the legal rate is allowed to absent or unknown heirs for a period of five years, if they remain so long absent or unknown.

“The moneys of the Guardian’s Fund remaining unclaimed for a period of forty years, lapse to the Crown, and become payable to the Colonial Treasury.

“As interest was only payable by the Orphan Chamber on the moneys belonging to minors, and as the capital consisted of moneys which belonged also to absent and unknown persons, major heirs, and unpaid creditors, on which no interest was allowed, the amount of interest derived from the capital invested necessarily exceeded the amount of interest paid; and from this excess of interest originated a fund, designated by Mr. Commissioner Dehwit ‘The private fund of the Orphan Chamber,’ which constituted part of the capital of the Chamber. The amount standing to the credit of this fund, at its first formation in 1698, was 12*s.* 6*d.* On the 31st December, 1827, it had accumulated to the sum 40,392*l.* 2*s.* 11 *d.* From the period last mentioned, when the further accumulation of the Private Fund was directed to be stopped, an excess of interest continued to arise as heretofore, for the reason already explained. That excess was denominated the ‘Profits of the Private Fund,’ which designation it maintained until the 1st March, 1834, from which period it has borne the appellation of ‘Surplus Interest.’ The terms ‘Private Fund,’ ‘Profits of the Private Fund,’ and ‘Surplus Interest,’ are thus synonymous, signifying the profits of the establishment, arising from an excess of the interest derived from the capital invested over the interest of the moneys paid to minors and others.”

“The ‘Profits of the Private Fund’ were paid into the Colonial Treasury in aid of the general revenue, and the ‘Surplus Interest,’ as it accrues, continues to be so paid. As no interest is allowed to major heirs whose inheritance remained unclaimed, or to absent or unknown heirs, except



in the case already mentioned, namely, for a period of five years, if they remain so long absent or unknown, there will always be an excess of interest derived over the interest paid, exclusive of the amount of interest (one per cent.) derived from the administration of the moneys of minors.

“ With the exception of some trifling sums, which may be recovered hereafter, and which, when recovered, will be appropriated to the reduction of the balance of the debt due by the Cape Government to the Home Government, on account of the debt contracted to the East India Company in 1825, the private fund may be considered to be disposed of. Of the sum of 40,392*l.* 2*s.* 11 $\frac{3}{4}$ *d.*, which stood to its credit on 31st December, 1827, the sum of 10,000*l.* was deposited in the Discount Bank (now the Treasury), under the order of the King in Council of the 24th November, 1828, ‘There to remain as a security against any considerable loss which the Orphan Chamber may sustain in the administration of estates entrusted to its management.’ The sum of 16,390*l.* 5*s.* has been applied in part liquidation of the debt contracted to the East India Company. (It is necessary perhaps that I should here explain that the Cape Government borrowed 18,750*l.* of the East India Company in 1825, which has since been repaid from the ‘private fund’ of the Orphan Chamber, excepting the balance of 2,359*l.* 15*s.*) The residue of the ‘private fund’ (1,401*l.* 17*s.* 11 $\frac{3}{4}$ *d.*) consists of 9,916*l.* 0*s.* 2 $\frac{1}{4}$ *d.* advanced by order of the Government to churches and other public bodies, and 4,085*l.* 17*s.* 9 $\frac{1}{2}$ *d.* of losses sustained by the late Orphan Chamber in the administration of the funds entrusted to its management. For several years previous to 1828, the private fund had contributed to the support of various charitable institutions, namely,—

“ The Orphan House,

“ The Bible and School Commission,

“ The Education Funds,

“ The Clergymen’s Widows’ Fund;

and it was in accordance with the same spirit that the advances above mentioned were made in aid of churches and other public establishments.

“ The order of the King in Council of the 24th No-

vember, 1828, directs the balance of the private fund to be appropriated to 'the public service, and expended in works of public utility;' and it having been so appropriated, it seems desirable that those advances, as well as the losses sustained, should be set off against the fund, and this fund finally closed. At present it exhibits a state fictitious, both in its nature and amount.

"Before alluding to the probable aid that may accrue to the Colonial Government from the Guardian's Fund, during the years 1844 and 1845, in liquidation of the Colonial debt, it is necessary to explain a few of the items which, it is anticipated, may compose part of that aid.

"Mr. Dessin, formerly Secretary to the Orphan Chamber, appointed the Orphan Chamber his legatee, directing that the property bequeathed by him should be appropriated to the support of that department. The Government having defrayed the expense of the department from the year 1808, and succeeded to its rights and obligations, there seems to be no valid reason to prevent the Government from claiming that bequest.

"The Orphan Chamber was required to report to Government, every tenth year, the amount due to unknown persons. From the period of the first establishment of the Orphan Chamber, several sums have been paid to the Colonial Government, of moneys remaining unclaimed, and the last payment so made included part of the amount unclaimed up to December, 1821. In accordance with the instructions of the Chamber, a further sum, which had remained unclaimed for periods ranging from twenty to eighty years, was payable to Government by the late Orphan Chamber, in liquidation of the amounts remaining unclaimed on the 31st December, 1833, and in virtue of the provisions of the Ordinance, No. 103, the amount that had lapsed under those instructions, previous to the abolition of the Orphan Chamber, is assumed to be payable into the Colonial Treasury; there being no likelihood that any part of that sum will ever be claimed, and if claimed the Government would remain answerable for the amount.

"Assuming from an estimate the Master of the Supreme Court has furnished, that the excess of interest payable to

the Colonial Treasury, under the 35th Section of Ordinance No. 105, amounts, for the years 1844 and 1845, to the sum of 3,000*l.*, the probable aid for those periods would be as follows, viz.:—

	<i>£.</i>
Excess of interest derivable from the Guardian's Fund, over the interest payable to minors and others . . . . .	3,000
Fees under Ordinances Nos. 104 and 105 . . . . .	500
Amount of Dessin's Legacy . . . . .	1,815
Amount administered for unknown persons . . . . .	7,000
	£12,315
Deduct ordinary revenue . . . . .	3,500
	£8,815
Extraordinary aid, which can be applied in liquidation of the debt . . . . .	£8,815

“ I do not calculate upon any aid from the private fund of the late Orphan Chamber, as the Master's estimate shows that there are some sums outstanding of that fund, and these when recovered will be appropriated in liquidation of the balance due on account of the debt contracted to the East India Company.

“ The fourth source is from the Prize Negro Fund. This fund originated thus:—Certain slaves, imported into this Colony in 1808, were released from slavery; but the parties who imported them were permitted to have them indentured to them for seven years. On the expiration of that period it was deemed advisable that they should be apprenticed out to different individuals for a further period of seven years; and the moneys paid for their services by the respective masters to whom they were indentured were placed in the hands of the Fiscal, for the formation of a fund for the support of the negroes in old age or sickness. In 1822 these moneys were placed under the administration of the Orphan Chamber, and after accumulating there, they were deposited in the Savings' Bank, in August, 1831; and in April, 1839, the account and the funds were transferred to the custody of the Government. It then amounted

to 2,551*l.* 10*s.* 9½*d.* Of that sum 2,000*l.* was lent, on 30th December, 1839, on a mortgage to the South African College, and 400*l.*, on the 6th July, 1842, to the Cape Town School of Industry, on interest at four per cent. per annum, repayable at any time, upon three months' notice from the Government; and the balance of the fund, viz. 151*l.* 10*s.* 9¾*d.*, was carried to the account of the Treasurer, in March, 1843.

“As there have been no claims upon this fund since it was transferred from the Savings' Bank, the Government having in point of fact superseded the object intended at its foundation, by the admission into Somerset Hospital and Pauper Establishment of all candidates who would be eligible to be relieved from it, there can be no doubt of the propriety of the balance of the fund remaining to the credit of the public; but whether it would be politic to disturb its present disposition, and whether, if disturbed, greater injury would not, in a public point of view, accrue to the two institutions, holding it on mortgage, than benefit to the Government by its acquisition, are questions worthy of serious consideration. My opinion is against any alteration at present, of this fund as invested.

“The next sources of aid arise from advances or disbursements made at different times by the Government on account of other Governments or individuals, which, although unpaid at this time, are repayable to the Colonial Treasury. By the enclosure No. 4, it will be seen that they amount to 2,394*l.* 12*s.* 11*d.*

“The result, then, of my Report upon the several services for defraying the Colonial debt stands thus:—

1. Recoverable securities in the hands of the Treasurer-General . . . . .	£5,630	8	0¾
2. Recoverable arrear taxes . . . . .	18,089	19	10¾
3. Recoverable land rents . . . . .	15,272	13	8
4. The Guardian's Fund and late Orphan Chamber . . . . .	8,815	0	0
5. Prize Negro Fund . . . . .	2,400	0	0
6. Unpaid advances . . . . .	2,394	12	11
	<hr/>		
Making a Total	£52,602	14	6½



“As the debt to be discharged amounts to 89,482*l.* 13*s.* 7½*d.*, it is evident that the means enumerated will be deficient in the sum of 36,879*l.* 19*s.* 1*d.*

“In the month of August last I brought the means of redeeming the land rents under notice, with a view to raise funds for liquidating this debt (see enclosure No. 3). Your Excellency then expressed your concurrence in the scheme and your readiness to carry it out. The annual land rents on the books amount to something above 14,000*l.*, which at fifteen years' purchase would produce 210,000*l.* But it is not necessary for the present object, that they should all be redeemed. The redemption of about 40,000*l.* would be sufficient. It must at the same time be borne in mind that, although the revenue would be reduced by the measure to the extent of the annual value of the redemptions effected, the interest of the debentures would be reduced in the same ratio. If it should be considered advisable to allow all the quit rents to be redeemed, and apply the residue, after discharging the debt, to public works, to immigration, or to any other system of productive investment which would tend to decrease the Government expenditure (which is tantamount to an increased revenue), or which would have the effect of decreasing expenditure in commerce, trade, manufactures or labor, or of increasing the consumption of Colonial produce or dutiable imported articles, an increase of revenue, must, I doubt not, be very soon experienced equivalent to the loss of redeemed land rent.

“It now only remains for me to point out to your Excellency the course to be pursued for raising the money immediately required to cancel the outstanding notes. The sum requisite for that purpose is 71,086*l.*

“I propose to issue debentures to the Master of the Supreme Court for the sum of 15,900*l.*, which will absorb so much of the balance in his charge belonging to the Guardian's Fund, as he considers will not be required to meet the public demands upon. These debentures should be for 100*l.* each, to bear interest at the rate of 5*l.* per cent. per annum, payable half yearly, and redeemable by the Government at any time on demand.



“ I have the Master’s authority to state that he cheerfully accedes to this proposition.

“ The balance of the sum (56,086*l.*) required in exchange for debentures should be obtained in the manner directed by the Secretary of State ; and if the Government should not in the first instance procure it at par, at the rate of five per cent. per annum interest, tenders must be invited at a higher rate of interest, or, which is the same thing, for the debentures at a discount. Should these attempts fail, the new Government paper must then be issued to supply the deficiency, in such amounts as may be requisite, in notes ranging in value from 5*l.* to 100*l.*

“ The amount of outstanding notes in the Commissariat chest in Cape Town, yesterday, was 20,500*l.*, and in the Commissariat chest on the frontier, 15,050*l.* The remainder of the notes (35,536*l.*) are in general circulation throughout the Colony, and it will be necessary for your Excellency to issue a notice declaring that the guarantee of Her Majesty’s Government that those notes shall be received by the Commissariat in exchange for Treasury bills, at the rate of 101*l.* 10*s.* 0*d.* for every 100*l.* bill, upon the application of the parties requiring such bills, is withdrawn, and that, in future they will be received by the Commissariat Department on the same terms as specie.

“ Some weeks since I instructed the Treasurer General to direct the several Civil Commissioners not to re-issue any of the old paper notes which might come into their public chests, but to transmit them to him. By this means and by the proposed Government notice, they will all, I imagine, be in possession of the Government very shortly.

“ It being of consequence to the Colonial revenue to relieve it, as far as practicable, from the payment of interest upon debentures, I would recommend your Excellency, since it would not be repugnant to the spirit of the instructions from Her Majesty’s Government, not to accept more than 10,000*l.* at present, in specie in exchange for debentures, as that, with the money to be received from the Master, will be sufficient to purchase the notes now in the Commissariat chest in Cape Town, and, as the remainder of

the notes hereafter accumulate in Cape Town, I would suggest to your Excellency to invite fresh tenders for such further sums of specie, from time to time, as may be requisite. Such a course will not only be beneficial to the revenue, but will prevent that inconvenience to the community which a sudden withdrawal from circulation of specie equal to the whole amount of notes to be redeemed, would certainly occasion. It will also remove the necessity of issuing any of the new Government notes, which, in my opinion, is very essential, tending as such an issue inevitably will, to disturb the pecuniary transactions of the Colony and its circulating medium. It must be borne in mind that, whatever number of new notes should now be issued by the Government, they must be withdrawn from circulation so soon as the debt is discharged; and this I estimate will be effected within a period not exceeding two years.

“In order to avoid the inconvenience to which mercantile or other parties might be subjected by an entire and sudden suspension of the Commissary General’s drafts upon the Lords Commissioners of Her Majesty’s Treasury, in exchange for the Government paper upon its cancellation, Her Majesty’s Government have issued the necessary directions, which will be notified to the public by the Deputy Commissary General.

“In my estimate of the ways and means for liquidating the debt, your Excellency will perceive that I have not calculated upon any surplus ordinary revenue for that purpose. My silence upon this point must not, however, be construed unfavourable. My opinion, from the insight I have already obtained is, that the revenue is susceptible of improvement, and the expenditure of retrenchment. But this is neither the time nor the place to enter upon the subject. In March next, when the estimates for the service of the year 1845 are laid before the Legislative Council, I shall be prepared upon it.

“I will take the liberty of adding but one remark more, as the law of the Colony now stands, the limitation in point of time, for a creditor demanding and suing his debtor for his debt, is one-third of a century. From what I have seen of the operation of that law, it works harshly, in my opinion, and requires to be amended. Instances have come before

me officially of demands having been made upon debtors, or their sureties, and legal proceedings instituted, after a lapse of twenty years, without any demand whatever for payment having been made in the interval. Such a course could not be pursued in England, excepting upon specialities. Simple contract debts would be exempted. The English statute of limitations very properly protects a debtor, unless his creditor makes demand and uses due diligence to recover his debt at short intervals. A law founded upon a similar principle should, I think, obtain here for all debts, whether Government or otherwise, contracted after its promulgation. It could not, of course, have an *ex post facto* operation, nor is it necessary, perhaps, that it should.

“ I have the honour to be, Sir,

“ Your Excellency’s

“ Most obedient humble servant,

“ (Signed) JOHN MONTAGU.”

From this statement and from documents in explanation and confirmation of it, it must be allowed that on Mr. Montagu’s entering on office, although successful steps had been taken for the diminution of the Colonial debt, a vigorous investigation of the available resources of the Colony was still required to remove it altogether. The most persevering application was given by Mr. Montagu to this important task, and it was speedily crowned with success : for in less than three years there was a surplus revenue, opening out the long closed prospect of improvement and prosperity.

The measures adopted by Mr. Montagu were, for (for perspicuity’s sake, it may be well to recapitulate the proposals laid down in the statement):—

1. By collecting arrears of taxes due by the inhabitants of Cape Town and other divisions of the Colony.

2. By collecting arrears of land rents.

3. By appropriation of unclaimed sums from a Colonial Fund, called the "Guardian's Fund."

4. By using a balance of a fund called the "Prize Negro Fund."

5. By application of sums, advanced at different times on account of other governments or individuals, but repayable to the Colonial Treasury.

6. By the redemption of land rents.

These measures were not only advised by Mr. Montagu, but for the most part vigorously carried into effect by him, under the governors Sir George Napier and Sir P. Maitland; and despatches\* from the Secretary of State for the Colonies, and from Sir George Napier, show that they viewed them as most able and satisfactory; and that they entertained the highest estimation of Mr. Montagu's services and talents. The influence of these measures on the Colony was most evident: a new life seemed to be infused into it, and confidence and spirit were awakened in the public mind. Those who had long looked upon all improvement and progress at the Cape as hopeless were now encouraged to believe, that it had resources for advancement, and that there was a stirring and prompt mind there which could give impetus and a right direction to those resources. The Colony once free from debt, and its available revenue being vigilantly administered, a desire for enterprize began quickly to manifest itself, and this desire found ready aid in the extensive and bold designs of the Secretary.

The first great improvement, which soon resulted from the new measure, was the increase of the revenue; this went on steadily improving till, in 1852, it had more than doubled what it amounted to

\* See Appendix.

in 1834, and nearly attained to one hundred thousand pounds in excess of what it reached in the year of Mr. Montagu's taking office. This will be seen from the subjoined tabular view:—

Comparative Statement of the Revenue of the Colony of the Cape of Good Hope in the Years 1834, 1843, and 1852.

HEADS OF REVENUE.	1834.			1843.			1852.		
	£.	s.	d.	£	s.	d.	£	s.	d.
Customs, dues, and wharfage	15,778	2	5	75,190	18	10	152,281	17	7½
Land sales and sales of other Government Property	2,550	12	5¼	5,823	14	5¼	{ 612 16 10½ 3,810 5 5		
General direct taxes	18,067	4	2	2,767	16	8			
Land revenue	9,170	5	8½	14,749	13	4½	17,617	7	0
Port dues	1,674	15	10½	2,023	1	10			
Rents, exclusive of lands	271	17	11¼	834	11	2½	229	6	11
Transfer dues	9,422	7	2½	18,512	12	11¼	31,551	12	0½
Auction dues	10,808	0	5¼	15,108	1	6¼	21,185	8	4¾
Tolls and ferries	2,780	8	0¼	3,013	18	4¼			
Market dues	3,611	12	8¼	34	12	4¼	26	0	4¾
Licenses, &c., in British Kafraria	..	..	..	..	..	..	2,284	0	7
Stamps and stamped licenses	16,465	18	9½	19,288	12	5¼	19,420	16	3
Postage	3,963	6	3	8,570	17	11¼	14,364	10	1½
Fines, fees, and forfeitures	7,102	7	8¾	6,134	12	11¼	7,076	17	6½
Reimbursements in aid of expenses, &c.	516	16	10½	472	1	8¼	4,953	3	0
Interest on moneys. Discounts of the late Government Bank	9,043	5	4½	3,035	17	6	118	7	10¾
Special receipts	2,855	3	3	2,633	11	6	65	4	6
Tithes on colonial produce	4,395	5	2¼						
	£ 118,477	10	5¼	178,204	15	1¾	275,547	14	6¾

Revenue from guano . . . £53,050 0 0

£

Public works paid for from the Colonial Treasury, from 1st January, 1843, to 31st December, 1852

Roads, streets, and bridges ditto ditto ditto . . . 227,989

293,592

From this statement it will be observed that in addition to the improved state of the revenue, from January 1843 to December 1852, 293,592*l.* were expended by the Colonial Treasury on public works,



which sum is quite distinct from the rates levied under the Road Ordinance.

The next improvement discernible from the vigilant manner in which Mr. Montagu administered, under the Governor, the affairs of the Colony was a retrenchment of expenditure. In the published Minutes of the Governor submitting the financial arrangements for 1845, one year after Mr. Montagu's entering on office, it is stated "that the expenditure for 1845 as compared with 1844 was reduced 9,791*l.* 14*s.* 2*d.*, while there was an augmentation of revenue in 1845 over the year 1844 of 10,790*l.* 11*s.* 0*d.*; and this, notwithstanding the abolition of the port dues, and the relinquishment of turnpike tolls by the Central Board which together amounted to 5,500*l.*" \*

But one of the greatest advantages arising to the Colony from the removal of the debt which so long cramped its energies and retarded its progress, and from the prudent and economical administration of its resources, was soon perceived in there being at

\* The following statement will show how far in different years the actual revenue exceeded the estimate.

	1843—	£8,300	7	2
	1844—	57,036	19	8
	1846—	15,651	0	0 (1)
	1847—	56,462	0	0 (2)
	1849—	12,292	0	0 (3)

(1) The diminution in this year from the preceding is accounted for in the Governor's "Finance Minute" by the Kafir war lessening amount received from auction dues, land rents, transfer dues, stamps, and sales of land.

(2) In the Governor's published "Finance Minute" for the year, the increase is again accounted for "from customs, auction, and transfer dues, postage and land sales, all indicating a gradual but steady return of internal prosperity after the ravages of a disastrous war."

(3) Decrease accounted for in Governor's minute from "diminution in customs' collection (only temporary) and land sales from local causes."

the disposal of the Government an accumulating surplus revenue, to be applied not only for the reclaiming or rather the subduing, the external face of the country, but also for the increase of its population, and for its moral and religious advancement. This is clearly shown by an examination of the Financial Minutes of Expenditure, for the years 1844 and following; in which arrangements are projected for extensive outlays on roads, increased postal communication, education, religious establishments, immigration, and other undertakings of general utility to the Colony. Of most of these improvements we shall speak more fully in subsequent chapters; of immigration, a few remarks, in this, may suffice.

In the Governor's published Minute, headed "Immigration," 1844, we have the following important observations:—

"I lately suggested to you to apply a portion of the surplus revenue, which appears in the estimate before you, to immigration, and which I am of opinion should be from the United Kingdom. I believe we all agree in the importance of this object. I am, therefore, desirous of submitting for your consideration the views of my Government upon it, that I may obtain your advice and assistance in concerting a scheme of immigration, calculated to develop the resources of this Colony, without hazarding any serious derangement in its social relations.

"I am of opinion that care should be taken in directing immigration to this Colony, that the number of immigrants arriving at one time do not exceed the means of immediate employment, on fair terms, in the various branches of labor and skill to which they have been trained. I am also of opinion, that unless the condition of the immigrant be improved in the same ratio, that his employer is benefited by his labor, the system will be defective, and I am further of opinion, that unless we import both character and intel-

ligence with the labor the advantages realized will not be commensurate with the expense incurred.

“ To ensure, as far as practicable, the beneficial application of your funds to the importation of superior and intelligent immigrants, I propose to establish three rates of bounty, corresponding in amount to the qualifications of the three following classes of immigrants :—

“ For the *first Class*, which should consist of superior or first rate farm servants, farm overseers, shepherds, mechanics, domestic servants and master workmen of every trade, (between the ages of 25 to 45,) I propose to allow a bounty of 15*l.* for every single male or female, and 22*l.* 10*s.* for a married couple, with an additional allowance of 5*l.* for each of their children (not exceeding three in number) above the age of 10 years.

“ For the *second Class*, which should consist of ordinary, or second rate, persons, of the same trades and occupations as are enumerated in the first class, I propose for each single male or female, between the ages of 18 and 40, a bounty of 12*l.*, and for a married couple, one of 18*l.*, with an additional allowance of 4*l.* for each child of their family (not exceeding three in number) above the age of 10 years.

“ For the *third Class*, which should consist of laborers only, and between the ages of 18 and 40, I propose a bounty of 10*l.* for every single male or female, and of 15*l.* for a married couple, with an allowance of 3*l.* for each of their children (not exceeding three in number) above the age of 10 years.”

The necessity of immigration was perceived by Mr. Montagu, from his first arrival in the Colony, and it was a project continually before him, although many circumstances served to hinder its being carried into effect, until the arrival of Sir H. Smith, as governor, in whose published minute laid before the Legislative Council in 1848, we have the long proposed plan referred to as being about to have a fair trial. Sir H. Smith's project was to this effect :—

“I propose to devote the sum of 16,000*l.* in the course of the year 1849, to the introduction of emigrants from Great Britain and Ireland into the Colony. It is needless for me to explain to you the advantages which will result from this vote, as it will ensure the provision of useful agricultural laborers, for the country districts. Arrangements will be made for sending out from England eight ships, with about 200 statute emigrants, in each, in the course of next year, or one every six weeks. These ships, I propose, shall be punctually dispatched on the days fixed, so that the period of their arrival may be securely calculated upon, and arrangements will be made for distributing the emigrants throughout the agricultural districts of the Colony, and I anticipate so much advantage from this measure, that I shall earnestly press it upon the attention of the Secretary of State.”

For nearly three years immigration to the Cape was carried on both extensively and successfully, for in that period nearly 1,700 new settlers were added to the labor of the Colony; and these as soon as they were landed found ready and lucrative employment. In consequence of the breaking out of the Kafir war, and from the more glittering attractions to the “Gold Fields” of Australia, throwing into the background the quiet and healthy pastoral occupations of the Cape, emigration from the mother country to Southern Africa, has been for a time suspended.

The great necessity for immigration at the time when it was strenuously recommended to the Home Government by Sir P. Maitland, was thus urged in a despatch from His Excellency to the Secretary for the Colonies:—

“My reason for appropriating a portion of the public revenue to this purpose was, because I felt convinced that the necessity of the Colony required it. The want of servants of every description is greatly felt, more especially domestic servants, whose demands for wages are exorbitantly high.

The demand also for laborers is so much greater than can be supplied, that many public as well as private works are suspended from inability to procure them. In order to convey to you some idea of the insufficiency of labor, I need only mention that although the Road Commissioners\* advertize for laborers at two shillings a day, and the rations\* stated in the margin, with accommodation, they are unable to obtain more than 250 men throughout the Colony. They would gladly employ more than double that number in the course of two or three months if they could engage them on those terms, but there is no prospect of their being able to do so at present."

Such was the necessity for immigration as felt ten years ago, a necessity which a variety of circumstances now renders more urgent than ever. If there is to be continued peace and security in the Eastern Division of the Colony, it must be by the steady increase and industry of a European population. The whole of Upper and Lower Albany, with its healthy climate and agricultural capabilities, invites a numerous population, who there might "eat bread without scarceness," and rise, as many of the settlers have risen, to prosperity and competence, if not to affluence. The wide-stretching and romantic country, capable of any degree of cultivation, lying round the Amatola region, whose rich soil and genial sun cause the fruits of the ground to dispense with all care and labor save the reaping and ingathering, offers a pure atmosphere and a tranquil peaceful home to thousands upon thousands, if the tide of emigration could be poured into it as the most sure and philanthropic barrier against further and future Kafir inroads. The extensive district of Natal with its almost tropical luxuriance, and with its immense resources, lies well

\* Rations:— $1\frac{1}{4}$  lb. beef or mutton ;  $1\frac{1}{2}$  lb. wheaten bread ; 2 oz. rice ;  $\frac{1}{2}$  oz. salt.



nigh useless, notwithstanding all its capabilities of abundance, from the dearth of steady, industrious, improving labor ; and only waits for an enterprising increase of colonists to make it “a land flowing with milk and honey.” In the Western Division, the newly discovered and inexhaustible copper mountains of Namaqualand, which give prospect of finding employment and wealth for tens of thousands, must, without a far greater accession of laborers than the Cape can at present supply, remain comparatively unworked, and with their rich veins for the most part unexplored. Yet, in the last few years, there has rather been emigration from the Cape than immigration to it ; many of the best mechanics and most enterprising laborers have been lured, by the Midas-like properties of Ballarat and Bendigo (the supposed capability of turning all they touch to gold) to forego health with peaceful labor, — plenty with a genial clime, — a happy settlement for their children with all the increasing advantages of morality, education and religion, — to seek “hasty riches,” which thousands of them never find, and which, if found, have in many cases been the irremediable destruction of their imprudent possessors.

But to return to the more immediate subject of this chapter, “The Financial Resources of the Colony,” from which we have digressed. It should here be stated, that the increase in the revenue was not by an illiberal or parsimonious curtailment of any expenditure which was necessary to uphold the efficiency or character of the public administration, but by a watchful consideration how the products and capabilities of the Colony could be turned to the best account.

MALAGAS, an island near the coast of the Colony

in Saldanha Bay, has been for centuries the resort of sea-birds, and is almost inexhaustible in its supplies of *guano*; this, which had been utterly useless for ages, has within the last ten years brought in a very considerable revenue; so much so that in one of the Governor's minutes we find this statement:—

“A fortunate addition has been made to our resources by the sale of *guano*; by the aid of which I have been able to liquidate, since the 1st of January 1844, claims and demands upon you to the extent of 145,597*l.* 14*s.* 0*d.*”

By the abolition of port dues, the Customs' Returns were also considerably instrumental in adding to the revenue; for from another of the Governor's minutes, we read:—

“I am happy to inform you, that since the abolition of port dues, the increase in the Customs' Revenue has fully compensated for the actual loss of them; and other advantages have accrued to the Colony in the increased amount of shipping which has visited its ports. From the returns furnished by the Collectors of Customs it will appear, that, on comparison of the vessels entered inwards during the eighteen months prior to the abolition of the port dues, with the eighteen subsequent months, there has been an increase in favor of the latter period of 107 vessels, or 47,744 tons, exclusive of the vessels connected with the *guano* trade, which have amounted during the same period to 215 vessels, or 60,583 tons.”

Such then were some of the masterly suggestions and arrangements of Mr. Montagu to improve the financial condition of the Colony; arrangements which caused the Governor to write to the Secretary of State, Lord Stanley, July 1844:—

“I am happy in being enabled to assure your Lordship, that the revenue is now well collected throughout the Colony; that all the financial arrangements are upon a sound

and healthy footing, and that there is no probability of the collections falling again into arrears in any branch of the service. The expenditure is narrowly watched, and as the system of advance to the public functionaries to provide for the wants of their departments has been abolished, no expense can consequently be now incurred, until the propriety of it has been submitted for my consideration and approval."

"In 1843, the acknowledged debt to the Home Government alone, was near upon 183,000*l.* In the year 1845, the Governor was able to state to the Legislative Council:—

"It is very gratifying to me to announce to you, that by providing, as you will perceive I have done, for the payment in 1846 of the probable balance which there will be against the revenue on the 31st December next, viz.: 15,892*l.* 14*s.* 5*d.* the Colony will be free from debt, as I am not aware of any other claim upon it than those already mentioned."

This, and other rapid and most advantageous changes in the entire management and progress of the Colony, soon raised up the flagging energies of a long prostrate industry, and gave fresh vigor to an enfeebled spirit of advancement. Private undertakings were now spurred on by public projects; commerce found a more encouraging mart than it had heretofore done, through the ports of the Colony; agriculture, hitherto well nigh confined to districts, and cramped to the unimproved implements and customs of former ages, began to increase and transport its produce over new-formed roads, to meet demands beyond a home consumption; additional banks were opened; insurance companies multiplied; importations for the improvement of farming stock, and merchandize for domestic convenience and adornment, were rapidly introduced; in a word, the Cape awoke from its slumber; the cloud which long rested

over it like the vapory masses on its Table Mountain passed away; and it now bids fair, from its spirit of enterprise, and from recent mineral discoveries, to become one amongst the most important of the British dependencies; and this onward movement was in a great measure called out and impelled by the energetic and stirring spirit of one man, of whom an influential local paper gave, a few years back (on the naming of a new road the "Montagu Pass"), the following just and discerning testimony:—

"The people of George, with honest gratitude, have singled out, for a mark of honour, that officer to whom, above all others, the colonists are indebted for the physical improvements of their country, and for the prospect of its indefinite extension. Mr. Montagu began by laying a broad foundation in a sound system of finance. In the course of a few years,—it may not be incorrectly said, in the course of a few months,—he reduced the monetary affairs of the Government to a state of perfect simplicity, and, without imposing burdensome taxes, paid off all its debts, those debts which had been so long pleaded as an excuse for inactivity, and which threatened at one time to seal the Cape down in irreclaimable barbarism."\*

In ascribing the conception and undertaking of these improvements to Mr. Montagu, we are far from wishing to detract from the merit or ability of others who were his co-adjutors or co-operators; and in fact, as in the instance of the talented Surveyor-General, Colonel Mitchell, the successful engineers and skilful accomplishers of undertakings belonging to their various departments; nor do we lose sight of, or wish to pass over in silence, the able chief administration of those governors, who, of late years, by their talents, energies, and devotion to the inte-

\* South African Commercial Advertiser. Dec. 15, 1847.

rests of the Colony, have done so much for its stable prosperity and commercial advancement. The names and services of Sir G. Napier, Sir P. Maitland, Sir H. Pottinger, and Sir Harry Smith, are too well known, and too universally acknowledged, to be extenuated by honest commendations bestowed on an officer of their government, whose zeal and rare qualifications they all discerned, and on which they wisely and unjealously confided. We view the measures of Mr. Montagu, in relation to the governors under whom he acted, exactly in the light in which they were well set forward in a Cape publication, on the departure of Sir P. Maitland from the Colony. Whilst reviewing the wise and successful administration of that governor, the writer observes :—

“ Under Sir P. Maitland’s government the public debt was paid off, and the utmost soundness and clearness introduced into the system of currency and revenue. Of the public works finished with dispatch, or begun and carried forward with unprecedented energy, under his government, or of his attention to the various departments, it would argue insensibility to the public welfare, as well as ingratitude to a public benefactor, not to join in offering our heartiest thanks to the man under whose auspices so many of them have been completed, begun, or amply provided for by the prospective regulations of the most just and equitable character. It is true that Sir Peregrine, as well as Sir George Napier in the last months of his government, had the inestimable advantage of Mr. Montagu’s services at the head of the Colonial Office; but it is also well known that Sir Peregrine devoted his mind steadily to the course of public business, and his despatches prove that his union with Mr. Montagu, in the numerous services rendered to the Colony, was one of intelligent conviction and enlightened confidence. Among the best services a governor can render to a colony is to discern merit, and give his open-hearted confidence to able public servants. Mr. Montagu’s merits,



so far from cancelling or detracting from the merits of his chief, reflect upon them all their lustre.”\*

It is pleasing to know, that at the commencement of Mr. Montagu's symptoms of serious illness, and when it was thought absolutely necessary for his restoration that he should not resume his heavy and responsible duties at the Cape, Sir Peregrine, with the generous frankness of a soldier, and with the self-forgetting charity of a good man, sent unasked, as we believe, the following open acknowledgment to his Grace the Duke of Newcastle, then Colonial Secretary :—

“ During my administration of the government of the Colony Mr. Montagu held the same office that he now holds, and I can truly say that I found in him a most honourable, hard-working, and able coadjutor. A vastly improved system of convict discipline and labor, and great improvements in the road and financial departments, were at that time acknowledged and commended by the Secretary of State, and with these the recovery of an old and almost forgotten debt of more than a quarter of a million paid into the Imperial Treasury by the colony; all of which were mainly, and of the latter I might say wholly, attributable to the services of Mr. Montagu.”

\* South African Commercial Advertiser. Jan. 20, 1847.

## CHAPTER IV.

## PERSONAL DIFFICULTIES.

POSITION OF MR. MONTAGU AT THE CAPE COLONY.—HOSPITALITY.—LOSSES IN VAN DIEMEN'S LAND.—NOBLE CONDUCT UNDER HIS DIFFICULTIES.—LETTER TO SIR J. STEPHEN, DETAILING HIS EMBARRASMENTS.—INTERESTING MEMORANDUM.—LETTER TO SIR P. MAITLAND EXPLAINING HIS PAINFUL CIRCUMSTANCES, AND THE INADEQUACY OF HIS SALARY TO ENABLE HIM TO EXTRICATE HIMSELF.—LETTER TO LORD STANLEY.—FAVORABLE TESTIMONY TO MR. MONTAGU'S SERVICES FROM GOVERNORS SIR P. MAITLAND, SIR H. POTTINGER AND SIR H. SMITH, SECONDING APPLICATION FOR INCREASE OF SALARY.—CONSIDERATE RECEPTION OF HIS APPLICATION BY EARL GREY.—HIS LORDSHIP'S ANNOUNCEMENT TO SIR H. SMITH, THAT AN INCREASE HAD BEEN GRANTED.—LETTER OF ACKNOWLEDGMENT FROM MR. MONTAGU TO SIR H. SMITH.—OPINION IN THE COLONY OF THE JUSTNESS OF THIS GRANT.

WHILE Mr. Montagu was applying all his energies to rectify the financial difficulties of the Cape Colony, as shown in the preceding chapter, his own pecuniary affairs were becoming, as he had anticipated, seriously embarrassed. From the high sense of public duty, and with the full apprehension that his leaving Van Diemen's Land, at the particular crisis when he did, would entail on him and his family heavy property losses, he had entered on the office of Colonial Secretary for the Cape of Good Hope; nor had he long entered on it before his worst fears were realized.

On his arrival at the Cape, he had fixed his residence a few miles from Cape Town, and endeavored to maintain that position which he conceived the importance and public nature of his office required. Sir. P. Maitland, for a considerable portion of his governorship, was absent on the frontier, engaged in the Kafir war, and on Mr. Montagu it mainly fell to receive and entertain the numerous visitors and strangers who arrived almost weekly in the Colony from England, India, and other quarters. It was not simply from a desire of forming acquaintances, or of carrying out a spirit of open-housed urbanity, that he frankly and courteously received those who were introduced to him (though in the generous feeling of showing hospitality he gave place to none); but it was from the impression that, in his official capacity, this was required of him; and also with the belief, that his duties would be most efficiently and intelligently discharged by a free and frequent intercourse with persons of various views, and from different countries; and it was surprising what a compass of information, with regard to what was transpiring in distant places, he thus acquired, and what a largeness of view he was capable of entertaining on political and diplomatic subjects, by his acquaintance and communication with passers to and from various parts of the world. By reason of the office which he filled, and from the reputation he had already attained, almost every vessel that arrived brought in it persons bearing letters and introductions to him; and from private generosity, as well as on public grounds, he considered it necessary to show what kindness and reception he was able to all thus recommended to his kind offices;

and he felt convinced that if he did not do this, much of the influence of his office would be lost. He soon found, however, that his salary from the Government was far from adequate to allow of a large exercise of hospitable liberality; nevertheless, as long as he had reason to believe that he had private means he entrenched considerably upon them, in order to uphold the influence of his position. But immediately the information reached him of his losses in Van Diemen's Land, his course was, at once, promptly and decidedly taken. Much as he felt the necessity of hospitality, he knew that of honesty to be far more constraining; and he was by no means one who would preserve the appearance of his public character at the risk of his private one.

The statements which he received from Van Diemen's Land were such as would have overpowered one of less energy and personal determination than himself. He heard, not only that his private means were exhausted, but that a debt of 11,000*l*.\* was lying against him. When he left Van Diemen's Land in 1842, he fully expected he had a competence whereon to educate his family most liberally, and also to leave ample means for their support until they had attained professions, or were otherwise settled in life; but, instead of this, he received the intelligence that, as far as his pecuniary resources were concerned, he was a ruined man; that a large debt was spreading a toil of difficulties around his path from which the economy and struggle of years would scarcely extricate him.

Under these circumstances, his purpose was at once fixed to be "obstinately just," and to meet his

\* This he subsequently found to amount to 21,000*l*.

difficulties resolutely as an honest man. He curtailed his expenses; disposed of carriage and horses, and whatever he could not scrupulously look upon as necessary. He gave up his residence in the country, and took one in the immediate vicinity of Cape Town, whence he might walk into his office daily. He withdrew his eldest son from Oxford, where he gave promise of much distinction; and his second son from a profession which held out to him considerable prospects. In short, in every way, he denied himself and his family not only present, but future advantages, in order that, if he left them no other patrimony, he might, at least, commit to them the legacy of a just and honest name. From this time forth, considerably more than half his income was systematically reserved; and he put his hard-earned means under a kind of moral sequestration, devoting every product of curtailment, and every exactment wrung from the strictest economy, to the discharge of his debt. This was indeed a trying position! for while he was, by his vigilance and economic arrangements, saving the British and Colonial Treasuries some thousands of pounds annually, he was tasting the bitterness of seeing his family under reverses, and the *res angusta domi* robbing them of those early advantages which no after years have been able to supply. It cannot be denied that his appointment to the Cape, from the scrupulous attention he devoted to relieve it from embarrassment, saved to the Government two hundred thousand pounds in three years,—but it ruined him, and has left his widow and his younger children penniless: the Colonial debt he labored day and night to discharge; but while all his exertions were being thus publicly directed, his personal



sacrifices were great; and brought on him a burden of liabilities which he just lived, and only lived, to see discharged.

The nature of his pecuniary difficulties, as well as some of the features of his character, will be readily perceived and understood from a letter which he addressed at this time to Mr. (now Sir James) Stephen, the Under-Secretary of State.

“ Cape of Good Hope,

“ 28th March, 1848.

“ My dear Mr. Stephen,—I am aware that in thus addressing you upon a subject connected with my official position, I depart from a course you deem the most proper, but the novelty of my case and my desire not to intrude unnecessarily upon Lord Stanley will, I trust, excuse me with you. If after perusing my letter you are of opinion that the contents may, through your medium, be made known to his Lordship, you will much oblige me by communicating them—but, if you feel that I ought to address his Lordship more directly or not at all, I will be guided by your suggestion, and, in either case, you will I hope pardon the trouble I shall have occasioned, and commit this paper to the fire. The truth is I am not confident that I am permitted to bring the subject of this letter under the notice of the Secretary of State, and hence my hesitation.

“ You are fully aware of the treatment I have received, and I am equally sensible of Lord Stanley’s kind intentions towards me in placing me here, and repairing, so far as he had the power, the losses which flowed to me from that treatment.

“ But his Lordship is not aware, nor was I myself till within the last few months, of the absolute pecuniary ruin that treatment has been mainly instrumental in entailing upon me and my family. It has swept from me all that I had; it has suddenly deprived me of the little patrimony I possessed; it has obliged me to lower the prospects of my two eldest sons by withdrawing them from professions for which they had, for some years been educating, and it will,

I fear, involve me in debt, from which I see no chance of extricating myself. All these effects you will, I am sure, admit are not my due, after twenty years honorable and zealous public service, and that I ought not to suffer them simply because it was thought proper to suspend me for conduct, which Lord Stanley has, after a severe scrutiny, pronounced to be without blame.

“ I have inserted upon the accompanying paper the pecuniary losses I have suffered.

“ Those already incurred have taken from me every penny of private property I previously possessed, and my liabilities will I fear involve me in much debt.

“ Under such a state of affairs I have been obliged, partly on the score of health, to remove my eldest son, who is just twenty, from Oxford, where he had been for nearly two years, and would, had his health improved in due time, have returned and taken holy orders; and my second son, who is eighteen, and was to have sailed from here this month to go to Cambridge with attainments, which his tutors have assured me, would, in all probability, have procured for him the highest honors there, has been obliged to relinquish that intention, and has abandoned the bar for which I had destined, and had been educating him. He and his brother must now turn their thoughts to more humble but more speedily remunerative employments.

“ If, however, my difficulties could be removed by these or any other measures within my control, I should not feel justified in bringing my disasters under Lord Stanley's notice. I should bear with them patiently. But it is otherwise. Independently of my gloomy pecuniary prospects, as connected with the private means which I lately had, my financial difficulties arising from my present public situation are becoming very great.

“ When Lord Stanley added 300*l.* a year to my Official Income, by bestowing upon me my present office, I am sure he believed, as well as myself, that the increase of income was, in truth, even greater than the difference in figures shewed, from the advantages the Cape was supposed to possess

over Van Diemen's Land, in various ways. Experience has, however, undeceived me.

“There are two or three causes here which work a contrary result; and which I will take leave to notice.

“In the first place, the visitors (public men) of all nations, who constantly call at this Port, are very numerous. The duty and expense of paying suitable attention to such persons falls, of course chiefly on the Governor. But the public officers, whose official standing obliges them to offer civilities to the persons in question, have to keep up larger establishments than would otherwise be required, the expense of which, owing particularly to the enormous charge for servants' wages, and the number of them which their somewhat independent habits force us to employ, far exceeds anything I could have contemplated.

“With the exception of butcher's meat, provisions of every kind, more particularly the articles requisite for entertaining, are exceedingly high, and house rent is, at least, treble what it would be in England. Housekeeping here, in every way, is very much greater than I had imagined, or than it is understood to be by those who have not tried it.

“In the next place the climate of Cape Town is, from the peculiar position of the place, very injurious to health during four or five months in the year, and makes it unavoidably necessary, for those who have not, from long residence, become accustomed to it, to remove in Summer five or six miles into the country. Persons, like myself, who cannot afford to keep both a town and country house, prefer living entirely in the country, but this involves the charge of a carriage and horses all the year, and creates, in various ways, an addition to the expenditure of upwards of 300*l.* a year. To reduce this in some degree, I am looking out for a house in Cape Town, but—as I have said—I cannot reside there in summer—to attempt it, with the daily arduous duties of my office, would destroy my health in a short time, and even if I were to continue there myself, my family could not do so without incurring a risk I dare not impose on them.

“Such a partial change of residence is attended with

much trouble and inconvenience, and does not diminish the annual expense by more than 100*l*.

“The only mode then which is open to me of keeping within my income, is to shun all those expenses which my office entails, and whilst retaining a prominent public situation, live in absolute retirement.

“My own inclination would be most indulged if I were to do so, but the requirements of my office preclude it, unless, indeed, I could consent to see it lessened in usefulness, and deprived of that species of social importance which, you are well aware is necessary to the maintenance of a proper position on the part of such an official as the Secretary to this Government.

“In a pecuniary point of view, I would rather return to Van Diemen’s Land as Colonial Secretary upon 1000*l*. a-year, than continue here upon 1,500*l*.

“Throughout my public life I have relinquished every selfish feeling, and sacrificed every consideration of a private nature to promote, to the best of my ability, the Queen’s Service. I have always been, and still am, unwilling to hold office at all, unless with benefit to the public interests, and it is because I feel I am here so circumstanced that I cannot do so without hampering myself with debt, that I now entreat your aid with Lord Stanley, to extricate me from my embarrassment.

“So long as I had a private income to fall back upon to support the character of my office, I disregarded my official means, and, you are aware that, although those means have been frequently augmented by the kind consideration of Her Majesty’s Government in rewarding my services by promotion, I have never once solicited an increase of salary. To remain in so equivocal a position as the Secretary to this Government in complete seclusion would be detrimental to the interests of this Colony, and I can only avoid it by an expenditure which must inevitably throw me considerably into debt in this place.

“The former salary of my office, including that portion of it (500*l*. a year) which, I am informed, my predecessor, volunteered to give up, when certain reductions were made

in the salaries of other departments of this Government in 1834, was not more than sufficient for defraying the necessary expenses of the office. To him such a reduction was not, perhaps, of much consequence as he had no family to support or provide for in the world, and his private income made him to some extent independent of his official. He had not, therefore, the inconvenience of debt before him.

“A public officer in a Colony, in debt to those with whom he may have to transact business, is awkwardly situated, but for the Chief Executive Officer to be so situated, is an evil, I need not, I am sure, enlarge upon to you. It must be destructive to his independence; to his official usefulness; and to the public service.

“Having related to you my position and feelings, will you now permit me to add my wishes?

“If Lord Stanley would permit me to retire from my present office, by providing for me in England, I should, indeed, feel very grateful to him. I lately applied to his Lordship, through Mr. Hope, for the office of Commissioner of Lands and Emigration, which will show that I am not ambitious of a very exalted nor very lucrative station. My desire is to be usefully employed in the public service, with my mind relieved from the fear of debt.

“In England I could live as retired as I pleased without impairing my usefulness in office in any way, but as I have nothing left to support my family and myself, beyond the salary my office would furnish, I am compelled to look to that as my last and only resource. But, if Lord Stanley should be unable to comply with this request, I am quite ready to relinquish my present office if his Lordship will approve of my receiving the retired allowance my twenty years' services would justify. Sorry as I should be to sever myself from office, I am of opinion I had better do so, rather than continue to hold it, and not execute the duties to that extent of usefulness, my conscience tells me I might do, under different circumstances. Sir G. Napier's knowledge and experience of the Cape would, if necessary, confirm my representations respecting expense and the Cape Town climate, and I feel that I can with equal confidence appeal to him to satisfy Lord Stanley that, while undisturbed by pecuniary



and domestic considerations, my time and talents have been of some benefit to his Government and this Colony.

“The heavy loss upon the sale of my landed property at Hobart Town and sheep farms at Port Philip arose from the immense depreciation which property of every kind has suffered in the Australian Colonies during the last two years. Had I remained in Van Diemen’s Land, or even had I returned there, these losses would not have occurred, because in either event, there would not have been any necessity for my disposing of the property; it would have been equally depreciated in value in my possession, but it would have risen again in due time. Nothing but my removal from Van Diemen’s Land could have forced me to dispose of it, at a period of depreciation.

“The property was of that description which required the constant watchfulness of the owner, and it was necessary for me to dispose of it at any loss, rather than leave it to the management of agents or overseers.

“In addition to the losses incurred upon the sale of my sheep farms, my agent informs me that I am still liable for the amount for which they sold on credit, viz., 5096*l.*, the greater part of which he finds will not be realized, owing to the still further depreciation of property, and the general insolvency at Port Philip.

“JOHN MONTAGU.”

Years did not serve to present any mitigation of his losses; nor did the circumstances of the property he left in Van Diemen’s Land in any way hold out the reasonable hope to him of reaping any future advantage from it; but, on the other hand, his embarrassments were rather heightened; nor was he altogether freed from apprehensions of further demands being made upon him, until a few months before he left the Cape for England in 1852. His true position, and his own estimate of what his total loss amounted to, he has himself left recorded in a memorandum drawn up at the Cape, and dated January, 1850. It is a memorandum of consider-

able interest, inasmuch as it clearly indicates, that he had a forethought that his years from that date might not be of long continuance, and that his family would probably be left, undeservedly, destitute at his decease. After having made mention of several letters and documents which appear in various parts of these pages, he adds—

“In my letter to Sir J. Stephen, of the 28th March, 1844, and in my letter to Sir P. Maitland, of the 10th Sept. 1846, I have pointed at the absolute pecuniary ruin that my suspension was mainly instrumental in entailing upon me and my family: that it has swept from me all the private means I possessed, and has left me considerably in debt. That debt I have, by great economy and self-denial, been gradually liquidating, and I trust I shall be free from all liabilities by the end of the year 1851.

“In my letter to Sir J. Stephen, I have attached a statement showing the pecuniary losses I have suffered since my suspension in Van Diemen’s Land: they amount to nearly 11,000*l.*; but in my letter to Sir P. Maitland of the 10th September, 1846, I stated the loss to amount to 19,000*l.*, having by that time found I had suffered more than I had discovered when my letter to Sir J. Stephen was written, and even since Sept. 1846, I have to add a further loss of 2000*l.*, making in all 21,000*l.*

“Had I not been removed from Van Diemen’s Land, I should have been richer by that sum than I shall now be. I am anxious that in case of my death, my family may have some record of the losses I have sustained by my removal from Van Diemen’s Land and by my appointment here; and I have, therefore, made the foregoing statement to enable them, if necessary, to prefer what I conceive would be a fair and just claim for compensation, and to furnish strong claims upon the Government for providing profitably for my son in life in the public service.

“JOHN MONTAGU.

“Cape Town, Cape of Good Hope,

“1844. I. 1850.”

It should be observed that Mr. Montagu always attributed his pecuniary ruin to his taking office at the Cape at the time when he did, instead of returning to Van Diemen's Land; and from this conviction, he rested on this act his own urgent claim and the claim of his family. One of his anxieties during his last illness, and when it appeared probable that his life would soon terminate, and his widow and young family be left, as they soon were, unprovided for, was to draw up a kind of dying testimony, putting forward the equitable and strong claims of those he was so soon to leave fatherless; this statement was addressed to the Secretary of State for the Colonies, his Grace the Duke of Newcastle. A few pages of it only were written when emotion and extreme exhaustion quite overpowered him, and he was compelled to leave it incomplete; it remains an interesting but painful document,—cut short like his own toilsome life,—the last, unfinished appeal of a public servant who had fallen a sacrifice in his incessant exertions to discharge those public duties which he had so indefatigably and devotedly pursued.

It was under the certainty of some, and the anticipation of other of the losses stated in preceding parts of this chapter, that Mr. Montagu made application, through the Governor of the Colony, Sir P. Maitland, for an increase to his salary, in order that he might be enabled to meet the difficulties in which he was involved. This application is in many respects valuable, especially as it tends to show the position of Mr. Montagu at this time, and also some of the great services he had been acknowledged to have rendered to the Colony:—

“Colonial Office, Cape Town, *Sept.* 10, 1846.

“Your Excellency was kind enough some time since to

transmit to Lord Stanley an official representation of the inadequacy of the salary attached to the office I hold under your Government, and although I am at all times reluctant to trouble you upon any subject which relates to myself, yet I trust to be excused for soliciting another representation to the same effect. In the year 1842 I held the office of Colonial Secretary in Van Diemen's Land, having then served eighteen years under that Government. The Lieutenant-Governor thought proper in January of that year to suspend me from office, upon which I returned to England, where, after a most searching investigation into the case, the Secretary of State, Lord Stanley, declined to confirm my suspension, as a 'not well judged' act, and having 'relieved me from every censure which impugned the integrity or propriety of my conduct,' announced 'that my public and personal character were unimpaired, and my hold on the respect and confidence of Her Majesty's Government undiminished.'

"For reasons I need not trouble your Excellency with, Lord Stanley then requested me to undertake the important post I now hold, with an increase of 300*l.* a year in salary, instead of returning to my office in Van Diemen's Land. I mentioned to his Lordship that what little property I possessed was in Van Diemen's Land, and that there were many considerations which made me desire to return there;—but that I would allow nothing of a private nature to interfere with his wishes, and although uneasy about the pecuniary consequences I did, without hesitation, accede to the arrangement his Lordship was desirous to accomplish.

"To the disasters that acquiescence has brought upon me is to be attributed my present application. By my removal from Van Diemen's Land to the Cape I was put to an expense of 4000*l.*, for which I have not received any compensation, and, in consequence of my not returning to that Colony, I was obliged to dispose of my property there, it being of a description which could not with safety be left to the management of agents and overseers. Unfortunately the sale took place at the period of the financial embarrassments of the Australian Colonies, and my property was sold for a mere trifle when compared to the cost. By these causes, having been deprived of the means of meeting



engagements I was under, I have been thrown into debt, and instead of being worth at the very least 10,000*l.* which would have been the case had I returned to Van Diemen's Land instead of coming here, (as there would in that case have been no occasion for disposing of any portion of my property,) I am now embarrassed to the extent of 5000*l.* In Van Diemen's Land the salary of my office supplied all my wants, and I applied my private income to make provision for my wife and family (six children) after my death. But how changed is the prospect! Since my residence at the Cape I have lived a few miles out of town to escape the baneful effects of the Cape Town climate during the summer months, by which my domestic expenditure has been increased 300*l.* a year. With the exception of that charge I could not, without entirely disregarding the requirements of my official position, have lived less expensively, and yet my salary has not, with strict economy, been sufficient for my expenditure. Unless therefore I can by some means obtain relief I cannot hope to liquidate my debt, nor leave my family the means of support for one day after my death. The only means in my own power is by residing in Cape Town which I shall do from the end of this month, notwithstanding the serious objections in regard to health, particularly to any one who, like myself, has an arduous, trying and anxiously responsible duty to perform, requiring an incessant and close application, never under twelve and very frequently exceeding fifteen hours a day. And after all the reduction of expense I shall thus effect will only prevent (by providing for interest), an augmentation of my debt; it will not decrease its amount. My hope is, that with your Excellency's assistance, I may obtain an increase to my salary, not, however, on the ground of the losses I have detailed, which I am sensible cannot be taken into consideration in this Colony, and which I have adverted to merely as the causes which impel me to address your Excellency upon my private concerns, but on the ground that it is inadequate to the labor and responsibility of my public duty, with the nature and extent of which your Excellency is acquainted.

“ If the amount and responsibility of my official business did not far, very far, exceed that which was required from



my predecessors I should not feel justified in preferring this application. It cannot, however, be doubted that a great increase of business has arisen with an increased population and a greater development of the resources and trade of the Colony by the facilities recently afforded. At the same time it must be remembered, that by the establishment of the Government of Natal much labor and responsibility have been added to my office.

“ I am also exclusively charged with the direction and management of an improved system of Convict Discipline, which, in its application, is laborious, extensive, incessant and minutely responsible. As Chairman of the Central Board of Commissioners of Public Roads, I am engaged in a large and important administration which embraces every part of the Colony; and as Chairman of the Board for Superintending Immigration from the United Kingdom I have a troublesome and anxious duty to perform. In many other departments, and in many other ways, I have, owing to the many recent alterations in systems and details, many additional and responsible services to perform for the public which were unknown to my predecessors in office, but as they are known to your Excellency I need not otherwise allude to them than to observe, that as they have already rendered inevitable an addition to the Clerical Establishment of the Colonial Office of nearly one-half more than I found it in 1843 (and further assistance is still required), it will not I am sure be denied that they have entailed, at least, a corresponding degree of labor and responsibility upon myself.

“ It would be indelicate in me to offer an opinion upon my public services, nor indeed is it necessary while I can refer to so many higher and better authorities. Your predecessor, Sir George Napier, has recorded his opinion of my services in terms of very high commendation and approbation, and I have no reason for supposing they are held in lighter estimation by your Excellency. Her Majesty's Government have likewise approved of my services here, and it is very gratifying to me to know, that the several measures I have been permitted to suggest have been adopted. Without alluding to them in detail I would merely observe generally,

that all have received the sanction of the Secretary of State, and in their operation have proved beneficial to the public interests. Some of them, indeed, to which I will take leave to allude, have been conspicuously so. Upon my proposing the measure of combining and promoting the two objects of improved discipline among the convicts, and a more effective administration of the Roads of the Colony, Lord Stanley 'concurring in the correctness and value of the views I had submitted,' expressed 'his gratification at observing that I was applying myself with so much zeal for the permanent interests of the Colony, and with so much ability to appreciate, explain, and apply them;' and when signifying his approval of the measures taken for carrying my plan into execution, expressed the opinion, that 'the success of those measures will be greatly promoted by my having accepted the office of Chairman of the Central Board of Commissioners of Public Roads.' More recently, also, Mr. Gladstone expressed his satisfaction with the working of the measure, especially that part which relates to the Convict system, the results of which, as regards the welfare both of the Colony and the convicts themselves, appeared to him to be highly important and as calculated to throw much useful light on the general question of Convict management.

"The other measure to which I would allude has obtained for me the entire approbation of Her Majesty's Government. On my arrival here in 1843, I found this Government encumbered with a debt which had for many years prevented any public works from being attempted. I suggested a measure of relief (shortly after I had suggested the measure regarding roads and convicts) which met Lord Stanley's entire approval, and induced him to add, that 'he had already had the satisfaction of bearing testimony to the zeal and ability with which I had applied myself to the duties of my office; but he could not conclude his despatch without a further acknowledgment of the very able and efficient manner in which I had submitted my views in regard to the extinction of the paper debt of the Colony, and my proposals for carrying the measures into effect;' and when the success of the measure was reported, his Lordship expressed his satisfaction, that the 'Colonial currency had been placed

on a sound footing by the course suggested by me; that 'this intricate subject had been brought to so satisfactory an issue;' and 'that the finances of the Colony were placed in so satisfactory a state by the measures I had proposed.' By this measure a debt of about one-quarter of a million sterling of long standing has been repaid to the British Treasury, and the Home Government has by it likewise been enabled to transfer to Colonial from Home Funds a charge of 18,000*l.* a year for Special Justices, which, owing to the inability of the Colonial resources, Great Britain had borne for several years, although the expenditure was for purposes purely Colonial.

"These results have been obtained without additional imposts, and at the same time by improvements in collecting the revenue and checking the expenditure, under a code of regulations I submitted and worked out in detail in the Colonial Office with much labor to myself; the revenue has been augmented and the expenditure decreased so as now to enable the Government to appropriate annually from its public funds upwards of 20,000*l.* to execute highly important public works; and a similar sum is now likewise obtained by the Road Commissioners, direct from the inhabitants, for road improvement purposes.

"I have dwelt at some length upon these measures for the purpose of introducing some of the opinions of my superiors upon my services under the Government, and to those I will only add, that Lord Stanley in the House of Lords, on the 3rd of March last, after he had ceased to preside over the Colonial department, was pleased, by overrating my services, to express his opinion of me as one of the ablest and most efficient servants any Colonial Government ever had.

"Having now submitted to your Excellency my application, I trust it has not been made on light or ordinary grounds. It is with extreme reluctance that I make it at all, and nothing but the urgency of my pecuniary affairs, the extent of which I have but recently ascertained, would have induced me to do so.

"The disasters I have detailed have brought me into debt; it is the first time in my life I have had to experience what are the feelings such a state produces. The effect upon

my mind is indeed harassing and distressing, and it will I hope be borne in mind, that they have not been brought about by imprudence or misconduct on my part, but originated in an improper exercise of power in Van Diemen's Land, and were afterwards increased by my acceding, from a sense of duty, to an arrangement for employing me in this Colony to meet the wishes of the Secretary of State.

“I have the honor to be, sir,

“Your Excellency's

“Most obedient humble servant,

“ (Signed) JOHN MONTAGU.

“To His Excellency

“Sir Peregrine Maitland, K.C.B.”

About the same time Mr. Montagu was encouraged, by certain passages of a speech made before the House of Lords by Lord Stanley, in which he expressed his opinion of Mr. Montagu's abilities and efficiency as a public servant, as quoted above, to address to that nobleman the following letter:—

“Cape Town,

“20th July, 1846.

“My Lord, — Having lately perused in the London papers the report of the speech made by your Lordship in the House of Lords in March last, when the subject of transportation to Van Diemen's Land was under debate, in which you stated your opinion of my abilities and efficiency as a public servant in terms so very laudatory—so exceedingly gratifying to my feelings—I trust your Lordship will pardon the liberty I take in requesting you to accept my most sincere and grateful thanks, not only for expressing your opinion, but for your goodness in doing so after you had ceased to preside over the Colonial Department. Such high and unexpected commendation is indeed very consoling, and greatly alleviates the anxiety and distress of mind I suffered from the ruin which has been brought upon my family. Disastrous as those proceedings have been to them, to myself as a public servant, they have been a cause of satisfaction, in



having brought my conduct to the knowledge of Her Majesty's Government and of your Lordship, in a manner and to an extent which could not otherwise have occurred.

“From the sympathy you have evinced for me, your Lordship will, I am sure, regret to learn that in addition to the heavy expense of two long voyages and my removal to the Cape, knowing it to be unsafe to retain property in Van Diemen's Land which I could not superintend, I caused it be sold when appointed to my present office, and have not only lost thereby, owing to the financial embarrassments then prevailing in that colony, all I previously possessed, but am now involved by it in a debt which will take me many years to liquidate. From possessing, as I did before quitting Van Diemen's Land, a private income of 1000*l.* to 1200*l.* a-year derived from the proceeds of the sale of my commission as a captain in the army, and from the accumulated savings of eighteen years' civil service there, and which, as my official income supplied all my wants, augmented annually the provision I was thus making for my wife and six children after my death. I have now the melancholy prospect before me, of leaving them—whenever that event may occur—perfectly destitute, the unavoidable necessities of my official position here, precluding me from attempting to do more than apply a small portion of my salary annually to decrease my debt.

“Your Lordship will, I hope, forgive the liberty I take in addressing you thus freely on a subject, I am well aware, I have no right, in your present position, to intrude upon you at all; but believing from the flattering testimony you have lately borne that the interest you have throughout manifested in my case has not decreased, I have persuaded myself that you will not be unwilling to learn—notwithstanding your Lordship's best endeavors to mitigate it by promoting me to a more important post, with a considerable increase of salary—how heavy a penalty I have paid.

“I cherish the hope that your Lordship will acquit me of intrusiveness or indelicacy in making this statement, which I have done in some degree under the impression that it might perhaps be in your Lordship's power to forward my wish to be employed in any other colony or in England,



where, either by an increased income or a diminished expenditure, I might be enabled to extricate myself from my existing embarrassment, and at the same time make some provision for my ruined family. With many apologies for thus trespassing, I beg to be permitted to assure your Lordship, that I am your grateful and obliged servant.

“ JOHN MONTAGU.

“ The Right Honorable Lord Stanley,  
 “ Knowseley Hall, Prescott,  
 “ Lancashire.”

One point of Mr. Montagu's career at the Cape, especially deserving observation, is the influence which his character and opinion obtained with those governors under whom he served; and the interest and high regard and confidence they manifested towards him. The despatches from Sir P. Maitland, Sir H. Pottinger, and Sir Harry Smith, printed below, evince not only the high and generous estimation in which they held his services, but also their kind sympathy in his difficulties, and the earnestness with which they pressed his claim on the attention of the Home Government:—

“ Camp, near Fish River Mouth, Kafirland,  
 “ *September 21st, 1846.*

“ Sir,—I have the honor to submit, for your favorable consideration, a letter addressed to me by Mr. Montagu, Secretary to Government, in this Colony.”

“ The circumstances under which Mr. Montagu asks for an increase of salary are stated by himself, and need not be repeated by me.

“ I am sure that every one who knows his value as a public servant will sympathize with him in his difficulties, originally caused by his suspension in Van Diemen's Land, and will wish that it were possible to assist him in his present situation.”

interests of the service to afford him the alleviation of them which he requests.

“In addition to what he has stated, I beg to submit the following remarks, as corroborative of the reasonableness of his applications. The salary of the Secretary to Government, in this Colony, used to be 2,000*l.* per annum, till the embarrassed state of the revenue led, in 1834, to a general reduction of the salaries of the civil servants, when it was decreased to 1,500*l.* Though Her Majesty’s Government have not admitted the principle of restoring the reduced salaries to their original amount on an improvement of the revenue, yet they have sanctioned the restoration of a reduced salary when the business and responsibility of the office had grown in magnitude, so as to render the less remuneration disproportionate to it. The Postmaster-General’s salary was restored from 400*l.* to 600*l.* a-year on this principle. I think the same principle applies quite as decidedly to Mr. Montagu’s office, which has greatly increased in labor and responsibility, and in these respects stands by far the first under my Government.

“Since Mr. Montagu has presided over the Colonial Office, the business transacted in it has received a very large augmentation. The collection of the revenue and the detail of the expenditure are now scrupulously watched and checked there, under his personal superintendence, in addition to all the ordinary business which used to be transacted there. This brings much extra work on Mr. Montagu of a harassing kind; and the benefit to the Colony has been extensive, by the liquidation of the debt, the retrenchment of annual expenditure, the enlargement of the revenue, and the consequent realization of a surplus every year for important public works.

“Mr. Montagu is a very hard worked public officer. His whole time and strength are devoted to the service, and applied with zeal and ability to promote the prosperity of the Colony. As he has mentioned, the introduction and establishment of several new and beneficial systems are due to his intelligence and activity. The retrieving of our finance from a most unsatisfactory and embarrassed state, entitles him to great credit and consideration.

“ If I look at the responsibility and labor which devolve upon him, the salary of 1,500*l.* a-year appears to me an inadequate remuneration. If, again, I compare his office, such as he has made it, with the other offices under my Government, I am led to the conclusion that he is less remunerated in proportion than the other public servants. I am inclined, on these grounds, to hope that you will find reason to view Mr. Montagu’s application favorably, and will be able to sanction the increase of his salary to 2,000*l.* per annum.

“ I have, &c., •

“ (Signed) P. MAITLAND.”

---

“ Camp, Fort Peddie,  
“ 15th April, 1847.

“ My Lord, — I have the honor to acknowledge the receipt of your Lordship’s despatch No. 17, of the 17th of January, 1847, regarding the proposed increase of 500*l.* a-year to the salary of Mr. Montagu, the Secretary to Government.

“ My attention was attracted, whilst hastily perusing the archives, at a very early period of my residence in this Colony, by Sir Peregrine Maitland’s despatch of the 10th of September last on this subject, and every succeeding hour has confirmed the opinion I had even then seen occasion to form, that Mr. Montagu was most inadequately remunerated for the unceasing, arduous, and responsible duties which he has at all times to perform, and which have been unusually onerous in all those respects during the past and present year.

“ I do not, therefore, hesitate one instant in adding my respectful recommendation to that of my predecessor, that the increase may be granted from the commencement of this year, and I do so with greater satisfaction because, from some returns which have been lately sent for my inspection from Cape Town, the local revenue appears to be in a sound state, and gradually increasing. The actual revenue of 1846 exceeded the estimated by rather more than 16,000*l.*, and for the first quarter of this year, (assuming the estimated

at one-fourth of the whole for the year,) I see the actual revenue is 51,939*l.* 15*s.* 3*d.* against 39,905*l.* 15*s.*

“This progressive improvement I believe to be a good deal influenced by cMr. Montagu’s judicious and careful supervision of every department; and although there is no doubt but the Colonial expenditure has been, and is likely to be whilst the war continues, beyond the receipts, yet, so far as the estimates for 1846 extend, the increase of expense is not equal to that of the overplus receipts; nor do I see, at present, any reason to suppose that the permanent charges arising out of the Kafir war, and fairly devolving on the Colony, will be hereafter beyond its means to meet them.

“I have the honor to be, my Lord,

“Your Lordship’s most obedient humble servant,

“ (Signed)                      HENRY POTTINGER.”

---

“Government House, Cape Town,  
“11th March, 1848.

“My Lord,—Every day increases my opinion of the value of Mr. Montagu’s public services. I have hourly proof of his energetic zeal—his ability and rapidity in performing the extraordinary amount of his responsible duties; and I waited to have this opinion firmly established ere I proposed to your Lordship to augment his salary to something approaching a more equitable remuneration for his arduous and important office.

“When I determined upon it I was not aware that the subject had been already under your notice. I can most conscientiously assure your Lordship that the salary he has received is not sufficient for the office *as he has worked it*. The three Governors under whom he has served, I know, concur with me in this opinion. Since he undertook the office he has doubled and trebled its duties in amount, importance, and responsibility. The beneficial results of his labors are apparent in every department and in every part of the Colony. During the last two years the continued absence of the Governor on the frontier has thrown upon

him an additional amount of toil, responsibility, and expense, foreign to his legitimate position; which ought not, in justice, to be either disregarded or unrequited. Moreover, a great increase of business has been made to the office since he entered upon it by the annexation of the districts of Natal and East London to the Colony, and by the several large extents of territory recently brought within the Colonial boundary, and also from very many other causes not then in existence.

“And again, as your Lordship will learn in a few days from my despatches, I have just proclaimed five additional fiscal divisions and twelve new seats of resident magistrates within the Colony, thereby adding considerably to his duties; as the control, correspondence, &c. of each devolve upon him, and further augmentation of this kind must soon take place. I have lately sanctioned an increase of three clerks to the Colonial Office establishment, and I feel sure that the increased and increasing labors of the office will soon render further additions to it necessary. There is no department of this Government to be compared in these respects to the Secretary's. ‘The laborer is worthy of his hire,’ but in Mr. Montagu's instance, this right principle has never been acted upon. His administration of the Colonial finances would, alone, entitle him to special consideration even if in no other branch of the service he had distinguished himself and advantaged the Government and the Colony. Without his co-operation and aid I could not have undertaken the bold line of policy I have just completed towards the Kafirs, the emigrant Boers between the Colony and Natal, and at Natal itself.

“By his exertions, and exertions, too, of no mean order, I found the Colony free from debt; a large surplus revenue in the treasury, and the sources of income under every head (from being superintended by him with unremitting labor and attention), improving.

“These causes have enabled me to undertake all the heavy pecuniary obligations incident to my policy, and also to provide for the various arrangements growing out of the Kafir war without increasing the charge upon imperial funds; and Mr. Montagu's knowledge of our resources and



his vigor in applying them, justify me in assuring your Lordship that the Colonial funds can bear these demands, until the revenues of the new territories can defray them.

“ My recent measures have also enabled me to report to your Lordship that I had quite broken up, to the satisfaction too of the inhabitants, the Government of the Eastern Provinces. A permanent saving of nearly 4,000*l.* a year will thus be effected, but it will add very considerably to Mr. Montagu’s labors. My earnest request,—my confident hope,—is, that your Lordship will instruct me to restore the salary of the Colonial Secretary, while Mr. Montagu holds the office, to 2,000*l.* a-year, and I would urge this officer’s valuable services since his arrival in this Colony upon your Lordship’s particular attention, in the full reliance that this restoration will be made retrospective as far as possible.

“ If there were no other grounds for such a recommendation, his successful control of a large number of convicts, and his administration of an extensive road department, which none of his predecessors in office performed, and for which no competent person could have been obtained for a salary of 500*l.* a-year, would fully warrant it in Mr. Montagu’s case. The result of this system is an improvement in the roads of the Colony which I cannot describe.

“ I make these requests upon the broad basis of justice.

“ The plans I have adopted and which I hope to carry out, entail so much extra labor upon the Colonial Secretary, that I should be as dishonest towards this energetic functionary as to the Government, if I did not represent what I now do with the most sanguine expectation of a favorable result, for I do assure your Lordship that as I endeavor to work myself so do I impose it upon others; and upon no one does the labor fall to the extent that it does upon Mr. Montagu.

“ I have the honor to be, my Lord,

“ Your Lordship’s most obedient humble servant,

“ (Signed) H. G. SMITH.

“ To the Right Honorable the Earl Grey.”

The Secretary for the Colonies, Earl Grey, in his

replies to these despatches, expressed that it was "impossible to reflect on the zeal and ability with which Mr. Montagu performed the duties of his office without feeling a high sense of the value of his services; and that entertaining this opinion of his merits it would afford him much satisfaction to be able to comply with his request; but that in the then state of the Colony, with the heavy demands upon its resources which must grow out of the Kafir war, he considered it necessary to postpone the further consideration of an increase to Mr. Montagu's salary until it could be considered with reference to the actual financial condition of the Colony." And in an after despatch he stated that "he should be glad to consider whether some special allowance ought not to be granted to Mr. Montagu from the Colonial revenue, on account of his valuable services."

At the close of the Kafir war, in 1848, in consequence of the above successive applications, and the favorable light in which they were viewed by Her Majesty's Government, a notification, dated 25th September, was received by the Governor from Earl Grey to the following effect:—

"The heavy and responsible duties which have for some time past been unavoidably imposed on Mr. Montagu, and the very high testimony borne to his zealous and efficient discharge of those duties, have induced me to submit his claim to the favorable consideration of the Lords Commissioners of the Treasury, and I have to desire that you will inform Mr. Montagu, that I have much satisfaction in being enabled to announce the concurrence of their lordships in my recommendation that he should be permitted to receive an increase of 500*l.* per annum, to his present salary of 1,500*l.*, so long as he may continue to hold the office of

Colonial Secretary, and that such increase should commence from the 1st July, 1847."

To this notification was added the following reasons for the increase, most consoling to Mr. Montagu, not only for the relief of mind afforded him, but especially because they expressed to him that he had both the sympathy and approval of those in authority in England as well as of those governors under whom he served:—"This augmentation of salary is made to Mr. Montagu in consideration of the peculiar position in which he has been placed, and of the very valuable services rendered by him to the Colony." To this addition to his income, thus encouragingly given, Mr. Montagu was not insensible (as may be gathered from the following letter, addressed to Sir Harry Smith); and by its aid he was enabled year by year to set aside 1,300*l.*, to defray his liabilities, which he fully and nobly discharged to the very last farthing, shortly prior to his decease.

"Cape Town,

"14th December, 1848.

"Sir,—I request your Excellency's acceptance of my best thanks for your kindness in forwarding to me, for my perusal, immediately upon its receipt, Earl Grey's despatch, No. 192, of the 25th September last.

"That Earl Grey has been pleased to acknowledge my exertions in the discharge of the duties which have devolved upon me, in so marked a manner as to make the increase of my salary a personal grant, and not to attach it to the office I hold, is peculiarly complimentary and gratifying to my feelings. Through the kindness of your Excellency and your predecessors, my name and public services have been, not unfrequently brought under his Lordship's notice; but I never contemplated their attracting the attention of his Lordship in so special a manner as to induce him to desire your Excellency to inform me of his satisfaction at the concur-

rence of the Lords Commissioners of the Treasury, in his recommendation in my favor. Of the honor thus conferred upon me personally, I am indeed proud and fully sensible, and in requesting your Excellency to submit to Earl Grey, my sincere acknowledgments and grateful thanks for his goodness, you will further oblige me by assuring his Lordship, that much as I esteem the favor conferred upon me, I place a higher value upon the flattering recognition of my public services by which it has been accompanied.

“To your Excellency also, whose unsolicited representations to the Secretary of State, have been so instrumental in obtaining for me this liberal increase of my official income my most cordial thanks are justly due, and are sincerely and gratefully offered. I do not add that the kindness which I now acknowledge will induce me to labor more assiduously than I have done in the service of the Colony, for I cannot exceed in it the exclusive application of all my time and talents; but I shall be much gratified if the removal of private cares and domestic anxieties, which are naturally inseparable from a position of pecuniary difficulty, brought about solely through an honest and zealous devotion to the public interests, may enable me to act more efficiently in conjunction with your Excellency, whose constant and continuous co-operation and support I have had so many occasions to acknowledge since your assumption of this Government.

“I have, &c.

“ (Signed)

J. MONTAGU.

“To his Excellency

• “ Sir H. Smith, Bt., K.C.B., &c.”

If we may judge from the opinion of a public journalist, the addition to the salary of Mr. Montagu, at that particular time, was as willingly granted by the colonists as it was recommended by successive Governors and allowed by the Home Government. The article referred to, having recorded the estimates for the year, was thus concluded:—“ Among the additions was an increase of 500*l.* to the salary of

the present Secretary to Government, recommended by three successive Governors, and finally ordered by Her Majesty, in consideration of the additional labor imposed upon that gentleman in his office, and of the invaluable services he has rendered to the Colony. His Excellency warmly congratulated Mr. Montagu on this proof of Her Majesty's readiness to appreciate and reward all meritorious public servants; and after taking a review of Mr. Montagu's public life in this Colony it will be universally felt that never was a reward more justly bestowed."\*

\* South African Commercial Advertiser. Dec. 13, 1848.



## CHAPTER V.

ADMINISTRATION OF SIR P. MAITLAND AND  
SIR H. POTTINGER.

ARDUOUS DUTIES OF MR. MONTAGU DURING SIR P. MAITLAND'S ABSENCE ON THE FRONTIER.—DEPUTY COMMISSARY GENERAL'S TESTIMONY OF THE ASSISTANCE HE RECEIVED FROM MR. MONTAGU'S EXERTIONS THROUGHOUT THE KAFIR WAR OF 1846 AND 1847.—ARRIVAL OF SIR H. POTTINGER AS GOVERNOR.—QUESTIONS REGARDING THE EASTERN FRONTIER AND PROVINCES.—MR. MONTAGU'S ACCUMULATING LABORS AT THIS TIME.—DESPATCH OF SIR H. POTTINGER TO EARL GREY GIVING A SUMMARY OF PUBLIC MEASURES DURING HIS ADMINISTRATION.—LETTER FROM SIR H. POTTINGER ACKNOWLEDGING MR. MONTAGU'S SERVICES.

THE various measures for the adjustment and augmentation of the financial resources at the Cape occupied the most diligent attention of Mr. Montagu for the year 1843, and two following years; within which period, as has been already noticed, the Colonial debt was discharged, and the pecuniary appliances and means of the Colony set on a firm and prosperous basis. But other measures for the general advancement of the interests and protection of the community were projected contemporaneously with those for its monetary improvement. Some of these were at once put in operation; others were necessarily postponed until the removal of frontier disturbances, which, at this time, threatened afresh to destroy the tranquillity of the Colony.

In 1844, Mr. Montagu's attention was considerably engaged in preparing and advising upon the new treaties entered into with the Kafir tribes by Sir P. Maitland.\* Of the nature of these treaties, however, and of the proceedings of the Kafir war of 1846,—feelingly characterized by Sir Peregrine Maitland himself as a “deplorable war,”—it scarcely comes within the scope of this Memoir to speak; nor would reference be made to them but to show the onerous duties which throughout this period devolved on Mr. Montagu. The Governor's time and attention were wholly engrossed with the scene of war; there his care and anxiety had more than enough fully to occupy them: he was harassed with disasters and with the difficulty of defending a frontier, measuring nearly 200 miles, from the inroads

\* The writer cannot refrain from using this opportunity of making special mention of the kindness invariably shown by Sir P. Maitland to Mr. Montagu. During his governorship he evinced towards him the most unbounded confidence; entered with the warmest interest into the difficulties which then surrounded him; expressed for his embarrassment his sympathy as a friend, and, as Governor, represented in the strongest manner his claims for assistance. Nor did this friendship cease on Sir P. Maitland's return from the Cape, but became stronger and more apparent when Mr. Montagu most needed it; for when he was in London, broken down and disabled from office, and in uncertainty what course would be open before him, Sir Peregrine was marked and unremitting in his kindness; and most assiduous were his exertions, and pressing his representations, in Mr. Montagu's favor, to assist him in whatever way his influence could avail. When Mr. Montagu's remains were consigned to their rest Sir Peregrine followed them as a mourner; and to the bereaved widow and children that good man's commiseration and generous, tender solicitude were truly beyond all expression. Sir Peregrine Maitland has since then closed his long career of public service; and with him the country has lost one of its best and worthiest sons. Brave as a soldier, loyal as a subject, just as a governor, upright as a man, warm as a friend, benevolent as a philanthropist, and truly strict and exemplary as a Christian—of him, if of any one, it may fearlessly be said, that “his sun went down in tranquil glory, and his end

of marauding savages, who drove off cattle, destroyed peaceful homesteads, and spread one wide devastation from the Winterberg to the sea. It was proved moreover, that the Kafirs were not a despicable and easily scattered horde; since the previous war they had grown up into a more expert and formidable enemy, and Sir Peregrine remarked, on writing to the Colonial Secretary, that the officers engaged in the last Kafir war were astonished at the resoluteness and skill displayed by the Gaikas; that they had no conception of the extent to which they were supplied with fire-arms, or of the facility with which they used them. Their persevering courage in facing artillery, their combination and expertness in skirmishing in the bush, and harassing the troops, were new and startling features in their warfare, which rendered them "no contemptible foe."

To meet the demands for a probably long campaign, against a skirmishing and harassing enemy like this, to whom,—

"—— opimus

Fallere et fugere est triumphus,"

Mr. Montagu had to bring the resources of his fertile mind. Levies and burgher forces were to be raised from every district of the Colony: extensive measures to be set in operation for the Commissariat department: the means of transport to be provided; and above all, the "sinews of war," the resources for the immediate payment of the heavy expenses for the equipment of the levies, and arrangements for the supplies of the troops and burgher force, at a period of extreme scarcity. Nor was he found halting or embarrassed in this trying exigency.

It would be clearly unjust to ascribe to one offi-

were concerned in them, used their utmost exertions, —yet it cannot be doubted that on one, individually, must mainly rest the heavy responsibility of the whole machinery of management; some one must have the watchful eye and the prompt direction over all; upon some one must rest the pressure of the whole system, by which the subordinate apparatus is made efficient; and this one, at the time to which we are referring, was the Colonial Secretary. So strongly did the then Deputy Commissary-General, Mr. Palmer, appreciate Mr. Montagu's masterly abilities and assistance in regard to the financial arrangements for this Kafir war, that when he, Mr. Palmer, received promotion for the successful manner in which he conducted his department at that time, and for the ability he manifested in his measures and resources for supplying the troops, he assured Mr. Montagu that he felt his promotion was chiefly owing to the valuable aid and co-operation he so uniformly and promptly received from him, throughout the whole of that difficult period.

In January, 1847, Sir H. Pottinger arrived in the Colony as Governor in the room of Sir P. Maitland: the Kafir war was at that time, virtually finished, but many measures had to be adopted for the final adjustment of much which was still unsettled; and to effect, if possible, a decided termination to Kafir hostilities. Sir H. Pottinger, a fortnight after his arrival in the Colony, proceeded to the frontier, leaving Mr. Montagu, as Colonial Secretary, responsibly in charge of the civil government. Sir H. Pottinger continued as Governor until the end of the year, when on his appointment to the Governorship at Madras, Sir Harry Smith was sent out as

During Sir H. Pottinger's brief administration many and intricate questions arose regarding the future civil arrangement and affairs of the Eastern frontier and province.\*

From the multiplicity of these questions and anxiety for the probable results which would arise out of them, Mr. Montagu's attention was engaged almost day and night; and, at this period, he never devoted fewer than fourteen out of every twenty-four hours to close application to his official duties: nor could what necessarily devolved upon him be executed in less; for, irrespective of the additional demands on his time and consideration, arising out of an unceasing correspondence on the Eastern question, the ordinary civil business which rested solely upon him, was more onerous than at almost any period of his secretaryship.

On retiring from his trust as Governor, Sir H. Pottinger addressed to the Secretary of State a summary of the public measures completed, carried on, or set in operation during his administration: this summary will serve to show what must have been some of Mr. Montagu's labors and services at the time, inasmuch as the Governor being on the frontier, the great stress of them would necessarily fall on the Secretary to Government.

“Graham's Town, Cape of Good Hope,  
“6th December, 1847.

“My Lord, — In closing my administration of the

\* Those who wish information on these points will find it amply supplied in the Blue Book, published at the Cape in 1847, styled “Correspondence between the Right Hon. Sir Henry Pottinger, Governor, and His Honor Sir H. E. F. Young, Lieutenant-Governor, Eastern Districts, respecting a separation of the Eastern and Western Provinces,” from which it will be seen how various and difficult were the questions referred to Mr. Montagu from Sir H. Pottinger for his opinion and



Government of this Colony, I take leave, very briefly, to submit to your Lordship a summary of those public measures which most engaged my attention in conducting the civil departments of the Government.

“Some of those measures originated with my predecessor, whose retirement devolved on me the duty of carrying them out; others have been adopted since my accession to the Government, and are now in progress; whilst others are still in an initiatory state, and consequently left for the future decision of my successor.

“In drawing up this cursory outline of my civil Government, I am induced, from a regard to simplicity and perspicuity, to classify the several matters referred to under distinct heads.

“I was honored with your Lordship’s views and instructions respecting the judicial institutions of the Colony in your despatch No. 2, of the 4th December, 1846. In obedience thereto, I caused to be introduced in the estimates of 1848, an adequate provision for the establishment of additional magistrates, the repair and improvement of the district gaols, and the formation of a rural police. The votes I proposed in furtherance of these measures were passed unanimously by the Legislative Council on the 11th of September. The unavoidable absence of the Attorney-General from Cape Town prevented the immediate introduction of draft ordinances to give effect to those measures, and to such other alterations in the judicial institutions of the Colony as required the sanction of law.

“The drafts, however, have been subsequently introduced, and have passed the first reading. By them, should they become law, provision will be made—

“1st. For abolishing the grand jury in Cape Town, and for amending the system of summoning jurors throughout the Colony.

“2nd. For the appointment of additional courts of resident magistrates, and for the enlargement of their powers of jurisdiction both civil and criminal.

“3rd. For extending the functions of clerk of the peace or public prosecutor to assize districts, instead of the

formerly; and for empowering the resident magistrate, in his own district, to institute inquiry into alleged acts of crime, and to conduct preliminary examinations in the absence of the public prosecutor.

“4th. For the improvement and better management of gaols, for the organization of a rural police, and for the more easy apprehension of criminals, and the prosecution of crime.

“In connection with the administration of justice, I have caused to be abolished the impressment of relays for the conveyance of the judges on circuit, providing for that branch of the service by contract.

“At the instance of the Lieutenant-Governor of Natal, I also caused Bills to be introduced into the Legislative Council, which have since passed, for amending the law of that settlement regarding district courts, and for the apprehension of deserters.

“During my administration, Municipal Government, as provided for by Ordinance No. 9 of 1836, has been extended, and now embraces every town, and almost every village in the Colony.

“Public markets have also been proclaimed, under defined regulations, at such places where municipal boards do not exist, as are likely to facilitate the internal trade of the Colony. At the request of the Lieutenant-Governor of Natal, I have caused provision to be made by law for the institution of municipal government in that district, and for regulating the establishment of markets.

“Having found, on my arrival in the Colony, that regulations existed in almost every town and village, whereby colonial produce was forced into market, subjected to inspection and registry, as also to market dues, whether intended for sale or not, I publicly intimated my intention of introducing into the Legislative Council an ordinance to relieve such produce from the necessity of passing public markets, on entering the townships, and of paying the dues that had hitherto been exacted. This ordinance was introduced by me on the 12th of August last, and has since passed into law. By this enactment Colonial produce, of the annual value of upwards of 140,000*l.*, will be relieved

from an unjust and obnoxious impost on entering Cape Town, the principal market and port of the Colony.

“When I entered on the government of the Colony I found, in full and active operation, a road administration connected with a system of convict discipline, of which I have already had occasion to express to your Lordship my cordial approbation. It was, therefore, a pleasing duty to me to afford it all the countenance and support I could. I am happy to inform your Lordship that the prosperous state of the revenue has enabled me to maintain this important department in undiminished activity. One of the most formidable mountain passes in the Colony (‘Cradock’s Kloof’) is nearly completed, and will be publicly opened in the course of next month; another (‘Mosterd’s Hoek’) is far advanced towards completion; two others have been surveyed, one of which (‘The Zuurberg’) is already in hand, and the other will be so in six months hence; after which there remains but one to be opened, of a very formidable character, throughout the Colony, viz., the ‘Zwarteberg.’

“While thus giving effect to the measures of my predecessor, in regard to the maintenance and construction of roads, my attention, at the same time, has been given to the important subject of harbors.

“In this Colony, with few exceptions, the harbors may be regarded more in the light of open roadsteads than of harbors, being entirely exposed to some one of the two prevailing winds which are constantly found on the coast, viz., the ‘south-east’ of summer, and the ‘north-west’ of winter. Those exceptions are confined to harbors; either of difficult access, or deprived of fresh water. In none of the harbors, with the exception of Table Bay and Simon’s Bay, are there any facilities for the landing or shipment of goods, in the shape of jetties or wharfs; nor have moorings been laid down for the safety of shipping when exposed to gales from the open sea.

“I therefore caused an ordinance to be introduced into Council providing for the improvement of the harbors of the Colony, and for placing them under the administration

“This Bill has been passed unanimously, to the great satisfaction of the mercantile and shipping interests; while another has been introduced by me, specially providing for the improvement of Table Bay, by the erection of an extensive pier or sea-wall, with an additional jetty capable of having placed alongside of it ships of upwards of 200 tons burthen. As a part of the plan, it is also contemplated to lay down a patent slip suited to vessels of large dimensions.

“It may not be improper here to mention, that in devising means for the better security of shipping, I have not lost sight of what is of still higher importance—the safety of life.

“During the government of my predecessor, in consequence of the great loss of life from shipwreck in Table Bay, a life-boat establishment was formed, and placed under the direction of the port captain; a similar establishment I have caused to be formed at Port Elizabeth, and placed under the direction of the harbor master.

“The wrecks I have just alluded to, having greatly increased the dangers in the bays and impeded their navigation, I caused a law to be passed imposing on the owners of such wrecks, or their agents, the necessity of completely removing them within a specified time, which has given great satisfaction.

“I am happy to inform your Lordship that it has been in my power to enlarge the annual grants both for churches and schools. In regard to the latter, especially the fixed establishment of which (in consequence of the expense of supporting teachers of adequate attainments) is necessarily confined to the towns and villages of the Colony. I have increased the former annual grant by 500*l.*, with the sole view of establishing among the farmers of the country districts elementary schools, in which, in addition to the common branches, a knowledge of the English language, and with it, of English customs and habits, will be imparted. Arrangements, on an extensive scale, are now being made for carrying this important measure into effect; so that we may expect, in a few years, to see the English language diffused in the remotest districts of the Colony, and among all classes.



“ In concluding this brief review of the most important measures of my civil administration, I am happy to be enabled to assure your Lordship that, notwithstanding the disastrous Kafir war, which has been so calamitous to the border inhabitants on the eastern frontier, the general revenue of the Colony is in a satisfactory state, still continuing to show that steady improvement which has marked its progress for the last four years.

“ The actual revenue of this year already shows an increase on that estimated of upwards of 40,000*l.*, and on that of 1846 of upwards of 20,000*l.*

“ I have, &c.

“ (Signed) HENRY POTTINGER.”

One point in this summary is particularly worthy of remark, that connected with what is known in the Colony, as the “Market Relief Bill.” Before the passing of this Bill the agriculturists had not only to transport their produce to market under the trying difficulties of long and destructive roads, but had also to pay market dues on all produce brought into townships. How burdensome and irritating to the agriculturist this tax was considered, may be gathered from this remark of Sir H. Pottinger, upon the Bill, for its removal: “By this enactment, Colonial produce to the annual value of 140,000*l.* (this was in 1847), will be relieved from an unjust and obnoxious impost on entering Cape Town, the principal market and port of the Colony.”

The following generous letter from Sir H. Pottinger to Lord Grey will serve to show how he—“whose habits of business which from long practice had become a second nature with him,”—estimated the burdensome duties, and eminent qualifications for public service, which attached to Mr. Montagu. It bears reference to his ability, his willing devotion to his duties, his constant and careful scru-



tiny into every department, and that regularity and dispatch of business which for some years passed has made the Colonial Office at the Cape, a model to all public departments.

“Cape Town,

“February 5th, 1848.

“My dear Lord Grey,—As the *last* act of my residence in this Colony, for I embark to-morrow morning for Madras, I address your Lordship in this form regarding the increase to Mr. Montagu’s salary, which was proposed by Sir P. Maitland, in Sept. 1846, and supported by my despatch of the 15th April, 1847. Since the date of that despatch, I have had still more ample opportunities of appreciating Mr. Montagu’s devotion to, and extraordinary talent in, the conduct of the affairs of this Colony, and I trust you will pardon me for again expressing my opinion that his services are by no means sufficiently rewarded. I have never in any part of the world met with a public servant, who struck me as being so eminently qualified for his duties, and with all my habits of business, which have, from long practice, become a sort of second nature with me, I do not hesitate to declare, that without Mr. Montagu’s able and zealous aid, I could never have got through the labor I had to perform. I *surmise* that the chief objection to the proposed increase is the apprehension of the precedent it might seem to establish for similar claims from others, but I very humbly think that this reasoning is in this instance, neither applicable nor just; since every one must see, that none of the other functionaries of the Colony, have a hundredth part of the labor and responsibility which attach to Mr. Montagu, and I feel convinced that the gradual development of the resources is solely owing to his constant and careful scrutiny into every department. I can unqualifiedly assert, that I never made a reference to him connected with any branch of the administration to which I did not receive a full and satisfactory reply as quickly as the post would admit; and from the manner in which Sir H. Smith spoke of him, during our short interview at Sidbury, I feel sure this opinion would have his cordial concurrence.

“Mr. Montagu has never asked me to write either pub-

licly or privately in his favor, but I told him I intended to do so once more, as I was anxious to leave my strong testimony to his claims and merit. Should your Lordship still retain the opinion that the suggested increase is not admissible, I would then, as an act of justice to Mr. Montagu, recommend that he should be removed to some other appointment of larger emolument; but in suggesting this plan, it is my duty to add, that I think this Colony would suffer *very seriously* by his removal, and therefore, on *public* grounds, I should be better pleased to hear that he was continued on an adequate salary. I am certain that your Lordship will not take amiss the honest and unbiassed recommendation which I have ventured, at the moment of my departure, to urge on Mr. Montagu's behalf, and which I should have put in an official shape, had your Lordship's despatch of the 3rd July, left me an opening to do so.

“ I remain,

“ My dear Lord Grey,

“ Yours very faithfully and sincerely,

“ (Signed)

HENRY POTTINGER.

“ The Earl Grey.”

## CHAPTER VI.

## ROADS AND CONVICT LABOR.●

STATE OF ROADS IN THE CAPE COLONY.—EFFECTS OF THIS.—MR. MONTAGU'S ENERGIES DIRECTED TO THEIR IMPROVEMENT.—SYSTEM OF CONVICT LABOR.—IMPORTANCE OF THE SUBJECT.—CONVICT STATIONS AT THE CAPE.—THEIR GREAT DESIGN TO REFORM THE CRIMINAL.—ROBBEN ISLAND, FORMERLY A PENAL STATION.—REPORT ON THE STATE OF CONVICTS THERE.—COMPARISON BETWEEN THE OLD AND NEW SYSTEMS.—MR. MONTAGU'S ACTIVE DILIGENCE IN THE MANAGEMENT OF THE NEW SYSTEM.—HIS OWN REPORT OF THE WORKING OF THE SYSTEM OF CONVICT DISCIPLINE.—TESTIMONY OF SIR H. SMITH TO ITS SUCCESS IN HIS DESPATCH TO LORD GREY.—LORD GREY'S REPLY AND RECORDED GRATIFICATION AT THE FAVORABLE RESULTS OF THE SYSTEM.—LORD STANLEY'S TESTIMONY BEFORE THE HOUSE OF LORDS TO MR. MONTAGU'S ABLE AND EFFICIENT SERVICES IN CARRYING OUT CONVICT DISCIPLINE—THE TWO GREAT POINTS OF MR. MONTAGU'S SYSTEM, PRACTICAL USEFULNESS AND MORAL IMPROVEMENT.

It has been remarked by an intelligent writer, that "every country through which there are no roads must remain in barbarism." The high road of commerce is commonly the highway of civilization; and the Romans, who proved themselves the most efficient colonizers, made roads and bridges and means of easy intercourse throughout each country where they planted a colony, one of their first undertakings. For a century and a half the Dutch Government held the Cape of Good Hope, previous to its surrender to the English in 1806; yet up to that date and for more than thirty years after, the internal parts of the Colony were absolutely cut off

from all knowledge of what was transpiring in the rest of the world. This arose from the difficulty of communication, by reason of the impassable mountain barriers which as a succession of rocky terraces, varying in elevation from 1,000 to 5,000 feet, intersect the Colony. It was in vain for the agriculturist to attempt to improve his crops when there was no approachable market where he could dispose of, or exchange his surplus produce. It was in vain that fertile and yet improvable regions, like the cold and warm Bokkeveld, could yield under diligent farming large supplies of grain and other products, so long as unopened kloofs, and rugged precipitous mountains divided them from the Cape district and every port from which they might be exported. It was in vain that the French refugees by their industry, and the introduction of their native vine into the Fransche Hoek, made that sunny corner, and subsequently the Paarl and much of the Western division of the Colony, to hang forth their rich green and purple clusters, so long as the wine-growing districts found between them and an available market, weary tracts of sand, and rain-swollen torrents, which made intercourse at all times uncertain and hazardous, if not wholly unprofitable. Energy was cramped; farming was little better than growing for home want and family supply; each *boer's* homestead, with its cattle kraals and long ranges of outbuildings for slaves, was, more or less, a little world within itself, self-dependent for its means of support, with its dwellers consuming what they cultivated. The mode of living in remote parts of the Colony was primitive and patriarchal; probably there was no less, there may have been even more domestic happiness in this

competition, and in the hurry and excitement of traffic at distant ports; but in this case, and under such an isolated state of being as prevailed through all places only a few miles removed from towns, a colony must unavoidably remain stationary. For the general purposes of the civilized world at large it can lend no aid; and its own population must necessarily grow up with narrowed prejudices, and without opportunities of advancement,—the son just contented with what the father did,\* using the same rude implements, satisfied with the same returns, and living exactly in the same unprogressing mode of existence, as if civilization had done nothing for the conveniences of life, nor commerce with its catholic spirit bid all the world shake hands, and each land pour in its tribute of supplies for the common industry, common employment, and common good of mankind.

For more than one-third of the present century, the whole of the internal resources of the Colony were locked up. Such was the hard and rocky nature of the country, that it seemed to defy road-making. Between Cape Town, Malmesbury, Stellenbosch, the Paarl and Wellington,—the corn and wine regions of the West,—there was a long waste of

\* Vice-Admiral Sir J. Brenton, who was stationed at the Cape as Commissioner, in his narrative of a journey to the mouth of the Knysna in 1817, gives several graphic descriptions of Cape travelling, and amongst them one which illustrates the above remark:—"In many cases we observed that the road might have been rendered much easier, and consequently safer and more expeditious, by a little more detour being made in it; but even when it was at all possible, the straight line was most inflexibly adhered to. It was frequently seen that the ruts of wheels were passing over a stone of two or three feet in height where a deviation of as many yards would have avoided it. But it was a road which the grandfather had gone, and was, therefore most dutifully followed by the descendants."



almost impassable sands, ever shifting and uncertain, and after strong winds rendering the finding of the track almost impossible. There was no great central road; and scarce any overland intercourse between the Eastern and Western divisions of the Colony, owing to several dangerous rivers with their uncertain drifts causing frequent and long delays,\* and the rock-strewn Cradock's Pass, claiming its exaction of toil and breakages and expiring oxen for almost every transit. In the Eastern division, from the districts of Somerset and Cradock to the port, (Algoa Bay or Port Elizabeth,) there was no available road, and the towns which give name to those districts now rising into importance, must have languished as all but "deserted villages" had there been no other access to the bay than that which, a few years back, the mountain roads afforded. Beyond the Paarl the frowning mountains of Tulbagh seemed to sever from the rest of the world the regions beyond: while the long, barren Karroo presented cultivation and enterprize alike stunted and dried up, on either side of its arid and famished waste, by its utter desolateness and consuming drought.

To open a communication with all parts of the Colony, was one of Mr. Montagu's first designs, and

\* The following illustrative description is from the account of Sir J. Brenton, referred to in a former note. "The road from Hottentot's Holland to the Palmiet River is broken and irregular. The river which we had now to ford was of little depth. The greater part of the summer it is nearly dry, but in the winter it is frequently impassable from the violence and depth of the torrents. This circumstance occasions great impediments in travelling through the Colony; a delay of many days is frequently experienced, and even whole families, who have left their homes for the purpose of going to church only a few miles distant, have been detained many days on the banks of one of these torrents, without the possibility of getting across."

with unsurpassed talent and energy he brought the resources of his mind and enterprize to this work ; and in a very few years was instrumental in setting on foot, and hastening to accomplishment “undertakings,” which to use the commendation of Sir H. Smith, “would do honor to a great nation.” In the last few years, the physical difficulties against the improvement of the Cape Colony have been removed ; mountain passes have been rent open ; hard roads made through deserts of driving sand ; rivers bridged over, and made passable even in the heights of winter torrents ; and a regular post line of communication carried through from Cape Town to Graham’s Town, —the capitals of the Western and Eastern Divisions, distant by an interval of more than six hundred miles, —over which the mail is now carried thrice in the week, with regular dispatch, completing its whole distance in a space of about seventy hours.

For the execution of his projects of opening the mountain passes, and carrying roads throughout the country, Mr. Montagu happily devised, and subsequently successfully introduced, a new and most advantageous system of convict labor ; a system which, in its usefulness and reformatory effects, has already worked, and will be yet more instrumental in working, the most important physical and moral changes, over the face and in the heart of the whole Colony.

Probably there is no question which has so much perplexed statesmen, and engaged the thoughts of philanthropists, or which so deeply concerns the general character and moral position of a people as the disposal and government of its convicts. A variety of character is exhibited in every penal station. Each station is a centre and meeting place

of almost every kind of moral evil; of almost every shade of crime; an asylum of miserable guilt; a focus of abandoned wickedness. To devise and institute, for our prisons, penitentiaries and penal settlements, such restrictive management, such firm but merciful discipline, such hard but useful labor, as shall uphold the dignity and justice of Government, and yet aim at reclaiming the criminal, and bring good out of evil by turning punishment to the public welfare and the general good, is one of the grandest, as well as one of the noblest, enterprizes which can engage the thoughts or claim the benevolent interests of man; and to this perplexing and important work, Mr. Montagu brought a breadth of view, a measure of experience, a boldness of design, a scheme of discipline, a deep and feeling interest, a close and merciful watchfulness such as have been seldom, if ever, given by any individual to any like object.

The present convict stations of the Cape Colony afford one of the most painfully interesting objects which can any where be witnessed. There may be seen, there, at the same station, the should-be-civilized and the savage; the white man and the colored; the culprit who has disgraced his Christian name by crimes which he has been taught to shun, and the heathen morally ignorant that theft is a crime, and who has hitherto been untaught that there is a God who has given his command against murder. There, may be seen grouped at the same labor, dieted on the same rations, and even learning in the same school on the day of instruction, the English and Dutch delinquents, the European sailor, the Africaner, the Kafir, the Bosjesman, the Fingo, the Hottentot, the Malay, the Mozambique; all shades of color, all grades of

intelligence ; and yet perfect discipline, and mercy tempering justice, and encouragement holding out its advantages to the well-conducted, and labor so regulated, that while it deters from crime, it consumes not the health like Siberian mines, nor breaks the spirit like drear blank solitude, or the pestilential dungeon. You may see, there, evil turned to good, and the ignorant taught to read in the weekly school ; you may behold indolence learning industry, and the idle and thieving Bosjesman, and the cattle-lifting Kafir, making a high-road for commerce and civilization, in which the *spoor* of theft shall give place to the rut of the farmer's wain. In those stations the savage nature is restrained by wholesome discipline, and yet the same savage by his penal toil turns the wild mountain-pass to a road of usefulness, and the frowning tracks of barrenness into scenes of grandeur, cultivated beauty, and fertility.

All this was originated in the vigorous mind and feeling heart of Mr. Montagu ; and no unprejudiced spectator can visit, or make inquiry at, the convict stations, or regard the discipline and treatment and public works of the convicts at the Cape, without acknowledging the complete success and merciful arrangements, there practised, to reclaim from crime, and to lead and encourage to good. This convict system has commanded the attention of several discerning strangers in the Colony, who have visited Bain's Kloof, or the Zuurberg, or other stations ; it has called forth the merited acknowledgments of successive governors, and the very highest approval of the home authorities ; and it will undoubtedly remain the highest glory to the name of Montagu, as long as those mountain passes shall remain, on which utility has been extracted from punishment, and

where the records of decreasing crime may be read in the stupendous achievements of improvement.

Before entering on the account of the different roads which have been opened, and the general assent to their usefulness, it may be well to review the system of convict labor by which these roads have been accomplished.

Previous to the employment of convicts on public works throughout the Colony, Robben Island at the entrance of Table Bay, and about six miles from the main land, was used as a convict settlement; for which purpose it had been set apart from the first occupation of the Cape Colony by the Dutch. The system which had long been pursued there, with reference to the management and employment of the convicts, will be best gathered from the following Report drawn up by Mr. Montagu, after a visit of inspection to that penal island.

REPORT ON *Robben Island*, by the Secretary to Government.

“ Colonial Office, Cape Town,

“ 6th January, 1844.

1. “ I HAVE the honor to inform your Excellency, that in accordance with your directions, I proceeded to Robben Island on the 18th December last, and remained there till the 21st of that month, for the purpose of inquiring into the working of the convict system at that penal station.

2. “ I visited every part of the island, inspected every work, and examined minutely into every particular connected with the discipline and management of the convicts. At the time of my visit, there were 183 convicts, of whom were 116 colored and eight white natives of the Colony, and fifty-nine Europeans, of which latter thirty-seven were soldiers. The barrack for the confinement of the convicts by night (they leave it early in the morning, and do not return till the evening) is sufficiently commodious.

3. “ It is strongly built and secure, and is kept clean and



in good order, and the beds also are good and clean; but the convicts are allowed each to have a bag for the clothes they leave in the building. These bags are made by themselves, of all kinds of materials, and are hung on nails above each bed, and, as they are generally speaking dirty, they present an unsightly appearance. They ought to be removed, and canvas bags or boxes should be substituted at the expense of Government. In some of the bags pieces of meat were kept, which ought not to be allowed. No meat should be left in the sleeping wards.

4. "The rations are supplied daily by the commissariat storekeeper to the convicts individually. They attend at the stores every morning before going to work, and each man receives his allowance of meat, and at night on their return from work, they, in like manner, receive their ration of rice and bread, but no vegetables are allowed. No cooking utensils, platters, knives, forks, mess-kids, panakins, nor anything suitable, either for cooking the food or for eating it from, are provided. Some men have kettles and saucepans, others have not, and, as they are not allowed any fuel whatever to dress their victuals, they cook them and eat them, when, where, and how they best can. All this should be remedied.

5. "There should be regular meals and messes, and the rations should be served to messes, and not to individuals. As the climate will quite admit of it, the cooking for dinner should be prepared wherever the mess is at work, by using camp kettles. It is essential that order, method, and regularity should be introduced upon these points.

6. "The men look healthy and strong, and the provisions of every kind are good, and although I questioned the convicts very minutely, there was not a complaint made to me either on that head or any other.

7. "The convicts are principally employed in collecting shells, and afterwards burning them for lime, and in quarrying stones. The enclosed return shows how every man was employed on the 19th December, and the Commandant assured me that it was a fair average return of their usual employments. No book is kept to which I could refer for further information upon that point, and I instructed the

Commandant to keep one in future, showing how every man is hereafter employed daily.

8. "The work of the convicts is hard and severe; I am of opinion that it is sufficiently so, if they are kept rigidly at it throughout the day, which the Commandant informed me is the case. When I visited the men they were hard at work.

9. "There are no free overseers over the men at work. There are but two free overseers on the establishment: Mr. Wolhuter, who is the senior, has such numerous duties connected with the stores, the rations, clothing, &c., and the general superintendence to perform under the Commandant's directions, that it quite precludes him from looking after the convicts at work; they are entirely under the charge of convict overseers during the whole day.

10. "There is a carpenter's and boatwright's shop, and a blacksmith's shop. These shops appeared to me to be well and economically conducted, and of great public utility.

11. "The want of the ordinary and usual means for endeavoring to improve the minds of the convicts struck me very forcibly. There is no school of any sort or kind, there is not even the appearance or name of such an adjunct, nor a school book to be found there; there is no minister of religion, nor is religious or moral instruction of any kind imparted beyond the reading of the Church of England Service in English every Sunday morning, and a sermon in the same language by the Commandant to all the convicts, and the reading of the service of the Dutch Reformed Church in Dutch every Sunday afternoon by a convict, to those convicts who do not understand English. A very neat and commodious church has recently been erected on the island.

12. "There is no code of regulations for the station, and the Commandant has no instructions sufficiently defined for his guidance; no other record is kept of offences or punishments, except for corporal punishments, for putting men in irons, or the black hole. I would recommend that a stricter record should be kept of every offence, &c., according to the accompanying form.

13. "The accompanying abstract of crimes committed,

and punishments inflicted, for the ten years ending, July, 1843, also the return of the convicts, who have been retransported to Robben Island for the ten years to the 6th January, 1844, were furnished me by the Commandant.

14. "There is no cultivation attempted for producing vegetables, or indeed any thing else, for the use of the convicts. This I am of opinion is wrong, both as regards the health of the convicts and economy to the public. The Commandant is of opinion, that four men constantly employed as gardeners, would produce vegetables for the station for six months in the year.

15. "The hospital of the island is small, cool and well built, but has not the requisite conveniences. It consists of one room only, and a small recess which has a fireplace for cooking the meals, &c., of the patients. There were six patients in hospital on the occasion of my visit, but no acute case; they were chiefly influenza. A medical officer is stationed on the island, who has the dispensary at his own quarters, at some distance from the hospital. He is not supplied with proper medicines, nor in sufficient quantities. No medical comforts, beer or wine, are allowed for the sick. These things have been supplied by the Commandant at his own expense for the last ten years. I accordingly instructed the medical officer to make a requisition for proper medicines, medical comforts, &c., which he has done, and I have referred it for the opinion of the medical committee. The duties of the medical officer are very trifling, and much more might reasonably be required of him for the salary which he receives.

16. "The clothing of the convicts is very inferior in quality, insufficient in quantity, and more expensive than it need be if properly supplied. At present it is furnished by contract through the superintendent of police, and the Commandant is not referred to or consulted in any way whatever; twenty-five pounds a year is allowed for the purchase of sheepskins and bullocks' heads to make shoes (called *veldschoen*) for the convicts. One sheepskin and two bullocks' faces will make two pair, at a cost of one shilling per pair. This sum of twenty-five pounds is granted without reference to the number of convicts. For the present number (183) it is quite insuf-

ficient. Every man ought to have at least four pair a year, and the quarry laborers and lime-burners require at least double that number. The Commandant suggested to me, that he should be allowed at the rate of six shillings a year for each convict for shoes, which will be sufficient to supply all parties with the necessary quantity, and I concur in this recommendation.

17. "Two shirts only each year were allowed for every convict, which number is quite inadequate. I was distressed to see the state of nakedness in which many of the men were, and knowing that your Excellency had lately approved of three shirts a year for each convict on the road stations, I instructed the Commandant to supply every convict on the island with an additional shirt, which your Excellency was pleased to approve when I reported it to you on my return to Cape Town. I directed the Commandant to purchase these shirts by private contract, in order to ascertain what difference would result from purchasing by that mode, instead of the present contract system. The result was, as I anticipated, most satisfactory. The shirts bought by Captain Wolfe were quite equal, if not superior, in quality to the contract shirts, and were seven shillings a dozen cheaper. Much economy would be insured, and superior clothing could be furnished to the convicts, by purchasing the Colonial leather, buttons, &c., for making their trousers, and having them made up of that material on the island. I suggested this to the Commandant, who after making the necessary inquiry, ascertained that it could be easily accomplished by the convicts, and acknowledging the advantage of the plan, immediately and strongly recommended it. After a short time, jackets and waistcoats of leather might, in like manner, be made by the convicts, but I would not recommend that anything more than trousers should be attempted for the first few months.

18. "The system of supplying provisions, clothing, stores and whatever else is required at the establishment, is I think very defective.\*

21. "The Commandant is in nearly an equal state of

\* Some sections of the Report are here and elsewhere omitted as being mere remarks on the duties of individuals connected with the island.



ignorance with respect to the revenue derived from convict labor. He supplies lime, slates and stones to the civil engineer upon that officer's requisitions, for the public departments in Cape Town, as well as for sale to private individuals. At the end of a quarter the civil engineer sends him a receipt for the lime and shells received by him from Robben Island during the quarter, which the Commandant certifies and forwards to the auditor; but until 1843, no account sales or expenses incurred in landing, cartage, &c. were ever furnished him. No information is afforded him as to the disposal of stone. He keeps no public account whatever of the revenue or expenditure of the establishment under his charge.

22. "The civil engineer furnishes the auditor-general with the account sales of the materials which he disposes of from the island.

23. "The supply of shells for lime, and of slates and stones from the quarry, is inexhaustible, and being in great demand in Cape Town and its neighborhood, requires to be more carefully accounted for. The men at the quarry, who are termed laborers, are not on task-work, but those employed to saw, chisel and polish, are, as are also those who are employed in collecting and burning shells.

24. "Whenever any thing is to be landed or shipped at the island, a gang of convicts is employed to carry it from the boat to the shore, by wading through the water considerably above the middle. A surf boat is always necessary.

25. "The Commandant, the surgeon, and overseers are allowed to employ nine convicts as servants, as will be seen by the return referred to in a previous part of this Report.

26. "With respect to the clothing, I would recommend that the same scale be adopted which has lately been approved for the road parties, also the same scale of rations, and that the same hours of labor be observed; and I would suggest, that the regulations which your Excellency approved on the 1st instant, for the discipline of the convicts on the roads, should, as far as practicable, be adopted for Robben Island; but they should, after a little further experience, be made much more stringent as regards labor and privations to the convicts under sentence there.



27. "It is, of course, of the greatest importance to the proper working of the new system of convict discipline lately introduced into this Colony, that the punishment at Robben Island should be so much more severe than that of the road parties, as to make the convicts at the latter stations dread removal to Robben Island. I think it also of importance, that no convict should be longer continued at Robben Island whose crime, conduct and character do not require a more severe degree of discipline and punishment than is observed at the convict road stations; and I would therefore suggest, that the Commandant be requested to furnish a return of such men as, in his opinion, ought, under the principle I have stated, to be removed to a road station. This, however, should not apply to what are termed European convicts, the greater part of whom are soldiers who have been transported for military offences. I see no objection to Hottentot soldiers being sent to road parties, and in these suggestions Captain Wolfe concurs. My impression is, from the inquiries and examinations I made of the men while on the island, that from seventy to eighty convicts may safely and with propriety be removed to the road stations.

28. "There should be an invalid establishment at Robben Island for decrepid and sickly convicts who are unfit for a road party, and who might very properly be detained at the island, not under punishment or sentence, but to perform such light work as they are capable of, and who should receive such indulgences as would not be incompatible with their condition of convicts.

\* \* \* \* \*

"No time should be lost in appointing a minister of religion, who should also be required to superintend and conduct schools, and that every proper means should, without delay, be provided for giving moral and religious instruction to the convicts.

\* a \* \* \* \* \*

44. "I am of opinion that it would be most beneficial to the discipline of the island to establish a scale of indulgences, in proportion to the sentences, to well-conducted convicts, by enabling them, in the first instance, to be removed to a

road station, with the promise of a pardon at a period to be specified, for continued good conduct at the road station.

“This scale I could prepare, if the principle be approved, and the promulgation of it amongst the convicts would, I doubt not, be highly useful. At present there is no rule whatever by which a convict can be guided for looking forward to a mitigation of his sentence; all is doubt and uncertainty on this head.

45. “The Commandant should be instructed not to permit any convict to leave the island to visit Cape Town, without the Governor’s permission obtained in writing through the Secretary to Government.

“ (Signed) JOHN MONTAGU.

“To his Excellency the Governor.”

Such was the convict system. Hard and severe; with no code of regulations for the station; of comparatively little return to the Colony of any definite revenue; with no means or regard for the moral improvement of the convicts themselves; no attempt to restore them to society better or more useful members than when they were expelled from it; with no place of instruction of any sort or kind, not even the appearance or name of such an institution; no minister of religion; no religious teaching beyond the reading of the Church of England Service in English every Sunday morning, and a sermon by the commandant to all the convicts, and the reading of the Service of the Dutch Reformed Church in Dutch every Sunday afternoon by a *convict*, to those convicts who could not understand English. The great design of the present system is to reform the offender while punishing the crime; to hold out hope for the future while visiting for the past. The management is mild though coercive; dealing justice, yet tempered with mercy; the code of regulations is minute though comprehensive; the

mode of treatment of that nature which upholds the majesty of government, and yet shows regard for the reclaiming those who have violated its laws.

On fixed days labor is suspended under the present system, that every convict, old or young, English or Dutch, white or colored, may receive instruction; and a zealous and judicious chaplain teaches and exhorts them unceasingly. There is at each station a lending library, with a good supply of well-selected books—religious, moral, entertaining—for the use of the convicts. Hope and fear—those incentives to human nature—those appliances through which the Divine Corrector appeals to what is reclaimable in his reasoning creatures, are employed to work their powerful influence on all under punishment. Those who exhibit good conduct are encouraged by a mitigation of their sentence; those who are refractory and hardened, have the threat before them of a longer servitude; and probably there is no institution in the Colony, nay under Her Majesty's merciful dominion, which reflects from itself greater lustre for moderation, utility, justice, and beneficence—in their uncorrupted though gentle influence—than do the stations of convict labor and discipline at the Cape of Good Hope. The system is, on every hand, allowed to be Mr. Montagu's; and is pronounced by all who are unprejudiced, and will be at the pains to examine into it, to be not only equal to the great objects it was designed to effect, but also a model for imitation, throwing an honorable distinction around the individual who devised it, and bringing credit to the State under which it is humanely administered.

Nor must it be supposed that Mr. Montagu only labored for the introduction of this system, or was

satisfied with simply drawing up regulations for its efficient and just administration,—he took the burden and responsibility of it,—he watched its progress, and entered into all its practical bearings with the most anxious interest. It was a great and good work to which he not only turned his mind, but on which he set his heart. He always spoke of it with that earnestness which proved it was paramount in his thoughts. He was familiar with all that transpired at the several stations, and was acquainted with the names and characters of most of the convicts. No punishment was inflicted without his knowledge; no culprit gave token of reform without meeting with his encouragement. And to the end that he might be acquainted with each, even the minutest, circumstance which occurred at the different stations, he arranged that “everything relating to the moral training, religious education, and discipline of the convicts, should be conducted exclusively through his office.” An arrangement on which Sir George Napier, when bringing it under the notice of Lord Stanley, generously observed—“It imposes a very heavy and responsible addition to Mr. Montagu’s duties, but he has cheerfully undertaken it.”

The whole of the system, and its adaptability for the reformation of individual conduct, as well as for the advancement of the general good, will be best gathered from the account of it by the framer himself; and it may yet be found to be of extensive benefit to give it greater publicity than it has hitherto obtained.

“Cape of Good Hope, Colonial Office,  
“27th July, 1849.

“Sir,—In your despatch addressed to Earl Grey on the

occasion of the opening of the Mitchell Pass, you informed his Lordship of your intention to call upon me at the close of the year to furnish a detailed report of the working of the system of convict discipline which I introduced into this Colony, and which would then have been in force for a period of five years.

“ 2. It is unnecessary here to explain at large the circumstances which have hitherto prevented me from complying with your Excellency’s instructions on this head. The mass, however, of statistical matter to be analysed, and which has been accumulating undigested in this office since the commencement of the system in 1844, will at once suggest to your mind the amount of labor to be incurred, and to which, on account of the numerous and onerous duties of my office, I could only occasionally devote my time and attention, before the report, which I have now the honor to submit, could be completed.

“ 3. In order that it may appear the more clearly what were the evils which this system was designed to obviate or remove, when introduced by me under the sanction of Sir George Napier on the 1st January, 1844, I take leave to enter into the following brief review of the state of affairs with regard to convicts under sentence of imprisonment with hard labor, which then obtained through every district of the Colony.

“ 4. On assuming the office of Secretary to Government, 1843, my attention was early directed to the subject of secondary punishment in this Colony; and, with the approbation of the Governor, I moved an inquiry into the state of convict discipline, or rather of the manner (for discipline did not exist) of giving effect to the sentences of the supreme and circuit courts, in regard to crimes not disposed of by the summary jurisdiction of the district courts, which is limited to thirty days’ imprisonment, with or without labour.

“ 5. This inquiry fully established the following facts:—

“ 1st. Of the collective labor of the male convicts then under sentence, one-fifth was lost to the public, and consequently the punishment of hard labor was, to a corresponding extent, in total abeyance; whilst, from the



lax manner in which hard labor was exacted from those on the effective list, the end and purpose of punishment were frustrated to a very considerable extent.

“2nd. The employment of the convicts on the streets of the district towns and villages, as, also, on the roads in their immediate neighborhood, not only afforded the convicts the means of uncontrolled intercourse with friends and former associates, but at the same time enabled them to procure comforts and luxuries incompatible with their condition; whilst the debasing effects of such a mode of procedure, in inflicting the penalties of the law, on the minds of the young in every district of the Colony, could not be otherwise than highly prejudicial to the best interests of society.

“3rd. The system that then obtained (if entitled to such a name) not only did not contemplate, but by its very arrangements neutralized or counteracted that process of reformatory discipline which is essential to the due exercise of penal justice, a process which, while it strictly regards the extent and degree of punishment imposed, seeks, on grounds of purely social consideration, to rescue the delinquent from the power of vicious habits or degrading propensities, and to restore him to society, if possible, prepared to resist its allurements and temptations from higher motives than the dread of punishment consequent upon crime.

“6. That this is no exaggerated statement of the result of the inquiry is abundantly apparent from the following facts selected from the voluminous official returns which I called for. The number of convicts then under sentence amounted to 470; of these, 183 were on the penal establishment of Robben Island, 86 on the public roads under the charge of the Surveyor-general, and 202 under the control of the Civil Commissioners of divisions, the two last being formed into parties varying from 4 to 31, and averaging, throughout the Colony, 14.

“The convicts sentenced to Robben Island were generally the most desperate characters. Punishment, in consequence, was to be found there in its severest form, so far as fetters and the lash are concerned, but the labor

exacted was scarcely of a kind that the legitimate interpretation of 'imprisonment with hard labor' would impose; it consisted in quarrying stone, and in collecting shells by the sea-shore for making lime. The convicts, when at work, were superintended by overseers chosen from among themselves; others acted as servants to the Government officers on the island, and some as boatmen; they were ill-clothed and irregularly fed. They were required to cook each his own food, without being supplied either with fuel or utensils, when, where, and how they best could. There was no provision of any kind for their instruction, either moral, secular, or religious; neither was personal cleanliness enjoined, nor any attempt made to re-establish in the mind of the convict a feeling of self-respect, or the necessity of self-control.

"7. The small number of convicts then on the roads was employed in keeping, or attempting to keep, in passable repair the old tracts over Cradock's Kloof, Attaequas Kloof, and some roads in the more immediate vicinity of Cape Town. They were equally neglected in all that constitutes reformatory discipline, but not under such severe restraint as those at Robben Island. The convicts, scattered over the several districts of the Colony under the control of the Civil Commissioners, were variously employed: some as water-carriers and woodcutters, cooks, hospital attendants, shepherds, mail contractors, travelling servants, assistant turnkeys, and even as constables in charge of public buildings containing the public money; others as scavengers, destroyers of dogs, assistants at public executions and corporal punishments; whilst a few were occasionally engaged in repairing, in chains, the streets and roads in and around the different towns and villages. As it regards instruction, supervision, and care, these were, if possible, in a still more deplorable state. They were but little removed from a state of perfect freedom, and were dreaded as pilferers and thieves in and around their neighborhoods. Finding conviction both profitable and agreeable, they too frequently insured a re-conviction by committing fresh crimes as their sentences expired; and thus, in too many instances, obliged the courts to reduce the sentences to the utmost, solely to defeat their

“8. Hence, as might be naturally inferred, every object of punishment was frustrated; the reformation of the convict, who was so soon to return to society and its temptations, a thing not thought of; instruction, cleanliness, order, sobriety, and even decency, wholly neglected; for further proof of which, and from a quarter beyond suspicion, I quote the following extract from a memorandum addressed to me by the Rev. Dr. Adamson, of the South African College, an authority ranking very high in public estimation in the Colony:—

“‘Even the outward appearance generally of the institution (referring to one of the new convict stations which he had visited in 1847) as to the state and demeanor of the convicts, is in the highest degree gratifying, as compared with their former condition, when dispersed and under the charge of local authorities. Men in chains used then to be seen idling in the streets, or making purchases in the retail shops, who spent the Lord’s day in washing their clothes, or dancing to the sound of a rude drum, and for whom no means of instruction were provided. In addressing them, when lodged in the casemates of the Amsterdam battery, the preacher had to stand outside of a wooden grating, to which it was scarcely possible to come close, on account of the overpowering smell. And the whole scene, as far as the convicts were concerned, was savage and nauseating, though they generally showed sufficient willingness to be instructed.’

“9. On my presenting to Governor Sir George Napier a report on the various documents which had emanated from this inquiry, he committed to me the entire supervision and control of this department of the public service, a department no less difficult in its economy than pregnant in its results, either for good or evil, as it regards the highest interests of society.

“10. I at once addressed myself to the task, but instead of attempting to remodel or reform what existed, I framed, *de novo*, a system of convict discipline according to my own views of the subject, and suited, as I conceived, to the character and circumstances of the Colony. This system I based on the following broad and intelligible principles:—

“1st. Society requires of Government the certain

enforcement of its laws, impartially and consistently, against all acts of crime declared to be such by the solemn verdict of a jury, and punished as such by the equally solemn sentence of the judge.

“ 2nd. In the carrying out of punishments short of death or perpetual imprisonment among communities that have to absorb or receive their liberated criminals, the reformation of the convict before his restoration to society is of paramount importance, both in a political and social point of view; to say nothing of the duty devolving on a Christian people (in regard to its criminals) whose social condition may of itself have conduced to crime.

“ 3rd. Secondary punishment, which in the main is imprisonment with hard labor for periods proportioned to the nature of the offence, and the previous character of the offender, not only satisfies the ends of justice for the public good, but if properly, humanely, and consistently carried out, subserves also to that other and equally important end, the reformation of the offender.

“ 4th. In no system of convict discipline, where the circumstances of society do not imperatively demand it, as in large penal settlements, should a gradation of punishments be recognized, either under the name of ‘ticket of leave,’ or ‘conditional pardon,’ as a legitimate incentive to good conduct. Reward for good conduct under punishment, for industry, self-improvement, and a sincere endeavor to reform, should not consist in the speedy prospect of release from the irksome restraint and unremitting hard labor which such a system of gradation holds out, if permanent reformation be our aim, or certainty of punishment our object. The best stimulus to such endeavors, and the best reward for good conduct, consistent with the ends of justice, is to hold out to the convict a well-grounded hope, based on well-defined and fixed principles, that the period of his punishment will be abridged, should his conduct under punishment be uniformly good, and his endeavor to reform sincere. And as an additional incentive there may be monthly deposits made, also on well-defined and fixed principles, of small pecuniary re-

on obtaining his freedom, or to be forfeited on the commission of any new act of crime or grave offence against the rules of the system, during any period of his punishment.

“ 11. In strict accordance with these principles I framed a code of rules for the future direction and enforcement of penal discipline in all its branches. They were published in January, 1844, and have regulated the system in force at all convict stations in the Colony during the last five years.

“ 12. Before I proceed to investigate the working of the system under the rules and provisions of this code, in regard to its corrective and reformatory character and tendency, it may be proper to state, briefly, the more prominent of its arrangements that conduce to this end, and the means by which I am enabled, as its comptroller, to determine on the individual character, personal demeanor, and habits of every convict. And,

“ 1st. The authority to punish, rebuke, or admonish, is exclusively vested in the visiting magistrates and superintendents of stations. No convict is ever placed for one moment in a position of authority of any kind over another convict.

“ 2nd. The visiting magistrate, whose powers do not exceed the inflicting of 75 lashes, and the extension of two years to an original sentence, is charged, when determining on the kind and degree of punishment to be inflicted for any given offence, to have regard to the temper, disposition, and general conduct of the offender; and, as a general rule, punishment by flogging, in cases in which it is permitted by law, either with or without additional penalty, ought to be the last resort in all instances of summary jurisdiction.

“ 3rd. The authority of the superintendents of stations to punish is restrained to the case of minor offences against the rules laid down for the discipline and management of the stations. For the correction of such irregularities and offences (if not sufficiently aggravated to be reserved for the decision of the visiting magistrate), their powers are limited to the infliction of solitary confinement for a period not exceeding three days, placing the offender



in the chain gang, or suspending indulgences for a given time. Their powers do not extend to corporal punishment.

“ 4th. At first, the more important and onerous duties assigned to the superintendents were of a moral and religious character. On the efficiency and success of his labors as a moral trainer and religious instructor depended the issue of the process of reformatory discipline, by which it was sought to protect society from future outrage and injury on the part of the discharged convict, the great aim being to counteract, through moral influences, motives and propensities which had previously led to an immoral life and the commission of crime. And in order more effectually to secure this most important end, I obtained from the gaols and districts in which they were convicted every information respecting the previous manner of life, occupation, or pursuit of every convict sent to the stations; on receipt of which, it devolved on the superintendent to procure such additional information from the convicts personally, or their associates, as their daily and confidential intercourse with them might supply, prosecuting the inquiry by systematic observation, so long as the convict remained in charge. In consequence, however, of having, in the course of the years 1847 and 1848, reduced the number of convict stations from four to two, placing at each from 230 to 280 men (a change which has been attended with great advantage both in point of economy and discipline), I found it necessary to relieve the superintendents, to some extent, of this class of duties, by appointing resident, instead of visiting, chaplains to each station, on whom now mainly devolve the duties referred to in this article, in addition to the morning and evening services, the conducting of Sunday and evening schools, and the promotion of the moral and religious interests of the station generally, which attach to their office.

“ 5th. No overseer, sub-overseer, or other subordinate, has the power to punish, correct, or reprimand. Their duty is solely to report. All such officers are under the entire control of the superintendent, who is answerable

for their good conduct and the right discharge of their respective duties.

“ 6th. All convicts are to be made to remember and to feel that they are undergoing punishment in order to deter them and others from crime. That their punishment consists not only in constant labor, but in the constant restraint of every selfish propensity and unruly passion; the most implicit obedience to those in authority over them, and the laws to which they have become subject; and a total isolation from former associates and friends. That they are subject to this severe discipline in consequence of crime, and that by good conduct alone and evident reform can they hope to escape from, or to have abridged, the severe course of restraint, discipline, and labor on which they must first enter, and undergo some determinate portion of their sentence.

“ 7th. No wine, ardent spirits, tea, coffee, tobacco, snuff, or any narcotic substance or preparation, are, under any circumstances, allowed the convicts, or permitted to be used by them, save under the sanction of the Government, or the direct prescription of the medical officer; nor can any luxuries or indulgences of any kind be permitted which are not sanctioned by the rules of the system.

“ 8th. Food and clothing, sufficient both in quantity and quality for a laboring man, are supplied for all convicts, without distinction, and on the same scale, when engaged at hard labor, but the daily ration of meat and bread is reduced when they are not so occupied, whether from undergoing punishment, being in hospital, or from other causes.

“ 9th. At each station the convicts are formed into two classes; viz., the chain gang, which is worked in chains, and the road party, which is released from this mode of restraint. On the removal of criminals after sentence to the convict stations, all those whose characters are known to be bad, or whose sentences render it necessary that they should be placed under a most rigid system of discipline, are placed in the chain gang, and none can be joined at once to the road party except by a special authority. The number of convicts in each station shall

about one-tenth of the whole number under punishment.

“ If at any time a convict forfeits, by misconduct, the privileges and comparative comfort of the road party, he may be degraded to the chain gang by sentence of the visiting magistrate. Convicts in the chain gang are precluded from the indulgences granted to the men in the road party, and are, as much as possible, kept separate from them, both at work and in the barracks. No indulgences, however, here referred to, consist either of better food, clothing, or lodging, or of relief from hard labor; that is to be strictly exacted so long as a convict is under punishment.

“ In thus classifying the body of convicts at the road stations into road parties and chain gangs, I ought to mention that no such distinction was observed until the breaking up of the penal settlement of Robben Island towards the close of 1845, when the convicts at the settlement were transferred to the road parties.

“ Before that time no convict was kept at a road station whose conduct and safekeeping did not permit of his being worked without chains. All unfit for this comparative state of freedom, either from bad conduct or a determination to escape, were invariably sent for punishment to Robben Island. Chain gangs are now worked at all the stations, not only for the purpose of safe custody but for the purpose also of degrading and punishing such as have neither sought to reform or have forfeited the indulgences allowed to those forming the road parties.

“ 10th. As a reward for general good conduct in the road party, and an inducement to persevere, the convicts are allowed the following indulgences:

“ 1st. Leave to write to and receive letters from their friends, subject to the inspection of the superintendent.

“ 2nd. Permission to be visited by their friends, on stated days in each month.

“ 3rd. Leave to receive presents of fruit, or others of a similar kind, subject to the approval of the superintendent.

“ 4th. A weekly allowance of tobacco, not exceeding two ounces to each man.

“ 5th. Not to be locked up, as the chain gang, at sun-down, but at eight or half-past eight o'clock, according to the season.

“ 6th. Monthly pecuniary deposits in the savings' bank, for willingness, industry, and perseverance in their daily labor, or improvement under instruction, or attention and assiduity in school.

“ From such rewards and indulgences the chain gang are wholly excluded, and while they are granted a remission of one-eighth of their sentence for uniformly good conduct while working in the chain gang, those in the road parties, for similar conduct, obtain a remission of one-fifth.

“ 11th. The superintendents prepare for me weekly returns of the amount of labor performed, and monthly reports of the character and conduct of every individual convict under their charge.

“ This they embody from their daily registers, which, by means of a prescribed system of notation, formed of conventional numbers and other arbitrary symbols, is so devised as to indicate precisely and minutely the incidents and facts on which the record of general good or bad conduct for the month is based.

“ With this the superintendent reports also on all offences and misdemeanors that have been committed, either in direct violation of the rules or otherwise, and the punishments that have been inflicted either by himself or the visiting magistrate.

“ To the monthly report is attached a list of those convicts whom the superintendent considers deserving of reward, and the reasons on which he grounds the claim.

“ 12th. The superintendents are moreover charged with the framing of an annual report of a more general and comprehensive character; so also are the visiting magistrates, medical officers, and resident chaplains. From these returns and reports, together with frequent personal visits, I have not only been enabled to form something like a confident opinion as to the general working of the

system, but at the same time to acquire an intimate acquaintance with the character and conduct of every individual convict.

“ 13. But in order to a truthful exposition of the working of this most important problem in the social economy of this Colony, it is proper that I should bring under your Excellency's notice, previous to an investigation of the working of the system, not only a précis or outline of its corrective and reformatory character, but also of the class of men on whom it has been brought to operate, their general character, habits, and associations, and the nature of the crimes of which they have been convicted.

“ 14. In doing so, I solicit attention to tabular returns\* in regard to crime in this Colony, for the years during which the system has been in operation, with such explanatory remarks as have occurred to me thereon.

“ 15. Before submitting my remarks on the results established by these Tables, I am anxious to draw attention to the comparative decrease of crime in 1846, and corresponding increase in 1847:—this is readily accounted for. In 1846, in consequence of the Kafir war, not only were the judges prevented from holding circuit courts in several of the divisions on the immediate frontier, which necessarily threw a large amount of arrear cases on the succeeding circuits of 1847, but in several instances of minor offences prisoners were released on their own recognizances, and never afterwards tried. If, therefore, the mean of these two years, viz. 239, be taken as the average of crime for each, it will be found closely to correspond with the amount of crime tried in the year preceding (1845). The excess (which in the records of the Supreme Court is marked at the same time by a serious increase in the heinous crime of murder) is more than accounted for by the state into which society was then thrown in consequence of the war. And it may not be improper to remark, that even the increase of crime in 1845, compared with 1844, is due to the increased depre-

\* These Tables are omitted as carrying no amount of interest to general readers. Those desirous of information from them will find it in the “Parliamentary Return,” 8th Feb. 1850, “Extracts of Despatches relative to Convict Discipline, &c., at the Cape.”



dations on the part of the Kafirs, which were known to prevail in the frontier districts before the outbreak of 1846.

“ 16. Referring to Table No. 1, it will at once be perceived that the more prevalent crimes in this Colony are—

“ 1st. Assault.

“ 2nd. House, store, mill and cellar breaking, with theft or intent to steal.

“ 3rd. Cattle, horse and sheep stealing, and theft, or receipt of stolen goods, knowing them to have been stolen.

And that, in fact, the convictions before the Supreme Courts for offences belonging to some one of the three classes, constitute 86·34 per cent., or nearly nine-tenths of the whole amount during the period under consideration.

“ 17. Referring to Table No. 3, it will also be observed, that more than one-half of the criminals convicted of offences of this kind belong to that portion of our population denominated Hottentots, Bushmen, and free Blacks, who are generally found the most tractable and docile, under a system of convict discipline, which, though rigid, neither induces irritation, nor easily gives cause to any violent outbreak of any angry passions, a failing to which this class of men appear to be constitutionally liable, though, under kind and considerate treatment, proverbially mild and docile. Of the remainder, one-fifth and upwards belong to the border tribes, who, though less pliable and less accessible to moral influences, yet from their almost invariably returning to their native country on obtaining freedom, cannot be said to add to or enhance the tendencies to crime among the Colonial population.

“ 18. Looking to the classifications under which the whole body of criminals is ranked in the columns of Table No. 2, we are struck with the great preponderance of crime among those classes of men alluded to in the preceding paragraph. The cause is easily accounted for in the character of the country; the great variety of its spontaneous productions capable of supporting life; the love of a wandering life, and of indolence common to all men before the comforts and wants of civilized life have been felt, and also the love of exploit as well as plunder that characterizes the Kafir in his

marauding expeditions against the herds and flocks of our frontier farmers. With this, however, I have less to do on the present occasion than with the fact that such preponderance exists; for, whatever be the aptness of the system to deal with crime, or the justness of the principles on which it is based, it is due to truth, to state, that this preponderance, from the character of the men, their disposition to obedience and readiness to receive instruction, greatly tends to the success of its working.

“19. It is also due to the system, in reference to the sixty-four cases aggravated by former convictions, which are included in the Table No. 2, to state that those aggravations comprise previous convictions under the summary jurisdiction of the Inferior Courts, as well as the Supreme and Circuit Courts; and that out of the whole number thus aggravated, less than eight of them were convicts who had been under discipline and instruction in the road parties between 1844 and 1848, the greater part of whom had been less than six months at a station.

“20. In addition to the circumstances I have now alluded to, as peculiarly favorable to the working of any system of convict discipline that aims at the reformation of the prisoner while under punishment, and the formation of habits of order, subordination, and steady industry, I have to remark that in this Colony crime has not generated a *caste* in society, nor become a profession, and that the most fertile if not only source of professional and systematic crime, viz., juvenile delinquency, is wholly unknown. Of the 818 prisoners who underwent punishment at the road stations during 1848, there were only 22 that had not reached their 16th year, an age much nearer to maturity in this Colony than in England. In our gaols I know of none under punishment at that age.

“21. In the review to which I now proceed of the working of the system during the last five years, I shall, for the sake of perspicuity, place my remarks under two distinct heads:—

“1st. The efficiency of the system in enforcing the law impartially and consistently against all, without distinction, convicted of crime, by a strict exaction of the punishment imposed, and

“2dly. Its tendency to produce reformation in the prisoner, and to establish habits of self-control, sobriety, and active industry.

“22. With regard to discipline, that is, the systematic restraint and subordination of the prisoners, their perfect isolation, not only from society, but from all friends and former associates, the cutting off of all luxuries and indulgencies, the suppression of all habits of slothful indolence, and the prompt and effective punishment of vicious practices, or the outbursts of uncontrolled passions, I feel assured there will be found in the code of rules under which the system is conducted, ample provision (consistent with humanity) for this most important part of the punishment of criminals. It is not necessary, therefore, that I should enlarge on this head further than to remark, that on no subject have I more strictly enjoined the superintendents of convict stations to act with undeviating conformity with the rules of the system, and their own special instructions; and in no respect does the system appear to every observer to have effected so thorough a change as in this.

“23. As to the measure and extent of punishment by hard labor which has been inflicted, it is sufficiently indicated in the extensive, I might more appropriately say gigantic, public works that have been completed (almost entirely by convict labor), or are now in progress. Of these, three have been visited by your Excellency, namely, Montagu Pass, over the Cradock Mountain, in the division of George; Michell Pass, in the division of Worcester, and the Hard Road, twenty-four miles in length, in the Cape and Stellenbosch divisions, over a sandy desert. Of the magnitude of these undertakings, and their importance to internal intercourse, you are therefore in a position to form your own judgment, and to contrast the efficiency of the new system in regard to the amount of hard labor exacted, compared with that of former times, of which the value and importance amounted to nothing.

“Returns lying in this office would at once prove the employment or non-employment (with the reasons thereof) of every convict, at any station during any lawful day of

every week for the last five years, with a minute statement of the kind and amount of labor performed.

“This, however, I conceive unnecessary, and inappropriate to a review so general as this must necessarily be, of the efficiency of the system, both as to punishment and reformation.

“Without details, however, which would only tend to disturb the more general view, I am enabled to show the extent to which labor has been actually exacted, and at the same time (which is by no means unimportant in discussing the efficiency of the penal institutions of a country) to compare its value to the public, with the expense which the maintenance of such institutions entails. Previous to entering on such a statement, I shall represent in a tabular form the expenditure incurred for the convict department during the years 1844, 1845, 1846, 1847, 1848.\*

“25. I now proceed to compare the annual expenditure for the maintenance, discipline, supervision and instruction of convicts, as above detailed, with the actual value estimated on a moderate scale for this Colony, of the labor they have performed on important public works.†

“On this last comparison of the value of the labor performed by convicts, with the expenditure incurred on account of the department in 1848, it ought to be observed that a larger additional expenditure and corresponding loss of labour was then incurred by the removal of the convicts to new road stations than on any former occasion.

“27. Thus it appears, notwithstanding the additional expense incurred and loss of labor sustained by three removals, within five years, of road parties to stations varying in distance from 100 to 300 miles, that during this period every convict under punishment, including the sick in hospital, persons in solitary confinement, cripples, the infirm and the aged, has on an average performed hard labor for 219 out of every 284 working days in each year, irrespective of the loss of time and labour from inclement weather; and further, that the aggregate value of the labor exacted, amounts on a moderate scale to 51,388*l.* 1*s.*; whilst the aggregate expense

\* Omitted for reasons given in former part of this work. † Table omitted.

of the stations, their establishments and their removal from one part of the Colony to another, is 55,992*l.* 18*s.*, thus showing that the average annual expense to the public of carrying out, on improved principles, the sentences of imprisonment with hard labor on the criminals of the Colony is not more than 920*l.* 16*s.* 9½*d.* or 2*l.* 3*s.* 4*d.* per annum for each convict.

“This estimate of the value of the labor of the convicts is based on the scale adopted by the Commissioners of Public Roads, under whom the convicts are worked, from their ‘feeling quite satisfied that the convicts performed more work in the same time than an equal number of freemen.’

“28. One other test of considerable value and of much interest has yet to be considered, as to the efficiency of the system in exacting hard labor, so far as the health and physical condition of the convict will admit.

“On the 30th of August 1844 (eight months after the concentration of the convicts at road stations under the new system), a regulation was issued, in which, after acknowledging the satisfactory establishment of discipline and good order among the convicts at all the stations, without the presence of military guards or even of any considerable constabulary force, it was announced for the encouragement of all desirous to regain character, and to submit readily to the discipline and exaction of the system, that in future, at the end of each month, eight men in every hundred of a road party, who in the superintendent’s opinion had exerted themselves most in their daily labor, and had been most attentive in the performance of it, would have, each, for that month the sum of 6*s.* deposited on their account in the savings’ bank, which amount, with whatever interest might have accumulated thereon, will be paid to them on the completion of their sentences, the merits of each individual case not being decided by the amount of labor performed, which depends mainly on the physical strength of the party, but by the willingness evinced to become useful and industrious, as well as obedient and attentive to orders; general good conduct being indispensable in order to participate in this privilege. A similar reward was held out at the end of each month to four men in every hundred of each road party, who



in the opinion of the superintendent, had evinced the greatest desire to benefit by the instruction imparted in the school and chapel, by their progress, good conduct and attention under the same conditions as are mentioned in regard to labor. The following Table\* exhibits the results of this arrangement, and the extent to which its influence embraced the great body of the convicts; it includes also the allowance of 3*d.* per diem paid to those convicts who become proficient as masons, miners, &c., so long as their good conduct entitles them to that indulgence.

“30. In explanation of the apparent increase of allowances accruing to each individual on his discharge during the fourth and fifth years of the period, it is proper to remark that many discharged in 1847 and 1848 (amounting in all to 329) had, by their good conduct and perseverance, been continuing to receive rewards from the date of the regulation or soon after, thus showing that their efforts to improve were not desultory or fitful, but steady and uniform. One, perhaps, of the most significant marks of the benefits resulting from the system.

“31. During the five years to which this Table refers, the number of convicts discharged amounted in the aggregate to 979. Hence of this number released from the penalties of the law and restored to society, 537 or 55 per cent. received pecuniary deposits placed in the savings' bank on their account, by virtue of the regulation of the 30th August 1844, these deposits amounting in the aggregate to 1,452*l.* 8*s.* 8½*d.*, the maximum to any one individual being 18*l.* 14*s.* 3*d.*, and the average 2*l.* 14*s.* 1*d.* And as to the total number of convicts in whose names deposits had been made up the 31st December 1848, they amounted to 803, or 51·5 per cent. of the whole number under punishment during the five years. Of these, 266 were at the stations, on the 31st December, 1848, having had up to that date 502*l.* 10*s.* 6*d.* deposited on their account. The aggregate of deposits, with the interest that has accumulated, is 1,954*l.* 19*s.* 2¾*d.*

“One of the conditions on which such deposits are made is, as already mentioned, that on the occurrence of any grave

offence or violation of the rules of the system, all deposits previously made are forfeited; and it is as gratifying as it is remarkable that only one instance has occurred of such a forfeiture during a period of five years, among a body of 803 individuals, under the strictest discipline and restraint, and the most scrutinizing supervision and control.

“32. These remarks on the subject of corrective discipline and punishment by hard labor, which are based on the official returns and reports in my office, I shall at once close, by the following observations, embodied in the Report of the Rev. Dr. Adamson, to which I have already referred. After stating the advantages derivable from concentrating criminals in bodies at road stations; viz., separation from friends and former associates; increased emulation in the fulfilment of duties from the effect of enlarged competition, and a proportionate diminution of expense for superintendence and instruction, he proceeds to remark on the results of his visit to the convict station at Michell’s Pass thus:—‘The rigid enforcement of perfect regularity in small matters on which the maintenance of discipline depends, and the consequent bending of the will, in addition to the exaction of continuous labour, constitute, without any real physical suffering, a sufficient inroad on the common proceedings of a man in life to render the punishments impressive; and, without appearing to interfere at all with the primary object of the sentence, sufficient time is gained by such a concentration for systematic instruction.’ \* \* \* \* \* Such may be seen to be the effect of numbers concentrated, as to the enforcement of common discipline, and the promotion of intelligence and moral habits under a suitable system. And the system has evidently had the effect of rendering these attainments valuable among men, the majority of whom seem to have had no opportunity of learning or appreciating their value before.’ \* \* \* \* \* ‘Perhaps the best proof of the state of discipline consists in the exceeding lightness of the penalties which it is found necessary to inflict for irregularities, and in the fact that these penalties are in general confined to a very few individuals. And the progress of experience in their management may be seen in the constant and gradual diminution, as to the intensity of these

penalties during the years in which the system has been in operation. It could be gathered also incidentally that those who had been convicts before the adoption of the present regulations, had been found generally more difficult to manage.'

" 33. As it regards the reformation of the convict, his instruction and moral improvement under the new system, which constitutes the second head of inquiry, I shall, as in the case of punishment and discipline, refer first to the facts elicited by the monthly returns and annual reports of the superintendents of stations. It would be both tedious and supererogatory to embody in this general outline a complete digest of some 150 of such papers which are now deposited in this office. The following remarks are therefore based on individual reports, taken as it were *ad aperturam libri*, and not on the whole body of the reports for the five years which it is not in my power at present, without the aid which I cannot command, to have minutely analysed and reduced to a manageable compass and form. I have no hesitation, however, in stating that the reports to which I now refer are a fair exponent of the whole, with this exception, that as they are of a more recent date, they exhibit a less amount of punishment and a higher degree of instruction, from the experience, as Dr. Adamson justly observes, that has been gained in the management of concentrated masses of convicts, and from the fact that of late resident chaplains have been appointed to the stations whose labors, in addition to those of the superintendents, are wholly devoted to the intellectual, moral and religious improvement of those committed to their charge.

" 34. The two following Tables,\* which are an analysis of the annual report of the convicts at the Michell's Pass during the year 1848, is a fair illustration of the internal economy and working of a convict station, as it regards the points that bear more immediately on the subject of reformation and improvement.

" 36. On referring to the above Tables, Nos. 6 and 7, which may be regarded as a statistical exposition of the

\* Omitted.

internal economy and working of the system generally, it will be found—

“1st. That of 328 convicts that were at the Michell’s Pass station during the year, none were brought before any court, save that of the visiting magistrate, whose powers are limited to seventy-five lashes, and the infliction of two years’ imprisonment with hard labor in addition to the original sentence, and that the number brought before this court was forty-seven, or one in every seven.

“2nd. That of the punishments inflicted by the visiting magistrate, corporal punishment, and that in a moderate degree, was inflicted on only five of the offenders, whilst none had additions to their original sentences, and but one was degraded to the chain-gang.

“3rd. That of the remainder (forty-one) whose offences brought them before the visiting magistrates, twenty-six were sentenced to solitary confinement on rice water for periods varying from five to fourteen days; and fifteen were either placed in solitary confinement on spare diet for two, three, or four days, or dismissed with a reprimand.

“4th. That the remaining offenders (seventy-four) who constitute a large majority, and had been guilty only of petty offences, infringement of the regulations, or neglect of duty or person, were disposed of by the superintendent of the station by stopping their tobacco allowance, putting them on bread and water, or in solitary confinement, for periods not exceeding three days.

“5th. That of the number (ninety-two) discharged at the station during the year, fifty-three, that is, fifty-six per cent. and upwards, were discharged under abridgment of sentence, sanctioned under the regulations, which hold out to every convict undergoing punishment a remission of one-fifth of the period for which he was sentenced, as an additional reward for uninterrupted good conduct while serving on the road party, and one-eighth in the chain-gang.

“6th. That exclusive of the remission of sentence now

referred to in the case of fifty-three convicts discharged during the year, there were 125 besides who received pecuniary rewards by deposits in the savings' bank on their account under the regulations, being thirty-eight per cent. of the whole number at the station during the year.

“ 7th. That with the exception of the Kafir convicts, who from their previous life and the total ignorance of the languages used in the Colony, are less accessible to moral impressions than any other class of convicts, and more deeply rooted in slothful habits, apathy and love of ease, the great majority have been orderly and well-conducted in the barracks; willing, industrious and attentive at work: generally respectful and obedient to the officers, and peaceful and kind among one another; there being in all only seven instances of quarrelling or fighting, and no case appears on record indicative of revenge or any other vindictive feeling.

“ 8th. That in regard to the moral and intellectual condition of those received at the station during the year, on their conviction—102 in number—fifteen could read, seven spell, and eighty or 78·4 per cent. could neither spell, read nor write. Their entire ignorance of the first truths of revealed religion may be naturally inferred, as in this Colony elementary instruction is invariably accompanied with a knowledge of religious truth.

“ 9th. That of the ninety-two liberated during the year, and who may be regarded as having been in an exactly similar state of ignorance when first received, fifty-two could read, and forty spell; while of the 219 remaining on the 31st December, 1848, seventy-six could read, 113 spell, and the remainder, being chiefly Kafirs, could neither spell nor read.

“ 10. That though the result of the labours of the chaplain in imparting a knowledge of religious truth, and in awakening the mind to a sense of its degraded state, or in strengthening the penitent in their resolutions to reform, cannot be exhibited by the figures of a statistical return, yet, from the reports of intelligent and impartial visitors, as well as those of the superintendents and visiting



magistrates, it is evident that this part of the scheme has been eminently successful.

“ 37. In proof of the latter inference, I would adduce the following facts which have incidentally come to my knowledge. Many men on their return to society, when there could no longer be any motive to flatter or conciliate those under whom they had undergone punishment, have been known to express to their former masters and friends their gratitude for the care and attention shown by the Government for their improvement whilst at the stations. Among these may be mentioned three men who had been convicts for many years under the old system, and latterly in one of the road parties, on the expiration of their sentences made the earliest use of their freedom to repair to a member of the Government, who takes a lively interest in the welfare of this unhappy class, and, whilst expressing grateful feelings for what had been done for them in the time of their servitude, they earnestly thanked God that they had been convicts, for they had not only been checked in their career of vice, but the instruction they had received had been the means of bringing them to a right mind, and to a knowledge of God. These men are now sober and industrious members of society. Similar instances of gratitude and thankfulness, expressed almost in similar words, have been frequently, and especially of late, brought to my knowledge.

“ 38. In concluding my observations on the subject of instruction, I would also quote the following paragraphs of Dr. Adamson's Report :—

“ “ Their desire for instruction appears evident from the number who are willing and able to act as monitors, as well as from the general advancement visible on comparing their present condition with the returns as to the state in which they were received into the institution. The combination, therefore, of large detachments of convicts under such a system seems to me, upon the whole, more conducive generally to the primary object of punishment, and to be, in our circumstances, almost indispensable, in order to any progress in the reformation of the criminal, which, situated as we are, is nearly as much a duty, and is scarcely inferior in importance.

“ ‘ Punishments in this country are as much needed to teach that certain acts are wrong, and to impress on the convictions of uninstructed men an adequate notion of the different criminality of different acts, as to deter from practices acknowledged to be criminal.’

“ 39. I would also quote the following passage from the writings of a gentleman (on the civil staff of our late Governor, Sir Peregrine Maitland), who, during his stay in this Colony, took a deep interest in its social, moral, and religious improvement; and I quote it chiefly for this reason, that it refers to a period in the working of the system more likely to yield less favorable results than that embraced by Tables, Nos. 6 and 7:—

“ ‘ To punish evil-doers is a function of Government both painful and difficult of proper execution. In capital cases the duty becomes comparatively easy; but when crime is to be punished by deprivation of liberty, and the infliction of hardship, then the difficulty arises in full force respecting a just mode of treatment, in which both a wholesome severity should be preserved, and also a constant attention be paid to the reclamation from vice and the moral improvement of the criminal, in order that, should circumstances permit it, he may be restored to freedom and society a wiser and a better man than when he forfeited his natural and civil rights. It is a pleasing matter that the difficulty has been in a considerable degree overcome for the present in this Colony by the new system of convict discipline, the successful operation of which, during the first year of its administration, will appear from the following statistics, on which reliance may be placed. The entire number of convicts at the four road stations during the past year, 1844, has been 464, but never exceeded 384 at any one time. They have been kept without military guard; and, with a slight exception for the purpose of punishment, not a chain has been used on them during the year. The amount of corporal punishment has also been very small. The entire number of lashes inflicted was 300; about five-eighths of a lash per annum for each man; an extraordinary low average. The labor of the convicts has been severe, being as much as can be fairly got

to their health, that only four deaths have occurred during the year. One afternoon in every week is appointed for secular instruction, and the result is certainly surprising. Out of the 464 who were sent to the stations, only eighteen could either spell or read on their arrival. But there have left the station during the year, forty-one able to spell, and forty-nine to read; and there remained at the stations on the 31st of December last (1844), 138 able to spell, and 134 able to read; so that the readers and spellers, combined in nearly equal proportions, have increased from eighteen to 380, in a total of 464 convicts, in twelve months.'

"Here follow the remarks of this gentleman on the subject of religious improvement, which are substantially the same as those embodied in paragraph 36, Art. 10, of this Report.

"40. Before passing from the consideration of the results exhibited in the tabular analysis of one of the Annual Reports of the Superintendents for 1848 to other matters, it may not be improper or out of place to state that, anxious to avoid impressions being made on my own mind or imparted to that of others as to the internal discipline and economy of the convict stations which could not be borne out by a detailed digest of the monthly returns or annual reports of the whole, I purposely selected the report of a Superintendent, who, though a most deserving and efficient officer, is generally considered strict in his discipline and rigorous in the exaction of every duty and the observance of every rule. In proof of this, I may at once allude to the following facts elicited from the other reports. At another of the stations there were in all 208 convicts under punishment during 1848; among these the number of offences committed amounted only to ten, and the number of offenders to three, whilst those rewarded amounted to forty-two. The number discharged during the year was eighty, of whom seventy-three, or ninety-one and half per cent., had become entitled, from uniform good conduct, to an abridgment of their sentences."

But of the 208 at this station, there were not less than thirty-nine, or nineteen per cent. of the whole number,

undergoing punishment from re-conviction; whilst at the station, the report relating to which has been analysed, there were only twelve convicts of this class out of a body of 328, being considerably less than four per cent. of that number.

“ 41. Considering the length to which this report has already extended, which has been unavoidably occasioned by the variety of points and statistical details that necessarily come under review, in order to a just comparison of the working of the present system of convict discipline and that which it superseded in 1844, I should have gladly closed my remarks with the inferences which have been just drawn from the annual report of the Michell Pass station, and the important evidence afforded by the two gentlemen from whose writings the extracts contained in paragraphs 38 and 39 have been taken. I feel, however, that there is still matter embodied in the official documents relating to the convict stations in this office too important to be passed over in silence. And, first, as to the extent to which the scheme has succeeded or failed in checking the recurrence of crime among men who have been returned to society on the completion of their respective sentences.

“ 42. By the returns from the sheriff's office during the years 1844, 1845, 1846, 1847 and 1848, the aggregate number of persons sentenced, or whose sentences had been commuted to imprisonment with hard labor on the public works, was 1089; of these sixty-four only were persons who had been convicted more than once. This yields a proportion short of five and three-quarters per cent. of the whole number, though in all such returns the summary convictions of the resident magistrates of district courts are invariably taken into account. From the five years' experience of one of the principal penitentiaries of the United Kingdom—I allude to that at Perth—it has been found ‘that sixty-seven per cent. of those who have passed through this place of punishment have been ascertained to have been re-convicted.’—*Vide* First Report from the Select Committee of the House of Lords relative to the execution of the Criminal Law, 1847.

“ 43. Great as is the contrast between these results of

two systems of convict discipline, yet, in my opinion, it is capable of being still further enhanced; though I would guard against being thought to entertain the notion that the working of either system, apart from the social condition of the two countries, can legitimately account for the remarkable difference in the amount of re-convictions. Considering the number of re-convictions in 1844 as being in no degree influenced by the new system of discipline that had only been set on foot at the commencement of that year, and believing also that its practical effect is better determined by the average of re-convictions during the last three years, I confine myself in the following remarks to that period. In 1846, 1847 and 1848 the number sentenced, or whose sentences were commuted to imprisonment with hard labour on the public works, amounted in the aggregate to 694; of these thirty-one had been previously convicted which yields the proportion of 4.46 per cent. of the whole number. But of these re-convictions again a large majority apply to persons who had undergone punishment previous to the introduction of the new system, or whose punishments being for periods short of three months had been worked out in the district gaols. Of all the convicts who have undergone punishment at the convict stations (being those sentenced for periods of not less than three months), there are not above eight who have been returned under re-convictions.

“44. Another matter of some practical consideration is the number of deserters. This, on the one hand, will test the efficiency of the arrangements for safe custody and the vigilance of the supervision, and, on the other hand, the extent to which, by a prudent and humane course, the prisoner may become reconciled to his lot without compromising the legitimate end of punishment. It is unnecessary here to enter into detail as to the arrangements for safe custody or vigilant supervision; they are fully explained in the regulations and other documents attached to this report. I proceed, therefore, at once to a statement of the number of desertions in each year, premising only that throughout the whole period no substantive change has taken place, either as it regards the means of safe custody or of super-



vision. In 1844 the number of deserters was twenty; in 1845, thirteen; in 1846, nine; in 1847, four; and in 1848, four: thus making a total of fifty deserters out of a body of 1559 convicts in the space of five years; this yields an average proportion of 3·2 per cent., or one out of every thirty-one prisoners, consisting of every race and description of men. It is also to be observed, that as the numbers have been steadily decreasing, the average for the last three years is still more favorable, being one out of every sixty-seven. Of the total number that have effected their escape, there were only fourteen at large at the close of last year. It is proper here to remark, that two convicts have been shot, and two wounded, in attempting to escape, and resisting their pursuers. All four were Kafirs, who of all offenders are the most impatient of restraint, and the most expert and daring in their attempts to regain their freedom. They broke away with other Kafirs by concert from a chain gang shortly after they had joined the station. No other convicts, either before or since, have been fired at.

“45. I have already alluded, in the analysis of the Mitchell Pass Report for 1848, to the number of convicts that were subjected to corporal punishment, and the number of lashes inflicted during the first year of the system, 1844. Looking to the returns for the five years, I find that out of 1,559 convicts, not more than sixty have been subjected to corporal punishment, and that the total number of lashes inflicted amounted to 2,764; being on an average forty-six lashes to each offender; the maximum allowed by law for any one offence being seventy-five. The number of offenders thus punished amounts to one out of every twenty-six. It ought, however, to be observed, that of the sixty who have been flogged, the greater part consists of the re-captured deserters alluded to in the preceding paragraph.

“46. Connected with this more serious class of punishment is the extension of sentences (which the visiting magistrate is authorized to inflict for grave offences) to periods not exceeding two years. During the five years, forty-six of the convicts have had their sentences thus extended for periods varying from one month to two years; but of these again twenty-eight belong to the sixty who had been subjected to

corporal punishment: thus making a total of seventy-eight principal offenders.

“47. As a proof that uniform good conduct under punishment has been prevalent among the body of the convicts, I have remarked in paragraph, No. 36, Art. 5, on the gratifying fact, that of the ninety-two convicts discharged at the Michell's Pass station during 1848, 53, that is, fifty-six per cent. and upwards had become entitled to an abridgment of their sentences by the rules of the system. I shall now state the result of this mode of rewarding good conduct during the last three years it has been in operation. From the 31st of December, 1845, to the 31st of December, 1848, there have been in all 575 convicts discharged at the several stations; of these 348 have had their sentences abridged for uniform good conduct. This amounts to 60.52 per cent. of the whole number discharged, a result still more favorable than that yielded by the analysis of the returns from Michell's Pass station in 1848. And that this expression of good conduct is not without influence highly favorable to the discharged convict is fully established by the fact, that so numerous are the applications from employers for the services of discharged convicts, and especially for those whose sentences have been abridged for good conduct, that the Superintendent of Michell Pass station lately informed me, he has been in the habit for the last three years of registering such applications, the wages offered being in all instances higher than the average rate usually given for such labour. This fact also accounts for one of the rules of the system having fallen into abeyance, which was this: in order to encourage the well-conducted convict to persevere in habits of industry and sobriety, the Board of Road Commissioners received him into employment in their free-labor parties, at the rate of two shillings per diem, in consideration of his having had his sentence abridged for uniform good conduct. Of late years not one instance has occurred of any such discharged convict seeking employment in the free parties on the public roads. Nor is there an instance of a discharged convict becoming a vagabond from inability to obtain work or service in consequence of his conviction. In many instances the discharged convict returns to the place or neigh-

bourhood he left immediately before his conviction, and is generally so improved by the discipline and instruction he has undergone in the interval as to be looked upon by his associates as a pattern for their imitation in work and conduct.

“ 48. Being aware of the importance of turning to account any leisure hours at the disposal of the convicts, and knowing the difficulty of altogether preventing at such times both frivolous and improper conversation, I have established at each station a small library, consisting of books suited to their state of mind and condition. These books are both amusing and instructive, but in no case fictitious, or calculated to counteract those corrective influences and tendencies which I am so anxious to uphold in every department of the system. The books are lent to the convicts, not as a reward, but solely with a view to the right employment of their mid-day hour of rest and the leisure hours at the disposal at least of the road parties, after their meal at sundown, and before the hour at which they are locked up. It is satisfactory to have to report as to the beneficial influence of this arrangement. Those who are able to read are generally found so employed, whilst those who cannot, group around them and eagerly listen. The libraries consist of works both in the Dutch and English languages. Bibles are given to all who are able to read, on their being discharged.

“ 49. In reviewing the internal economy of a convict establishment, no subject can claim greater interest and consideration than the health of the convicts. A reference to the rules, &c., &c., annexed to this Report, will at once show that every attention has been paid to cleanliness and ventilation. These, I consider, not only essential to health, but conducive to the reformation of the prisoner. The strictest injunctions, therefore, have been laid on all superintendents and inspecting officers in respect to cleanliness of person, attire and bedding, as well as cleanliness and ventilation of barracks, and the effect has been that the state of health at the several convict stations is even superior to that of the inhabitants generally. During the five years, only thirty-five deaths have occurred among a convict population of 1,550 souls; and of these one a Hottentot was killed at the

works by a rock falling on him; two Kafirs were shot, as explained in paragraph 44. One, a free black, was murdered by a runaway convict from New South Wales, re-convicted in this city; and one, a European (the murderer just alluded to), was executed; so that there remain but thirty who died from natural causes, out of 1,559 souls, being one in fifty-two during a period of five years.

“50. I have thus brought into review before your Excellency the principal and more prominent features of the scheme of convict discipline in this Colony, and its practical working, for a period of five years. • •

“I am not insensible to the many facilities that have contributed to its success, arising out of many circumstances connected with the social condition of the inhabitants of this Colony. Of these I have, to the best of my ability, availed myself, in framing the scheme which has now been tested by the experience of five years. But taking these into account, as one of the features of the scheme itself, I feel assured that your Excellency will find in this report ample grounds for the conclusion at which I have arrived, viz., that as it regards this Colony, it has been found practicable, strictly to enforce the punishment of the law, in order to deter others, whilst that very punishment has been made to subserve that other important end, the reformation of the criminal, which alone can prevent the recurrence of crime.

“51. In conclusion, it is right that I should state that the agency I have had the good fortune to engage has proved itself most efficient, and deeply interested in the success of the scheme; that the four Governors under whom I have had the honor to serve in this Colony have left me, in the conduct of this department, uncontrolled discretionary power; and that both the public opinion and the public press have invariably been in favor of the system.

“I have, &c.,

“ (Signed) JOHN MONTAGU.”

This system has been now tried for a period sufficiently long, and under circumstances sufficiently various, to determine its utility, and it has fully

justified the expectations of its benevolent designer, and also the terms of satisfaction and approbation in which it has been commended.\* Sir H. Smith bears the following earnest testimony to its success as well as to the clearness of the above Report.

“Both my predecessors and myself have on more than one occasion reported to your Lordship the great advantages which this Colony has been deriving from the manual labor of the convicts on the public roads. Having, unlike other Governors, known the Colony before I assumed its government, I was on my arrival surprised at its advancement in this respect. On my return to the seat of government after my first visit to the frontier, I stated to your Lordship, that the roads had improved beyond my powers of description, mentioning particularly the hard road over the sandy desert of the Cape Flats, and ‘the gigantic work on the once awful pass of Cradock’s Kloof, an undertaking which would do honor to a great nation, instead of a mere dependency of the British Crown.’ I have since had the gratification of reporting to your Lordship the completion of another great work, the Michell Pass; and the continued labor of the convicts will afford the frequently recurring opportunities of describing similar works, contributing in an equal degree to the prosperity of the Colony.

“The enclosed report relates only to the system of discipline and control under which the convicts have been placed while employed upon these important public works. The report is at the same time so lucid in its arrangements and so comprehensive in its details, that I do not think it necessary to do more here than very briefly to indicate its results.

“It will be found that for the system which was in force in 1843, and which, to use the words of Sir George Napier, was ‘a positive evil, which should be got rid of as soon as it could be replaced by a better, has been substituted one, the object and effect of which have been to reform the criminal, so that he may be returned to the society from which he merged, without danger to that society, or without being an

\* See Appendix.



object of scorn and dislike to those by whom he will be surrounded.'

"Such, my Lord, are the results of the system of convict discipline pursued in this Colony. Its management has been left by me, as by my predecessors, Sir G. Napier, Sir P. Maitland, and Sir H. Pottinger, entirely in the hands of Mr. Montagu, by whom it was devised in 1843. Its success is, no doubt, in a great measure to be attributed to the interest which he has constantly felt in the subject, and to the fact that the application of its principles, and the management of its details have always been left in the hands of its author; but it is also clear that it is founded upon sound principles, applicable to the circumstances of this Colony, and possibly to those of other communities.

"I have much satisfaction in assuring your Lordship that the system has given universal satisfaction throughout the Colony. So far as I have been able to ascertain the general opinion on the subject, all classes concur in approving it. From the judges in particular I have learned that they have been relieved from serious embarrassment by its operation. In former times the sentence of imprisonment with hard labor was a premium on crime, and the longest punishment was only, in fact, the highest reward for its commission. The courts are now enabled to pass sentences proportionate to the nature and gravity of the offences of which the prisoners are convicted, and the change has been from a system which encouraged to a system which deters from crime; the best proof of which is furnished by the fact that crime has diminished in the Colony during the last five years.

"I beg here to draw your Lordship's marked attention to the fact, that the system pursued had reference alone to the offenders within the Colony, and it is most gratifying to me to know that while the local offenders are undergoing the just sentence of the law, their labors are turned to such good account."

This testimony from Sir H. Smith, as well as the Report that accompanied it, was answered by the subjoined appreciating and candid acknowledgment

from Lord Grey, then Secretary of State for the Colonies :—

“ Downing Street,

“ 7th February, 1850.

“ Sir,—I duly received your despatch, No. 167, of the 6th September last, accompanied by a Report upon the operation, during the last five years, of the system introduced by Mr. Montagu for the management and control of colonial convicts; and I can assure you that I have read with no less gratification than interest the account of this very successful experiment in the administration of secondary punishment.

“ 2. Nothing could be more honorable to Mr. Montagu than the testimony which you bear to his merits. It was a very proper mark of consideration and of confidence, on the part of yourself and your predecessors, to leave the application of the system entirely in the hands of its author, and I appreciate the cordiality of your satisfaction at the result.

“ 3. From the reports I gather that the sentence to imprisonment with hard labor was formerly no object of dread; that re-convictions were frequent; that many of the convicts were suffered to loiter and to enjoy numerous irregular privileges, and that those employed on the roads barely kept in available repair the old tracks over the passes which connected the capital with the interior. It now appears that the sentence to hard labor has become a subject of wholesome apprehension; that the proportion of re-convictions has become remarkably small; that both the discipline upheld at the stations, and the testimony of men who have completed their sentences, bear evidence to the controlling influence exercised on the convicts' minds; and finally, that they have executed works which, to use your language, 'would do honor to a great nation, instead of a mere dependency of the British Crown,' and which are calculated, by the improvement of internal communications, to prove of the highest utility to the public. Thus the main ends of punishment appear to be fully attained; the correction inflicted on offenders is deterring and reformatory, and at the same time their labor is so employed as to advance the interests of the community, and produce general satisfaction.

“4. I am aware that it is difficult to draw general inferences from experience in any one place. The whole number of colonial convicts at the Cape is not large; the proportion of Europeans amongst them is limited, and it is possible that the men of the other races may be more amenable to this species of discipline. I am bound to say, however, that it is extremely rare, in any country, to read of anything approaching to the success of this experiment.

“5. The best reward to Mr. Montagu for the thought and the exertions which it must have cost him, will doubtless be found in the sense of the service which he has thus been enabled to render his fellow-creatures, both in the reform of such of these unhappy people as have been amended, and in the discouragement of others from the commission of crime. But I feel it not the less due to him to record the gratification with which I have perused the accounts of the favorable results of his plan of convict management.”

That the old convict systems required considerable amendment cannot be doubted. Robben Island was not the only drear spot where there was a mass of abandoned and guilty wretches without any humane attempt at their moral improvement; without any Christian instruction; any religious book; any school; any teacher of any kind to care for the hopelessness of the criminal's mind, or the utter destitution of his soul. To the crying necessity of a change from such a condition an able statesman, long connected with the Colonies, bore some years since the following testimony before the House of Peers; and at the same time gave public commendation to the subject of the present Memoir, whose rare qualities Lord Stanley quickly discerned and fully appreciated.

“Up to 1840, (this was Lord Stanley's statement before the House, in March, 1846,) every person transported to the Colonies was handed over to the free settlers, who exercised over him the full rights of property. This assignment

system was attended with many advantages. It had the effect of removing convicts from the temptation to crime, and placing them in families where they might witness a good example; and it was therefore more likely to promote the great object of all punishment—the reformation of offenders. But the system was open to this great objection, that there was no certainty in the amount of punishment, which in fact varied with the character of the person to whom the convict was assigned; he might be either treated with indulgence, or subjected to the most tyrannical oppression. If a man was found a good workman or mechanic the party holding him was naturally unwilling to lose him, and passed over many faults; whereas if another individual were not found so useful he was reported to the Government for the slightest fault, though perhaps he might be in every respect a much better disposed man than the other. Cases had been known where persons had gone from this country, and asked that their husbands, or sons, or wives, as the case might be, should be assigned to them, so that in such cases there was no punishment whatever; while in other instances the assignment system led to the most debasing slavery. This system was put an end to in 1840, by the noble lord who then held the office of Colonial Secretary, and who, at the same time, put an end to the practice of sending convicts to New South Wales. Since that time, Van Diemen's Land had been the sole place to which convicts were transported. His noble friend spoke of the extraordinary number of convicts in Van Diemen's Land, but that was just the effect of the measure carried by the Government of which his noble friend was a member; and that was the state in which the present Government found matters when they came into office. They found Van Diemen's Land the only place to which convicts could be sent. They found the assignment system abolished, the gang system introduced into the Colony, while the House of Commons had come to a resolution in favor of the number of convicts sent out of the country being increased. He did not deny that the petitioners were entitled to seek relief from Government, and he had turned much of his attention to the subject when in office, with a view to remedy the inconveniences which he



must say he had foreseen from the first. It was not easy, however, to establish a system of convict discipline, when all the arrangements were to be carried into effect by parties at so great a distance from each other, that it took twelve months to get an answer to any proposition that might be made. Towards the close of 1842 one of the ablest and most efficient servants any Colonial Government ever had, Mr. Montagu, then Secretary of Van Diemen's Land, happened to be here at the same time with the Attorney-General for New South Wales; and after much consultation, rules were framed for the regulation of the system in future; the convicts were to be sent first into the penal (or probation) gangs, to be worked in unsettled parts of the Colony, and thence at proper periods permitted to pass through various less severe stages, till they arrived at conditional, or ultimately free pardon. Till this period, no provision whatever had been made for the religious or spiritual superintendence of convicts after they quitted the convict ship; but one of the first acts of the Government was, to secure to each gang, consisting as it did of 250 or 300 persons, the services of a chaplain, the gang being exclusively formed of Protestants or of Roman Catholics. In a moral point of view this scheme had been productive of the most beneficial results; and if it had failed in anything, it had been in this; that from the large increase in transportation precisely at the period of the great financial embarrassments of New South Wales and Van Diemen's Land, there had been less demand than was anticipated for the labor of convicts when they came to the more advanced stage."

Before closing this chapter upon convict labor and discipline, it is opportune to remark, that in Mr Montagu's system are to be traced two of the leading points of his own character,—*practical usefulness*, and *a benevolent desire for moral improvement*. These points in his system may be gathered not only from its general tenor, but from his own words, when elucidating some of the advantages to be expected



“As a matter of practical utility, the greatest advantage consists in its applying the labor of a large body of convicts more beneficially to the colonists than the old system, in making roads, and thereby facilitating communication, and reducing the expense of bringing farm produce to market. This measure will also be advantageous in stimulating the colonists to exert themselves and provide additional means for carrying on more extensive operations of a similar kind. It will tend very soon to increase the value and demand for land, and thereby enable the Government to dispose of Crown lands, and apply the proceeds either in reduction of taxes, or to public works, immigration, or some such object of colonial desire; for without the operation of some such cause, there seems to be no prospect of a revenue being derived from this source. The advantages to the Government of increased facilities in the removal of troops, in the transmission more speedily and more frequently of mails, in shortening the time for the journey of the circuit judges, and in every thing connected with the business of Government in the interior, I need only advert to. A very large amount of public money will be expended usefully and profitably for the general good, instead of being so frittered away as to leave the benefits of it almost undiscernible, and that too, without adding any fresh charge to the colonial revenue.

“The serious objection of constantly employing convicts in the towns of the Colony, before the eyes of the rising generation, will be obviated; an advantage of no mean importance. But the advantage to the morals of the lower orders will be very great. They will not think, as I fear too many do at present, that to be a convict is no degradation, and that it is not attended with inconvenience or punishment. As soon as the effects which the change of system must produce, are apparent and appreciated, it is but reasonable to hope that crime will decrease, and with it its attendant expenses to the public; and it is, certainly, a most important advantage to be enabled to afford to the convicts themselves both religious and moral instruction while they are undergoing their sentences, an advantage they never have had under the old system.

“To procure increased dread of the sentences of the Courts of Justice is an advantage to be looked for under the new system. Under the old it has, I am informed, very much ceased to operate. To purge the police in the two principal towns of the Colony of its convict connection, is certainly a considerable advantage. These are some of the leading advantages to be derived from the new system. I could enumerate more, but I trust I have cited sufficient for the purpose required.”\*

\* In order to afford full explanation of Mr. Montagu's system of Convict Discipline, the whole scheme of “Regulations,” &c. is given in the Appendix. Of these regulations the Governor, Sir G. Napier, fully approved, as is shown from the subjoined extract from his despatch to Lord Stanley :—

“I have been happy to avail myself of Mr. Montagu's experience and knowledge of convicts, to obtain from him the accompanying regulations for their discipline and management. I entirely approve of the principle and spirit upon which they are formed, and as I am assured by him that they correspond, as nearly as the different circumstances of the two Colonies will admit, with the system of convict management lately established by your Lordship for Van Diemen's Land, I submit them with more confidence for your Lordship's approval. Some of the details are new, as your Lordship will perceive, but they are, I think, well calculated for the class of persons usually convicted in this Colony.”

## CHAPTER VII.

## ROADS AND PASSES.

PASSES OPEN IN THE COLONY PREVIOUS TO THE PRESENT SYSTEM OF CONVICT LABOR.—HOTTENTOT'S HOLLAND KLOOF.—SIR LOWRY'S PASS.—CAPE FLATS, FORMERLY ALMOST IMPASSABLE.—DESCRIPTION OF.—HARD ROAD FORMED ACROSS THE "FLATS."—DIFFICULTIES OF PRESERVING IT FROM THE ENCROACHING SANDS.—MR. MONTAGU'S DILIGENCE TO EFFECT THIS.—METHOD ADOPTED TO ABREAST THE SANDS.—OLD ROAD OVER CRADOCK'S KLOOF, DESCRIPTION OF.—PRESENT MONTAGU PASS.—REPORT OF THE "GEORGE AGRICULTURAL SOCIETY," OF ITS BENEFIT TO THE DISTRICT.—GREAT BRAK RIVER HEIGHT.—MICHELL'S PASS.—ITS EFFECT ON THE SURROUNDING DISTRICTS.—LINE OF ROAD FROM PORT ELIZABETH TO GRAHAM'S TOWN.—THE ZUURBERG.—BAIN'S KLOOF, WHAT SUGGESTED THE IDEA OF OPENING IT.—DESCRIPTION OF THE LABOR IN CONSTRUCTING THE NEW ROAD THROUGH.—COMPLETION OF.—CENTRAL AND DIVISIONAL ROAD BOARDS, CONSTITUTION AND POWERS OF.—SIMILAR PLAN FOR THE MANAGEMENT OF ROADS, APPROVED BY THE LATE SIR ROBERT PEEL.—MR. MONTAGU'S TOUR TO SURVEY THE STATE AND CAPABILITIES OF THE ROADS OF THE COLONY.—MEMORANDUM ADDRESSED BY HIM ON THE SUBJECT TO THE COMMISSIONERS OF THE ROAD BOARD.—THE BOARD'S MINUTE ON THE SAME.—MR. MONTAGU'S EXPERIENCE OF THE DIFFICULTIES AND DANGERS OF CAPE TRAVELLING.—DESCRIPTION OF MODES OF TRAVELLING AT THE CAPE.—HORSE-WAGON.—BULLOCK-WAGON.—HORSEBACK.—THE AMOUNT OF CREDIT DUE TO MR. MONTAGU IN THE IMPROVEMENT OF THE PUBLIC ROADS.—EXTRACT FROM CAPE MAGAZINE.—RESULT OF BETTER ROADS; OLD AND NEW POSTAL ARRANGEMENTS.—RATES OF POSTAGE.—PRESENT POST LINES, AND DESPATCH IN CARRYING THE MAIL.—HARBOUR IMPROVEMENTS.—THE GOVERNOR'S DESPATCH TO THE SECRETARY OF STATE FOR THE COLONIES ON THE SUBJECT.—REMARKS ON THE PRESENT STATE OF TABLE BAY.

HAVING thus considered, in the foregoing chapter, the system of convict labor by which the roads of

the Colony of the Cape of Good Hope have been improved, and in many instances newly-formed; it will be interesting to glance at some few of the public works which this convict labor has been usefully occupied in constructing.

Previous to the present extensive employment of convict gangs on the public passes, only two undertakings of any considerable magnitude had been set on foot in South Africa, to open those formidable mountain barriers which had so long and fastly locked up all communication between different parts of the Colony of the Cape. One of these was the FRANSCHÉ HOEK PASS, which was mainly a military undertaking. The other was the road over the Mountains of Hottentots' Holland, commonly known as SIR LOWRY'S PASS. This road, which is a part of the direct line from Cape Town to the frontier, through the principal towns of the Colony, is cut out on the side of a precipitous mountain, looking in one direction down over the "Cape Flats," and in another to the wide expanse of Table Bay.

Sir J. Brenton who in 1817 crossed the old pass, known then as Hottentots' Holland Kloof, writes: "With difficulty we surmounted this pass, which could only be effected by putting oxen to the wagon, which being trained to the task and by nature more patient than the horse, slowly but certainly get up the mountain with the heaviest load. Where one *spar* or team is found insufficient, it is frequently the case that two are put on, and as many as thirty-two oxen may be seen crawling up the mountain, at a distance resembling an immense caterpillar." The new road, as formed by the order of Sir Lowry Cole, is winding and comparatively easy of ascent, its highest point being about 1000 feet above the sea,

and 700 feet from the starting point of the incline. The whole pass presents a scene of stern grandeur, with its rocky bluffs above, and its precipitous ravines beneath, sometimes striking sheer down, and making dizzy the brain of the traveller who looks over the rude parapet. The view from it has been thus graphically depicted by the traveller above quoted: "From the summit of Hottentots' Holland Kloof, the view towards the north and the west is sublime and magnificent beyond description, and can scarcely be surpassed. The Table Mountain, which forms a striking feature on the western side of the isthmus, appears from the height on which the spectator stands, diminished to a small island; whilst the Cape Flat, as the isthmus is called, which connects it with the range of mountains skirting the eastern side of it, is dotted with farms and vineyards, especially near the Table Mountain, where the two Constan-tias, Newlands, Wynberg and Rondebosch look like clusters of ornamental cottages; and even the tracts of bare white sand, which are interspersed amidst the coloring of every hue, from that of the dark cypress to the brightest green in spring, produced by the innumerable shrubs which clothe the plain and sides of the mountains become features of extraordinary beauty, lighting up the landscape with the most forcible touches."

This road, absolutely necessary, unless the Colony was to remain stationary, with little or no intercourse between its extreme portions, was undertaken by Sir Lowry Cole, when Governor, almost on his own responsibility, so impressed was he that the exigencies of the district demanded it; but such was the position in which the Colony was hemmed by its debt, that this noble work was for a time peremptorily



arrested, and Sir Lowry threatened with a surcharge for commencing its construction; upon which, so great was the excitement of the Colonists that they readily stood forward and guaranteed their Governor from all loss if he would complete the undertaking.

SIR LOWRY'S PASS is distant from Cape Town about thirty miles, of which, formerly, nearly twenty were over loose, deep, shifting sands, through which lay the only route from Cape Town to several of the most important divisions of the Colony, including Caledon, Swellendam and George,—and which was a part of the main line of communication between the Western and Eastern provinces. To call it a road was an absurdity; it was a desert track, frequently effaced, over a long stretch of level barren waste called the "Cape Flats," or "Downs." Where the sands do not wholly usurp the waste, as they formerly did in the immediate outskirts of Cape Town, for far-stretching miles these Flats are covered with a variety of brushwood, consisting in the lower and more sandy parts of proteaceous shrubs, and on the more stony portions verging towards the uplands, of *Rhinoster-bosch* or Rhinosceros-bush. In certain patches, scattered here and there, is found a coarse vegetation of rank and pipy sand-grass; and rustling tufts of rushes (*restiones*) dispute the ground with the wide-trailing Hottentot-fig, whose succulent fingers spread a covering of life and verdure over the very bosom of sterility.

In some places the face of the Downs and surrounding scenery is more pleasing and varied, being overgrown with heaths, indigoferas, proteas, polygalas, and other flowery shrubs, and in patches between these, in the flowering months of August, September, and October, there is one perfect embroi-

dery of flowers of the richest and brightest hue,—among them the *mesembryanthemum*, *babiana*, *oxalis*, *hypoxis*, and *moræa*,—profusely claiming and covering certain spots to such an extent that the eye beholds a plat of pink, blue, yellow, white, red, according to the prevailing flower. But even now when so much has been done to reclaim this waste, much of the region, especially that bordering on the main track, is barren dreariness, and an uncultivated wild.\*

\* The “Cape Flats,” or Downs (*Kuapsche Duinen*), are formed of the low, flat ground, lying between False Bay and Table Bay. The sterility of this region is accounted for, partly by the violent south-east winds which blow periodically over it, and sweep away almost everything before their irresistible fury; partly by the cattle and sheep, which being driven in large flocks across it have served to depasture it of herbage, and tread it down into a waste; and partly from the scarcity of firewood in Cape Town tempting the poorer inhabitants to cut and tear up the bushes and shrubs for the purposes of converting them into fuel; for which the silver tree (*Leucadendron argenteum*) is particularly adapted. Burchell, who travelled over these “Flats” in 1811, and who has given the most minute and faithful account of the whole Colony, observes of this district of “incurably heavy sand:”—“The wind blowing very strong seemed illnaturally disposed to put a stop to all observations, by leaving no other alternative than walking with my eyes shut, or being blinded with showers of sand. In many parts of the isthmus, this sand is carried from place to place by the wind in such quantities, that in some spots, the bushes exhibit their roots standing bare, and exposed to the atmosphere; while in others they are nearly buried, having no part visible but the tops of their branches. The large mounds which are here frequently met with, have been formed originally by the sand thus accumulating round either a single bush or a clump of bushes. The scarcity of firewood in Cape Town has forced the poorer inhabitants to discover a timely resource in these underground stems and roots, which being in mere loose sand are dug up with great ease. But however convenient this source of fuel may be to individuals, the destroying of the bushes, root and branch, will at last become a greater inconvenience to the public, as the isthmus will then be reduced to a sand desert, still more difficult for wagons to travel than at present. If an opposite system were pursued, and the growth of shrubs and trees, with sedge and sand grasses encouraged, the trees would protect the soil from the action of strong winds; while the sedge would not only fix the loose sand and form a harder ground, but might at the same time afford nourishment for cattle, which would certainly prefer such pasture to the

Across this arid plain a hard road had been contemplated and periodically talked about, for nearly five and twenty years, and then for a while silently forgotten, or abandoned as impracticable; yet, till such improvement was made, it was idle to talk of extended intercourse with other parts of the Colony. At times, this *track* was perfectly impassable, nay, undiscoverable: deep sands rendered it so heavy and difficult that a wine-wagon required eighteen or twenty oxen to move it slowly through; and when a strong south-east wind prevailed, it rushed and howled over this waste like a hurricane, carrying before it clouds of hot sand, which blinded the eyes, stung and irritated the skin, encrusted the luckless traveller in a perfect covering of dust and drift, often overturned wagons, and presented on the whole as perfect a representation in miniature of an African Zahara, as any one could imagine. The great check to any attempt for improving this wilderness on the very verge of Cape Town, was the supposed impossibility of arresting the sandy current, which almost daily through the summer months swept over it. Yet results have since proved that such a work was neither impossible nor impracticable: it only wanted a resolute and master mind to set it on foot.

**HARD ROAD.**—Mr. Montagu had not been many weeks in the Colony when an attempt to remove this serious obstruction in travelling to the interior was actually in operation. A raised path, or hard causeway was run in a straight line across the Flats,

hard reed-like stalks of the different kind of *restio* that overspread a great part of these Flats. Few experiments in the way of agricultural improvement seem of more importance to Cape Town, or better worth trying, than that of rendering these extensive sands more easily passable, or of converting them to some use, or to some more productive purpose."

raised above the ordinary level, in some places to the height of sixteen or seventeen feet, and sloping down on either side, so as to allow the drift-sand to sweep over it, without collecting on it. This hard road was commenced in 1843, and finished in 1845, but the difficulties of keeping it free from sand, and in general repair, have been for years extremely baffling, though now well nigh removed.

The Road Board's notice of the accomplishment of this undertaking will furnish some idea of the work to be effected.

“In bringing under review their proceedings for the year 1845, the Central Board of Commissioners of Public Roads have the gratification to commence their report by announcing the completion of the entire line of Hard Road across the Cape Downs, between Cape Town and the Eerste River, in the division of Stellenbosch.

“The road is exactly twenty-four miles in length and was opened to the public for general traffic on the 24th of December, 1845.

“In addition to the Montagu Bridge on this line of road over the Salt River, about four miles from Cape Town, a bridge of three arches, with a teakwood platform, carried by substantial piers of stone masonry sixteen feet high above the bed of the river, resting upon broad and deep foundations, has been erected over the Eerste River, at the terminus of the Hard Road, twenty-four miles from Cape Town, and was opened to the public on the 1st July last. Several very large culverts and drains of solid masonry have likewise been constructed in various parts of the line for the purpose of drainage.

“On account of the many difficulties (some of them indeed have been long deemed insuperable) which have for so many years deterred both the Government and the public from attempting this important road over such a length of sandy desert, the Board were not insensible to their heavy responsibility in undertaking it, and they may with safety



state that many of those difficulties were not exaggerated. But numerous and serious as they were, it is extremely satisfactory to consider that it has been accomplished within the space of two years from its commencement.

“The expenditure incurred for the construction of the road amounted to 40,000*l.*; and in order to afford some idea of the extent of the labor bestowed upon it by men and animals, it may be stated that it was equal in round numbers to the employment for one day of 265,000 men, and 12,370 wagons drawn by large teams of oxen.

“It would be difficult to represent with certainty in figures what the gain to the public has been by the formation of this road; but assuming (which it is supposed is correct from the information obtained) that between 50,000 and 60,000 wagons and other vehicles will travel it every year at an average reduction of expense to each in time, cattle, and wear and tear, of not less than from ten to twenty shillings each journey, it is not in the Board’s opinion estimating the pecuniary gain to the public too highly in placing it at 20,000*l.* a-year.

“The indirect, though immediate, advantage in the increased value which such a reduction must necessarily occasion to the numerous farms benefited by this road has, since it was opened, been estimated by many of the proprietors at one-fourth, and by others at one-third of their previous value; and if to this is superadded the social and other benefits the country will derive, the Board feel a confidence in submitting that even if the outlay had been double that incurred it would have been both expedient and judicious.”

When the Hard Road was completed it was ascertained that the encroachments of the sands in certain places were so considerable, that unless they could be arrested, the road must soon present its former obstacles, and become, in some parts, utterly impassable. Various plans and remedies have therefore been resorted to, from time to time, to protect



the road; some of the difficulties and attempts to remove them are thus referred to by the Board:—

“The difficulty of arresting this sand will be appreciated when it is stated that it is carried to the Hard Road by the wind, from a space of about 1,000 acres of land, and the violence and volume of it are so great that, at one period, as much as one mile and a half of that road was covered with deep sand. It appeared to the Board that the most effectual means for arresting it would be to bind the sand by vegetation.

“Two screens, one of 1056 feet, the other 784 feet in length, and both 12 feet in height, and about 484 yards asunder, and nearly parallel, have been placed to the eastward of the road, to prevent any further accumulation of sand on the road; and as soon as the rainy season has set in, the space now covered with sand, between the screens furthest from the road, and the road itself (about 300 acres), will be planted with the Hottentot fig. Upon the completion of the screens the road was cleared of drift sand, and has so continued to this time.

“It affords the Board very great satisfaction to be enabled to report the perfect success of their undertaking to arrest the drift sand, on the Cape Flats, to the southward and eastward of the Hard Road between Cape Town and the eastward.

“It was stated in last year’s report that the sand drift, upon about 1,600 acres of the field of sand, had been arrested; that about 250 acres remained unreclaimed; and that a screen had been erected near the Hard Road to arrest the drift from that space, and to collect the sand into a hill, which, when bound by planting, would, it was hoped, prove a permanent protection to the road. These expectations have been completely realized. The whole of the land then unreclaimed, including the sand hill formed by the accumulation of the screen, has been planted; and an arid desert of about 2,000 acres, which was formerly one waste of sand, the drift of which, across the road, was so cutting that it was painful even to travel there, has been converted into a perfect garden; an object of admiration and astonish-

ment to all who have witnessed this complete triumph over obstacles which were formerly, and even till very lately, believed to be wholly insurmountable."

many difficulties, at first seemingly unconquerable, the road is now so far perfected, that instead of the toilsome wagon team "dragging its slow length along," there are daily omnibuses established between Cape Town and Stellenbosch, which perform the journey in four hours. Gigs, spring carts, and every description of vehicle, drawn by a single horse, are now constantly to be seen traversing by means of this road the sandy desert, which formerly could only be crossed by wagons with strong teams of horses and oxen; and the wine and other farmers are now enabled to transport their produce to market with about half the power of draught, and in less than half the time, previously required.

The advantages resulting from the stoppage of the sand drift between the 4th and 6th milestones, are felt along the whole line of this road. Formerly the farmers, having no means of knowing, until they reached that spot, in what state they would find it, were obliged to provide their wagons with a power of draught sufficient for overcoming the greatest impediment. Now, the condition of the road being always uniform, they have been enabled to dispense with this precaution, and to reduce their teams accordingly.

The untiring and determined energy of Mr. Montagu was well tested during the two or three years, 1847-50, employed in efforts to check and bind the moving sand across this Hard Road. On every stormy or rainy day, he was sure to be seen riding to the various spots planted, in order to witness the

effects of storms and winds, whether from the north-west or south-east, upon these plantations. By the prevailing storms of south-east winds during the summer of 1849-50, large embankments of sand accumulated at one part of the road. At this season Mr. Montagu left his house at Cape Town, frequently before daybreak, and rode to this spot, which he reached by when the sun was up, in order to ascertain the daily encroachments of the drift, and the means of stopping its further progress. On one of these occasions his horse stumbled in some loose sand and threw him, but the fall though severe was not serious. This circumstance is mentioned as indicating how indefatigable he was in whatever he undertook; inasmuch as he would ride out early to inspect a distant road, and be at his office punctually at his usual hour.

In attempting to obstruct the progress of the sands across the Flats, Mr. Montagu had two objects in view; one to protect the main road, the other to plant the reclaimed land with something which should eventually repay the outlay. The Hottentot Fig (*Mesembryanthemum edule*), the principal production used in arresting the drifting of the sands, he soon perceived would make no profitable return beyond the one purpose of binding the soil. He therefore determined to try and raise plantations which might be turned to account. With this design he caused seeds of almost every kind of tree and shrub of South Africa to be set in different places, especially those of a shrubby plant, the wax of which has long been used in the interior parts of the Colony, in the stead of tallow, for candles.\* In those parts

\* The following extract is from Barrow, who travelled in the Colony in 1797:—"Candles being an unsafe article to transport by land carriage

of the reclaimed soil which were not found suitable for the waxberry-bush, he substituted different varieties of Australian trees, not having found any productions indigenous to the Colony which would grow to any size in that locality. The trees and shrubs which have been found to answer most successfully are the *Acacia longifolia*, *Acacia latifolia*, *hakea* (pale and green), *Fabricia*, and *Callitris*. The gum tree, *Eucalyptus*, did not answer well, owing to the effects of the very strong winds, which broke them before they had attained any magnitude. The breadth of one space planted, near the Maitland Road, was more than a mile and a quarter, the length of it above three miles. The area planted, in all, exceeded 2,000 acres. A fence of Port Jackson willow and *hakea* was also raised on the south side of the Hard Road, from the fifth to the sixth milestone; this row of trees promises to be effectual in affording both screen and shelter. Should this long-desert region of the Cape Flats ever become profitable and fertile,—which there is now every reason to believe it will,—the work of reclaiming it will be one of the most successful efforts of ingenuity and perseverance perhaps ever effected. Those who knew that desolate track a few years back can testify, that never did natural obstructions threaten to baffle human skill and enterprize more than there; it will be indeed an achievement, if the moving sand can be converted into a firm soil, and a region of dearth and waste to one of fertility and usefulness.

CRADOCK'S KLOOF.—The opening of one of the are seldom brought out of the country; but a vegetable wax, collected from the berries of a shrubby plant, the *myrica cerifera*, plentiful on the marshy grounds near the seashore, is sometimes sent to the Cape District in large green cakes, where it may be had from a shilling to fifteen pence a pound."

first Passes undertaken and successfully carried through, since the arrival of Mr. Montagu in the Colony, was that of the formidable Cradock's Kloof. No description can exaggerate the state of this so-called road, as it was witnessed and travelled over about ten years ago.

“The road over Cradock's Kloof certainly deserves its reputation, being the most formidably bad, if not of all roads I ever saw, assuredly, of all that pretended to be passable by wheels. Its steepness, the ruts, or rather chasms, by which it was furrowed, the masses of rock that obstruct it, can hardly be conceived by one who has not travelled beyond the civilized countries of Europe. The very attempt to drag any vehicle over such places would seem incredible without the testimony of one's own eyes.”\*

The path was a mere ledge, with a terrific ascent up the rugged side of a steep mountain. To pass it was an undertaking of extreme peril, and almost certain destruction to some part of the travelling vehicle. Wagons had frequently to be unloaded, and together with their freightage, taken up the mountain by instalments of wheels, and sides, and yokes, and packages; and when this was not resorted to, it took from twenty to thirty oxen to each wagon to move it up a quarter of a mile an hour, and six men with ropes and *reims*, or strong thongs of hide, attached to the side to keep it from falling over the threatening precipice. The cruelty to the oxen on such occasions was extreme, besides the straining labor necessary for such a task; in the fury of the Hottentot driver to excite them upwards, frequently pieces of the flesh would be lashed out by the cracking whip, which could be heard sounding and echoing along the mountain windings; and not uncommonly one or



more of the oxen would lie down and expire, from the very severity of the task, before the summit was reached. The accompanying engraving, taken from a sketch by the late talented Surveyor General, Colonel Michell, whose skill and energy did so much in the construction of several of the Cape Roads, is no exaggeration; many who knew the old Cradock's Kloof can testify that it is no more than a faithful picture.\* A military officer who travelled with Mr. Montagu over the old road, before the completion of that now opened, thus describes it:—  
“The Cradock Kloof is the most impossible place for horses, much less wagons, to get over I ever beheld; it is positively as perpendicular in parts as the face of Table Mountain. The distance is only five and a half miles, but, what with accidents and detentions, it was nothing uncommon for a wagon to be three days in getting over the barrier.”

The new road was commenced 1844, and opened Dec. 1847. On the average there were 250 convicts employed on it. The Road Board's Report of this undertaking thus refers to it in 1848:—

“The Cradock Pass, which was formerly the great, and almost insurmountable, barrier to any communication inland between the Eastern and Western Districts of the Colony, has been overcome, and the beautiful and easy passage through the Cradock Mountain by the Montagu Pass has been substituted for it. The work is now finished, and the Pass was opened for public traffic on the 19th of January last.

“Some estimate of its value can be formed from the fact that by the opening of Montagu Pass the farmers are now enabled to perform in two or three hours, with an ordinary draught, that which it formerly took them eighteen hours, and sometimes as much as three days and nights, to effect

\* See Engraving

with a double draught. The passage of this mountain is now performed with comfort and safety, and without the hazard of the accidents and dangers, which were the causes of the former delays.

“The whole expense of the construction of Montagu Pass amounted to 35,799*l.* on the 31st December, 1847. Of this amount 21,322*l.* have been expended in the charges attending the convicts stationed there; 8,058*l.* on free labor; 4,666*l.* on stores and tools of various descriptions; and no less than 1,753*l.* on gunpowder; a circumstance, in itself, sufficient to illustrate forcibly the stupendous, difficult, and tedious nature of the work; five and a half miles of the Pass having been blasted out of the solid rock.”

Further testimony to the great boon which this work conferred upon the Colony, especially upon the Town and District of George, was given by another Report published in the Colony about the same time:—

“It is difficult to enumerate all the advantages that are likely to result from the completion of the road, and the removal of the ‘natural boundary’ which had hitherto divided the two provinces. During the past year farm produce has been pouring into the town to an extent never known before; the poor man has been enabled thereby to procure cheaper bread, while, at the same time, the grower has been well remunerated. The farmer is saved the labor and expense of dragging his half-filled wagon over a toilsome road; the timber felled in our beautiful forest is easily and expeditiously conveyed to the interior; and not the least benefit of all is the establishment of the present Agricultural Society, which could not have been formed earlier with any chance of success—and none more ardently hope than your Committee that it will continue to increase in prosperity, and to advance the people’s welfare.”

In the year 1849, the George “Agricultural



recorded the subjoined expression of thanks for this noble undertaking, and of admiration and gratitude to the energetic mind which was mainly instrumental in its rapid completion:—

“ In introducing the subject of Roads to your attention, the Committee feel pleasure in congratulating you and the public generally, on the completion of that excellent line of road through the Cradock Mountain, now called ‘ Montagu Pass,’ a work of universal admiration, which has now been open to the public nearly fourteen months; and your Committee cannot refer to that grand undertaking without expressing, in the name of the Agricultural community, their grateful thanks to the Honorable the Secretary to Government, for the important and lasting benefits he has conferred upon the whole Colony, and the inhabitants of this district in particular, by the expeditious removal of such a stupendous barrier to intercourse and trade; and while the purest and noblest motives have influenced his powerful and energetic mind in the accomplishment of this and other measures for the public good, he has the gratification of seeing his labors crowned with complete success, and the rapid advancement of the Colony in prosperity, through the exercise of his acknowledged talents, which have been singly devoted to the development of the capabilities of the entire Colony.” \*

To the same military officer, whose brief but graphic account of the old Pass was given above, we are indebted for the annexed description of the present road:—“ The Montagu Pass is about the same length as the old road, about five and a half miles, but so gradual in ascent that wagons go through in an hour.† You may imagine what an effect the extraordinary talents and energy of this road-making Secretary are producing in the Colony from the single remark of a wagon-maker in George,

\* Report of the George Agricultural Society, 1849.

† See Engraving.



who told me he has now orders for more *spring vehicles* than he can execute in five years; and there is already an extra charge for taking riding horses over the Cradock Kloof, which a year ago was the only road they had."

The MONTAGU PASS is now a part of the great trunk line between the Western and Eastern Districts. The general improvement of this line, and the advantages to be derived from it, may be gathered from the following extract from the Road Board's Minutes:—

"From the Great Brak River to the southern entrance of the Montagu Pass, all the great and important improvements which the Board announced in their last report to be then in hand have been completed. The following extract from the report of their Inspector, Mr. White, on these undertakings, conveys the best information the Board possesses regarding them:—

"The great advantage of this Pass (Great Brak River Height) over the old road up the face of the Height may be inferred from the fact, that the table land of Outeniqualand, which is 900 feet above the level of the Great Brak River, was ascended by the old road in less distance than one mile, whereas the same elevation is gained by the new road at an equal ascent of two miles, the length of the Pass.

"The old road was so steep that it was a work of toil for an unloaded animal to ascend it. On the new line, the whole of which is scarped from the mountain-side, the heaviest loaded wagons have gone from the top to the bottom without locking a wheel; and a single horse with a gig may trot either up or down the whole length.

"From this Pass to the Long Kloof, the whole of the new line of road, including Montagu Pass, is also now open, and the greater number of the bridges thereon completed. The whole of this line, excepting the Montagu Pass, can be travelled on by any vehicle without locking a wheel,—the greater portion of it being perfectly level, and the remainder but a very slight departure from it.



“ ‘The importance of this line of road to the public of the central portion of the Colony, it must be manifest, is very great, as, independently of its being the main post road between Cape Town and Graham’s Town, it is, at the same time, the direct road from the interior to Mossel Bay,—a bay which is now the best between Table and Algoa Bays, and which, by the construction of a breakwater, can be more improved than any harbor on the southern coast of the Colony.

“ ‘The Long Kloof, a large wool-growing district, and the fertile districts of Kamnassie, Oliphant’s River, Cango, &c., producing largely very superior wheat, and other sorts of grain, tobacco, wine, brandy, dried fruits, &c., have now communication by horse-wagons with Mossel Bay; and by cutting a road through the Zwartberg range, the district of Beaufort would then also be connected with Mossel Bay.

“ ‘A horse-wagon can now easily reach Mossel Bay from Oliphant’s River in two days. Previous to the opening of the Montagu Pass, and the new line on either side of it, it was no uncommon occurrence for the farmers of this river to prefer taking their produce to Graham’s Town and Port Elizabeth, a distance of fourteen days with an ox wagon, rather than encounter the difficulties in surmounting the Cradock Mountain, and other places on the road to Mossel Bay.’ ”

MICHELL’S PASS.—The next work of any magnitude, undertaken by the Road Department of the Colony, was the opening of Mosterd’s Hoek, now named “Michell Pass.” Until this was opened, communication with the extensive and fertile regions lying beyond Tulbagh and Worcester, known as the Warm and Cold Bokkevelds, and also with the districts of Beaufort and Graaff Reinet, across the Karroo, was protracted and difficult. In the construction of this road, like impediments to those at the Montagu Pass, had to be overcome; considerable measures of rock to be blasted, and parapets



to be built up in extent and massiveness only inferior to some on the great Alpine Passes. The new road was commenced Oct. 1846, and opened 1st Dec. 1848. The average number of convicts employed on it was 240, and the expense of its construction did not amount to more than 22,884*l*. The character of this great work, and the advantages which may be expected to result from its completion, cannot be better described than in the words of Mr. Bain, the Inspector, who constructed it. The following are extracts from his report, which include likewise his remarks upon the two new lines of road which the Board have made, and opened to the public on the same day, viz.: from Michell Pass to the Karoo Poort, and from Michell Pass to the Cold Bokkeveld by the Gydwow Pass:—

“ In place of the old road through Mosterd’s Hoek, one of the worst and most dangerous in the Colony, a safe and easy Pass has now been substituted.

“ The constant crossing and recrossing of the Breede River is avoided by the new line, which is carried along the right bank of the river nearly parallel with it, till it emerges into the Warm Bokkeveld. For a length of about five and a half miles it is scarped almost entirely out of the solid rock, and is strengthened by a retaining wall, varying from three to forty feet in height.

“ A massive stone bridge, thirty-six feet in height, and several stone culverts and viaducts, besides a number of drains of considerable extent, have been rendered necessary by the numerous gullies and ravines which intersect the line. With the exception of a hundred yards, which are not yet completed, the whole of this stupendous work has been constructed in little more than two years, by convict labor. That portion of it, which has been constructed by blasting, has required much labor and exertion, the rock being of a rough quartzose sandstone, frequently containing imbedded pebbles of pure quartz, in many parts exceedingly



hard to drill, and so tenacious as to be very difficult to blast.

“ In connection with this Pass I am desired to announce the completion of the New Road from Mosterd’s Hoek to the Karoo Poorts, and of the Gydow Pass to the Cold Bokkeveld.

“ The former of these passes through the Warm Bokkeveld, is a direct line about twenty-eight miles in length, avoiding the circuitous turnings of the Old Road, and is carried over the precipitous chain of mountains, between the Bokkeveld and the Karoo, by a deep scarp carried up the side of the mountain for one and a half mile, supported by a stone retaining wall, and is conducted to the lowest summit of the chain known as ‘Trek Pad,’ through which all the sheep and cattle pass from the interior to Cape Town market; whence it descends by an easy road down Hottentot’s Kloof to the poorts of the Karoo.

“ The advantages which will result from the opening of the Mosterd’s Hoek Pass, and the roads connected with it, can scarcely at present be estimated with any degree of correctness. The pass will form the grand focus of the interior trade from Cape Town and the ‘Boveland,’ besides opening up the extensive territories of the Klein, Middel, and Onder Roggevelden, Hantam, Nieuweveld, Warm and Cold Bokkevelden, &c., which are among the most fertile and productive, though hitherto the least known districts of the Colony.

“ It may not be amiss to mention that the Bokkeveld, despite of the disadvantages which are now about to be removed, has established its name at Mark Lane as ‘producing the best wheat in the world,’ which will of course be very greatly increased, in quantity at least, by the greatly increased facilities of export.”

To show the immediate effect which such a work as the above has upon the prospects of the Colony, and the hopes and enterprize of the community at large, a few sentences may be quoted from a speech delivered on the occasion of his Excellency



Sir H. Smith publicly opening the "Michell Pass." The speech referred to was made by the Civil Commissioner, Mr. Truter, one of the most enlightened and polished inhabitants of the Colony. After having thanked Sir Harry and Lady Smith for their presence on the occasion, and congratulated the Governor on the return of tranquillity and peace to the Colony after a most harassing and destructive war, the speaker addressed himself to Mr. Montagu and the Road Board:—

"Honorable Sir, Chairman, and Gentlemen, Members of the Central Road Board, please to accept, through me, as their organ, the most sincere thanks of the inhabitants of this division, and more particularly of the residents of the Bokkevels, for having fixed your attention on this interesting line of road, by which an almost insurmountable barrier to the outlet of the produce of the fertile farms of these sub-divisions has been removed and such a fine road constructed, as is this day opened for the use of the public. They beg openly to declare that the benefit thereby bestowed on them is incalculable, that the value of their property has thereby greatly increased, that a most effectual stimulus has been given to their industry, which they trust will soon be perceived in the Cape Town market, and in the markets of the villages situate on the other side of the first range of mountains. The capabilities and the productiveness of their farms have never been fairly tested; the barrier, so happily removed this day, has depressed their agricultural pursuits, and compelled them to have recourse to the grazing system for their support."

In addition to this, it may be stated, that one necessary result of the opening of these lines of communication between the different districts of the Colony is not simply the bringing under better cultivation and utility extensive and fertile regions, but also the establishment of new towns and villages.



Immediately after the opening of Michell Pass, about 1800 acres of unappropriated Crown Lands in the Warm Bokkeveld, at the eastern entrance of the Pass, and well supplied with spring water, were laid out as the site of a village, on which is bestowed the name of "Ceres." Situated in the midst of a most fertile tract of corn land, and being by the side of an important main road, there can be little doubt of this becoming, ere very long, one of the most flourishing villages in the Colony.

NEW LINE OF ROAD FROM PORT ELIZABETH TO GRAHAM'S TOWN.—The two great Passes now known as the "Montagu Pass," and "Michell Pass,"—names worthily given to them from the two most energetic and talented minds instrumental in their construction, viz., Mr. Montagu and Colonel Michell,—are both situated in the Western division of the Colony. But in the Eastern division, communication between its rising towns was as difficult as in the Western. Graham's Town, the capital, is distant from Port Elizabeth, the principal Bay of the Eastern province, about ninety miles, by the road formerly travelled, though now it is considerably shortened. The old road was in parts scarcely passable and always dangerous. The Bushman's River Drift at about half the distance, and Howison's Poort nearer to Graham's Town, in fact, almost one entrance to it, were hazardous to life as well as destructive to every vehicle that crossed them. Considerable labor and expense have been bestowed on this line of road, to what extent and with what success the following authorized statement will show:—

"From Port Elizabeth to the Coega, where the road branches off to the Zuurbergen, the line is open to the



public; the Zwartkop's River is crossed by means of an iron pontoon, which provides a safe and efficient means of transit.

“ From the Coega to the Sunday's River, the road, with the exception of the ascent from the Coega, which requires widening, is completed, and is level for nearly the whole distance.

“ At the Sunday's River, a punt, eighty-six feet in length, has been placed, which carries a loaded wagon across in three minutes.

“ From the punt, the road is open to Kruger's Kraal; and from Bushman's River to the Gomka River, the road has been nearly completed. This latter distance is the heaviest and most difficult portion of work on the whole of the line between Port Elizabeth and Graham's Town.

“ This line of road, of which the portions above referred to have only been completed, has been already, and continues to be used, where it can be adopted, with much benefit, as well as with great saving of distance; and even in its present state, affords practical proof of its superior advantages over the circuitous, and, in many cases, difficult line of road which formerly connected these two most important towns of the Eastern frontier.

“ That fertile and productive tract of country ‘the Olifant's Hoek,’ which finds a ready market for its abundant produce in Graham's Town and Port Elizabeth, has, by the new line, been brought nearer to the latter place, by half the former distance; having, besides, the advantage of a road nearly level throughout, the highest gradient, being one in twenty-five.

“ The work which is still required on this line will be completed as soon as the present disturbed state of the frontier will permit of the re-employment of the free parties of laborers, which it became necessary to discharge on the breaking out of the Kafir war.

“ Since the commencement of the war, the greater security of this new line over the old became apparent, wagons with arms and ammunition having been taken over it, notwithstanding its being in an unfinished state.



known as the 'Howison's Poort Road,' the most difficult portion of it has been completed, namely, from the end of New-street, Graham's Town, to the commencement of the precipice behind the Cape Corps Barracks,—thence through the solid rock to the rivulet above the waterfall, across which a substantial bridge of two stone piers, with a wooden platform, has been thrown; and from that point to the level of the flats, the whole being properly clayed, gravelled, and macadamized, with parapets where necessary, and effectually protected by parallel and cross drains, built and paved with stone, and with masonry laid in lime wherever damage by heavy rain seemed probable.

“The length of this road is about 5,500 feet, with an average breadth of twenty-six feet. About 310,000 cubic feet of excavation and embankment, 326,000 cubic feet of cutting through solid rock, 90,000 cubic feet of masonry, and 150,000 square feet of macadamization, &c., have been executed.

“At this portion of it the ascent is now slight, and it is confidently expected that, in descending, wagon-drivers will not find it necessary to lock the wheel,—a practice so destructive to the roads in this Colony.”

**ZUURBERG.** — Another of the great roads projected in the Eastern province, and now almost completed, is that over the Zuurberg.

The range of mountains through which this road will open an easy and safe passage has hitherto presented an almost insurmountable barrier to all those districts of the Colony, to which Port Elizabeth is the natural harbor. Its importance will readily be estimated when it is stated that the Divisional Board of Somerset have contributed 500*l.* towards the construction of the Zuurberg Pass.

This road when finished will be twenty-three miles in length, the steepest gradient (and that in a few spots only) will be but one in seventeen, and the whole line will be passable for the heaviest

wagon with an ordinary team, without locking a wheel; and, by thus opening up to the districts of Somerset and Cradock, an easy and much shorter access to Port Elizabeth, will enable the farmer to bring his produce to a sea-port town in three or four days, which he cannot now do in as many weeks. Of course the same advantages will be extended to, and felt by, the divisions of Graaff-Reinet, Beaufort, and Colesberg, and the country beyond the Orange River, upon the completion of this great and scientific work. The expense of the Zuurberg Road, it is estimated, will be about 20,000*l.*, and the time occupied in its construction about two years.

From the Report of Mr. White, the Inspector of this road, it appears that the great accommodation which it will, when completed, confer on the public, may be fairly estimated from the fact that there was passing on that part of it which was finished two years ago, eight times the amount of traffic there was previous to the commencement of the work, when the old road had to be followed.

“ The rapid occupation of the country in the direction of the Northern interior will make this road one of the principal outlets to the sea-coast, being the direct line from the interior to the, at present, best port in the Eastern division of the Colony.

“ For some few short distances the inclination of the road is one foot in fifteen, a considerable portion averages one in thirty-five, and of the remainder, the greater portion is at but a slight departure from a level.

“ The whole is well drained, and from the surface having been well mettled, it will suffer but little from traffic or rains, and will be inexpensive to keep in repair. Upon the adoption of the proposed plan for the transmission of the post by the Zuurberg, from the junction post at the Koega, the time occupied in conveying it between Port Elizabeth

and Somerset, Cradock, Graaff-Reinet, Cōlesberg, &c., will be lessened to some of these places one-half, and nearly so to the others.

“The post from Cape Town to Somerset, Cradock, Graaff-Reinet, Colesberg, &c., will be conveyed in a much shorter time than at present, and travellers will be able to be rapidly conveyed in light vehicles drawn by horses, where formerly a wagon was in danger of being broken, and was with difficulty drawn by sixteen oxen.”

**BAIN'S KLOOF.**—One of the most extensive of the public works at the Cape, in the department of road-making, is that which has been but very recently completed; having been opened since Mr. Montagu, its projector, left the Colony. It is known as “Bain’s Kloof Road.” It is cut through the mountain range which separates Worcester, and the districts beyond, from the Cape division. This barrier of mountains could only be passed, heretofore, by fetching a compass round one of the rugged and inconvenient passes at its extremes, at least forty, or by the road, more than sixty miles apart—the Tulbagh’s Kloof, or the Fransche Hoek Pass. In a direct line from “Mosterd’s Hoek”—now “Michell Pass”—and Cape Town, there is in the interjacent mountain chain, in a line with the village of Wellington, a neck of the ridge considerably less elevated than any other part between the extremes of the mountain. It struck Mr. Montagu, while visiting this locality with Mr. Bain (the enterprising Inspector of Roads, whose name is now associated with this pass), that a way might be traversed, in the direction of this neck, through the kloof; and Mr. Bain was encouraged to explore it. He commenced at early morning the western ascent of the mountain, entered the ravine through which the

Witte river descends to the eastward, and before nightfall had worked on his dangerous and toilsome way to the other side of the mountain. In this his expedition of discovery, the difficulty of which can scarcely be estimated by any unacquainted with the rugged barrenness and stifling heat in the confined ravines of Cape Mountain passes, Mr. Bain was accompanied (on more than one occasion) by young men of public spirit and bold enterprize, among whom may be mentioned Messrs. Retief, Du Toit, and Malan. On Mr. Bain's report it was at once determined to effect a pass through this part of the mountain.

Some idea of the difficulties to be encountered in opening this road may be formed on learning that the pass, which is about ten miles in length, is, for nearly two miles, carried up the side of a hill like Sir Lowry's Pass, and then for about six miles along the rocky face of a stupendous mountain, almost perpendicular, but along which the gradient is small, and accords nearly with the dip of the strata.

The western entrance of the road commences at a short distance beyond the village of Wellington, and is seven miles in length from that point to the top or highest neck to be crossed in the mountain. The first two miles undulate slightly, and in the next two and a half the gradient averages 1 in 35. This portion of the road is planted, on the outside, with young oak trees, and contains two substantial stone bridges, with wooden decks, besides four stone culverts and a great number of covered water-courses. It is entirely scarped out of the side of the hill, which consists of decomposed granite and clay slate, and required little blasting; but in some

ing tongues of land, to avoid sudden turnings, which added much to the labor of the work. Along the road are many very deep cuttings with high and ponderous breast walls below, and several stone culverts, besides covered drains.

On the eastern side of the kloof, the nature of the work is quite different from the other side of the mountain, the line passing through huge masses of fixed and detached quartzose rock, which seemed to set at defiance the engineer's skill to construct any thing like a well graduated road through it; for no sooner was one obstacle removed, in the shape of an enormous block of rock of scores of tons weight, than others appeared in rapid succession, such as rugged traverse krantzes and baffling interceptions, of which there seemed to be no end; but blasting and the crowbar made them slowly disappear, and where the wolf or baboon a few years ago could scarcely find a footing, you may now canter as pleasantly as from Cape Town to Rondebosch, with a view before you perhaps not to be surpassed for the breadth of its extent, and the scale of its magnificence.

The above description is, in part, and the following extracts are wholly from Mr. Bain's account, furnished from time to time as the work proceeded; they may prove of interest as describing some of the impediments and difficulties to be surmounted:—

“ We have now reached the sides of the rocky mountain, a geological formation differing entirely from that through which we have already passed, which consisted of an easily worked decomposed clay-slate; whereas that on which we now enter, and continue in all the way through Bain's Kloof, is a quartzose sandstone, exactly resembling that on



the top of Table Mountain and of Michell's Pass. The pick and the spade are now in a great measure thrown aside, and the 'drill' and the crowbar take their places, so that without the powerful agency of gunpowder we cannot advance one step. The masses of rock removed from above are immediately transferred to the retaining wall below, which the convicts are exceedingly adroit at building, so that the whole work is one of compensation, and little or nothing is lost.

"At the 'Montagu Rocks' \* a gigantic work has been executed. This stupendous mass of rock, with a precipice towards the river of 90 feet in height, is thrown, as it were, directly across our line of road, leaving no alternative but either to build a retaining wall of 70 feet round this formidable ledge, or to blast a way right through it. The latter was chosen, and a beautiful pass has been formed through, averaging 15 feet broad, 20 feet high, and 62 yards long. To remove this mass of rock, a small railway of very simple construction was made, which conveyed the stone with very little labor to a deep gully close by, which had to be built up. At this place are altogether 200 yards of wagon road completed, including two massive stone bridges or large culverts, one of which is 32, and the other 25 feet in height.

"A little below the 'Montagu River,' at River's Krantz, 395 yards of wagon road have been carried along the edge of a precipice 300 feet high. In this space are three culverts, and the retaining wall averages about 10 feet in height.

"The greatest part of the above work has been scarped out of the solid rock, and may be considered as some of the most formidable and difficult parts of the road, so that the intervening spaces will be comparatively easy; and, should the season prove favorable, it is hoped to have the whole road, as far as the Bishop's Arch, available for wagons without much further delay.

"The two gangs of convicts at the Pilkington River Station have been employed in carrying on the bridle-path beyond that spot down to Wolvekloof, which has been a

work of considerable difficulty, on account of the immense masses of rock that had to be blasted.

“They also blasted a passage through the Bell Rock, a work similar to the Montagu Rocks, and have completed 340 yards of wagon road with two culverts, one of which is 42 feet high, in the neighbourhood of Dacre’s Pulpit.

“The whole of the work between Rivers’ Krantz, Bell Rock, and Hell Krantz, is of the most appalling and difficult kind; the lofty retaining walls being built on the very edge of a precipitous cliff of 300 feet high, whilst the upper half of the road is blasted out of, and stolen as it were, from the frowning *krantzes* above; yet on the finished parts of the road there is no feeling of insecurity, for the breadth is ample, the rustic parapet walls strong, and the descent gentle.

“Below Hell Krantz is the ‘Maclear’s River,’ over which a massive stone bridge has been built of 30 feet high; and lower down still is the ‘Pilkington River.’ The bridge over this stream will be 53 feet in height, when finished; but is now only 36 feet high, and forms consequently a barrier for the present to the further progress of vehicles down the kloof.

“In one space, the retaining walls vary from 4 to 57 feet, as at the Wentzel River, and contain four large stone culverts and six large stone drains. This section of the road is distinguished above all the rest by its numerous deep rocky fissures that intersect it at right angles, and which to the passing traveller is unobserved, now that the road is made, but, in its original state, might have been likened unto a gigantic comb, whose huge *Brobdignagian* teeth had to be blasted away, on which to form the platform of the road, and the abyss-like interstices had to be connected by retaining walls of the height above described.

“In this, as in the upper part of the roads, the craggy precipices above, of compact quartzose sandstone, had all to be blasted away to yield material for the building of the ponderous retaining walls below.”

The whole of this stupendous task, entirely the result of Mr. Montagu’s convict system, and encountered and constructed by convicts alone, is now com-

pleted from Wellington to Michell Pass, a distance of about thirty-one miles. Its entire cost was 50,000*l.*, and the number of convicts engaged on it averaged between 300 and 400. It was commenced February 1849, and finished September 1853. By this road the journey to Cape Town from the Warm Bokkeveld is reduced by about thirty or thirty-five miles—almost one-third of the former distance; but the importance of nearly level and good roads through those two kloofs must not be estimated by distance. The difference in the wear, tear, and destruction to wagons and oxen, the absence of all danger in the rapid rivers running through those kloofs, the increased loads the wagons are enabled to carry, and the time which is saved on the journey, should be computed to be equivalent to a reduction of four-fifths of the previous cost of bringing produce to the Cape Town market from the Bokkevelds, which are most fertile districts, and produce the best corn in the Colony. It may also be added, as one of the pleasing adjuncts of this great undertaking, that there is a rapid improvement as well as increase in the beautiful village of Wellington, which is already nearly twice the size it was before the commencement of the road; and landed property has since that period risen in value more than 100 per cent. on both sides of the mountain range.

To the above account of the construction of some of the great roads and public works carried on in recent years throughout the Colony, it may be explanatory here to state, that the forming and management of the public roads are under the direction of two Boards—the Central and Divisional. The mode in which these two Boards are constituted,

“ 1. The Central Board is composed of three Official and three Unofficial Members, from time to time nominated by the Governor.\*

“ 2. The Divisional Board, in each Division, is composed of the Civil Commissioner of the Division, and four other Members elected by the inhabitants.

“ 3. The four unofficial Members of each Divisional Board are chosen triennially, by ballot, by the owners of immovable property in the Division. The qualification of electors and elected is the ownership of such property to the value of 100*l*.

“ 4. The Central Board has the exclusive management of the main roads of the Colony, and the Divisional Boards, respectively, that of the branch roads, under certain restrictions.

“ 5. The Central Board receives and expends, in such manner as it deems most conducive to the public advantage, whatever sum of money is annually voted by the Legislative Council for Road and Convict purposes.

“ 6. The Central Board is empowered to assess the immovable property of each Division for the purpose of raising such funds as shall, when coupled with the sum voted by Council, be sufficient for putting into a fit state, the main roads in that Division.

“ 7. No Division is assessed by the Central Board except for its own main roads, and the amount of the Council grant bestowed by the Central Board upon the main roads in every Division, is in proportion to the amount of the

\* Sir G. Napier, under whose administration the Road Boards were instituted, thus wrote to Lord Stanley, in his despatch of 1844 :—

“ I had at first some difficulty in procuring the assistance of competent persons as commissioners for the Central Road Board, on account of the novelty, as well as the extent and responsibility of the duties required of them under the Ordinance. The gentlemen to whom I proposed the office were unwilling to enter upon it unless Mr. Montagu, with whom the whole scheme originated, was chairman of the Board: I felt some hesitation in adding to the labor of an officer who has so much to do as Mr. Montagu, but when I mentioned to him what had occurred, he did not hesitate to accede to my request, and I have accordingly appointed him to that office, as your Lordship will learn by the accompanying proclamation.”

assessment in that Division for the same object,—that is to say, the more there is contributed by assessment, the more is bestowed out of the grant.

“8. The Central Board is empowered to determine what parts of the main roads of the Colony shall be first attended to; and the Governor is empowered to declare by proclamation, which shall be considered the main roads.

“9. When the probable cost of constructing main roads in each Division has been estimated by the Central Board, the said Board, after calculating the amount of money to be anticipated from the Council, by way of grant which it will be just and practicable to reserve for, and bestow upon each Division,—is empowered to raise the difference by such assessment as aforesaid. But no assessment for the construction of main roads is to exceed 1*d.* in the pound per annum, upon value of property, or to be levied for more than five years in all; but the years need not be consecutive.”

This scheme of two Road Boards thus constituted, was projected and carried effectually into operation by Mr. Montagu; and it is interesting to be able to state that the plan of a Central Road Board for the management of all main lines of road through a country, met the approval of the late Sir R. Peel; for that great statesman in making his commercial statement on the 27th January, 1846, relative to the repeal of the Corn Laws, proceeded to review some of the burdens falling immediately upon land, and which were “capable of alleviation,” not by their transfer to other parties, “but by introducing reform in the administration of expenditure.” Among these burdens he noticed the highway rates. These rates were collected by the local authorities of 16,000 different parishes; “but what can be more defective than that, where the highway is a continuous channel of communication passing between different parishes, the same highway shall be under the control



of every different parish?" He proposed therefore "to compel the union of parishes into districts for all the purposes of roads." He had the more confidence in proposing this measure, because the voluntary union of parishes allowed by the Act of William IV., had produced the most marked benefits where it had been adopted. As an instance of "the result of the substitution of a central authority in place of many parochial authorities," he quoted a case which had occurred in one of the northern counties, where the effort of the change was to reduce the amount of rates from 6*d.* and 9*d.* in the pound to 4½*d.* and 5*d.*, and in one case as low as from 1½*d.* to 3*d.*: the road being at the same time greatly improved."

To return to the public acts of Mr. Montagu. It may here be recorded that he not only laid plans for the opening of the principal Passes, which would at once give a stimulus and exertion to the enterprise of the interior districts, but he also, in person, on two or three occasions, made a tour through the Colony, in order to ascertain by his own observation, the then state of the roads and their capabilities of amendment. On one of these excursions and surveys, he passed over 2,000 miles of a rugged country, and on his return gave the results of his observation, and also his suggestions arising from it, to the Road Board. The extent of his expedition and inquiries, and the boldness of the plans then projected by him, may be ascertained from the following memorandum he submitted to the Board, on his return:—

"The amount of information possessed by the Central Board not being sufficient to enable the Commissioners to judge which would be the most eligible lines for main roads in some parts of the eastern districts of the Colony, and it being, at the same time, desirable to ascertain if any further

similar works remain to be undertaken by the Board in the Western districts : I was fortunately enabled to inquire into both these subjects in the course of a tour I undertook during the months of September and October last, in the performance of some duties connected with my office of Secretary to Government ; and I now take the opportunity of bringing before my colleagues the information I have collected in the course of that tour, which exceeded 2,000 miles, and embraced almost every division of the Colony.

“ I was enabled to make this inquiry the more easily from having throughout my journey been assisted by many of the best informed persons in the various localities I visited, as well as from the information I had derived from previous correspondence.

“ I now proceed to state the results of my observations, and the opinions I have founded upon them, that the Board, having made any additions or alterations which may appear to be required, may announce to the public a comprehensive plan, embracing all the main roads which they may think it desirable to adopt and make throughout the whole Colony ;— so that the public, by knowing what their views are, may have the opportunity of suggesting alterations before the several works are commenced, and so enable the Board to correct any errors they might otherwise fall into.

“ A great work, which should certainly be done, is the opening of the Seven Weeks Poort through the Zwarteberg Mountains, in the Swellendam District, which would give easy and rapid access to the Karoo in the Worcester and Beaufort Divisions, lying between the Hex River and Prince Albert ; and thence to Beaufort, Graaff-Reinet, and Colesberg. The length of the Poort through the mountain, which at present is impassable for any description of vehicle, would be eight or nine miles,—it would be nearly level, and well supplied with water and grass. It would be an admirable work for a convict road-gang ; and I should think a party of 250 or 300 men would complete it in fifteen or eighteen months. This opening would enable the farmers travelling from the Swellendam District to the Karoo, and *vice versa*, to perform in three hours a journey which now occupies sometimes as many as four, five, or six days ; viz., between the

points where they are now obliged to diverge from the straight line and pursue a circuitous route before they regain it.

“But opening this Poort will not of itself be sufficient for the easy transit of agricultural produce to the sea-ports, unless good roads be made from the Swellendam side of it to the harbors on the coast. There should, therefore, be two lines from the western mouth of the Poort,—the one to Port Beaufort over the Platte Kloof, which would give a branch also to Mossel Bay; the other over the Tradouw to Cogman’s Kloof, and thence, *vid* Worcester and Bain’s Kloof, to Table Bay; These two, however, are branch roads, and I should hope they would be undertaken by the Divisional Boards, for the benefit of the divisions through which they will pass.

“A new road should, also, be made to join the western mouth of this Poort near the Zoar institution, on approaching it from the Congo and Oliphant’s River Districts, by following the Huis River, after crossing the Gamka, instead of the present road, after it crosses that river, through Caledon’s Kloof, which is ten or twelve miles in length, an exceedingly difficult and dangerous road, being merely the bed of a mountain torrent, filled with large stones, and wholly impassable in winter.

“In the George Division a road is much required from the Long Kloof through the Kammanasie Mountain at the Toverwater opening, into the Beaufort Karoo, and thence to Beaufort and to the districts further east. The George Divisional Board are now employed on a road from Plettenberg’s Bay and the Knysna to the Long Kloof; so that these two roads taken together would open those ports to Beaufort and the more Eastern Divisions.

“The road now making by the Divisional Board will enter the Long Kloof at Zondag’s, which is very near to the opening in the Kammanasie, called ‘Toverwater.’

“Another road on the north-eastern side of the Kammanasie Mountains, from the Oliphant and Congo River districts to Port Elizabeth, is much required, and can be made available for traffic during the whole year, and much shorter than the present line, which is impracticable during the winter months.

“The main road from Cape Town to Graham’s Town, as

far as Kromme River's Hoogte in the Uitenhage Division, requires no alteration; but from that spot to the Van Staden's River, a distance of about 100 miles, a great deal of work will be required in different parts of it, though with very little alteration in the direction of the road. This would be a fit work for a convict road party.

"The lines of road proclaimed by the Governor on the 28th ultimo, from Port Elizabeth and Uitenhage to Graham's Town, will render an alteration necessary on the main line from Van Staden's River towards Graham's Town.

"The main road from Van Staden's River should, I think, go direct to Port Elizabeth and not through Uitenhage, as at present. This can be effected without much expense, by making the river always passable at its mouth, which passage is now always preferred by the farmers, when the tide permits, whether bound to Uitenhage or Port Elizabeth.

"The new roads lately proclaimed from Port Elizabeth and Uitenhage to Graham's Town, and over the Zuurberg Mountain to Somerset, Cradock, &c., will be great improvements, and will afford facilities to traffic which are greatly wanted in those parts.

"The present road between Uitenhage and Sunday's River passes through a dense bush, and is very steep and precipitous. The new line avoids the bush and is nearly level. So also between the Sunday's and Bushman's Rivers, the present road passes through the dense Addo Bush and ascends the Addo Height for five miles, and about one foot in six. In the intended line between these rivers the highest gradient is one in twenty-five, and the bush is entirely avoided. A similar difference is observable in the lines between Bushman's River and Graham's Town. The total distance from Uitenhage to Graham's Town by the old road is eighty-seven miles, or fourteen hours and a half; by the proposed line, seventy-eight miles, or ten and a half hours; which increased rate of travelling can easily be accomplished on this line, it being nearly level throughout,—the greatest rise being not more than one in twenty.

"In like manner the present road from Port Elizabeth to Graham's Town is ninety-six miles in length, or fifteen hours; the distance by the proposed road will be seventy-six



miles, or, for the reason already assigned, ten hours. This road will fall in with the proposed line from Uitenhage to Graham's Town, at a spot a little beyond the Coega River, where a central post station is to be established. The present road between Port Elizabeth and the Coega is a succession of ascents and descents (some very steep), which are avoided by the proposed line, which is nearly level throughout.

“ In the same manner the distance between Port Elizabeth and the Zuurberg Pass will be reduced from fifty miles to forty, by the proposed new road, which will be nearly level. When the Zuurberg new road is opened, and continued in a direct line to Cradock, traffic in exportable produce, which now goes from there and the country north and north-east to Graham's Town, and thence to Port Elizabeth, will thereafter pass over the Zuurberg to Port Elizabeth direct.

“ As this alteration will in some degree decrease the traffic through Graham's Town, and other parts of the Albany Division, it becomes both just and necessary, in attention to their wants and interests, to increase simultaneously the facilities of transport through that division to the interior, as well as to their present shipping port, and this (as already shown) will, to a great extent, be effected by the proposed new line between Graham's Town and Port Elizabeth.

“ In furtherance of this object, the road from Graham's Town to Cradock should be improved as soon as possible, and should be made more certain for traffic, and less liable to detentions at all seasons of the year. Until recently there were three crossings of the Fish River between Cradock and Graham's Town,—two near Cradock, and one at Espach's. The two former have been already avoided, by a recent alteration in the line of road before reaching Dagga Boer's Neck; and the crossing at Espach's might also be avoided by adopting a road, after crossing the Dagga Boer's Neck, between the Koonap and Fish Rivers, and crossing the latter over the bridge at Fort Brown, whence Graham's Town could be easily reached, at all times and seasons, by the Queen's road. This would obviate the delays now so frequent in summer, when the Fish River is impassable sometimes for a fortnight at a time. To effect this improvement, however, an entirely new line of road would be required from the Kaga to the

bridge at Fort Brown, through a hilly and bushy country, the present road by Ayton's and Tomlinson's being too circuitous; but by making it, the Mankazana would be likewise connected with Graham's Town, and the transport of an important and fruitful section of the Colony would be facilitated. By these alterations, and by improving the road over the Dagga Boer's Neck, all the existing obstructions along the whole line of road from Graham's Town to the Orange River, Colesberg, Albert, &c., will be removed. It is possible, though I do not think it would be found to be the case, that the adoption of the road by Fort Brown would slightly increase the distance, but it would avoid Espach's Ford and the dangerous De Bruin's Poort, and substitute for the present road one by which the Fish River could always be crossed with certainty, and without the long delays which now so frequently occur.

“There should also be a new and improved line of road from Graham's Town to the Kowie Mouth, so soon as that Port is made available for shipping, which, as the work required upon the line suggested is not extensive, could be speedily effected.

“The roads from Graham's Town to Fort Peddie, King William's Town, Fort Beaufort, and Alice, have been lately so much improved by the Royal Engineer Department, that there is nothing for the Board to undertake on any of those lines, nor others in the Divisions of Victoria and Fort Beaufort.

“The survey and new road through the Zuurberg Mountain has been decided on, and is now in course of completion from Commando Kraal to the north base of that mountain in the Somerset Division. From that point, a new main line must be constructed through the Somerset Division to the Town of Cradock, as all the traffic from the north and east of Cradock must necessarily pass through that town, which is intended either for shipment at Algoa Bay, or for sale at Graham's Town.

“Three lines have been proposed to me for this new main road from the north base of the Zuurberg to Cradock, one through the town of Somerset, and over the Bush Bergen to the west bank of the Great Fish River, and thence to Cradock,

without crossing the river until it reaches that town; a second by Roode Waal, and after crossing the Great Fish River, to proceed by Dagga Boers Neck to Cradock; and the third to go between the east end of Bruintjes Hoogte and the west end of the Bush Bergen, through Swager's Hoek and Ganna Hoek, to Cradock, and which can probably be made without crossing the Little Fish River before it becomes a considerable stream. I am unable to form a decided opinion at present as to the comparative advantages of these three lines, more information being required; but I am of opinion that the last mentioned will be found to be the most direct and the least expensive.

“Between Cradock and Burghersdorp, the Fish River now has to be crossed several times, immediately on leaving the former place. A new line should (and I believe could) be made so as to avoid these crossings, and afterwards there will be no work required for constructing good main roads to all parts of the Albert Division,—excepting at a hill immediately after entering it on the road from Cradock to Burghersdorp, called Kneehalter's Neck, and which is not a work of much magnitude.

“Between Cradock and Colesberg no work is required, excepting that on leaving Cradock the crossing of the Fish River should be avoided, as before observed.

“Much heavy work will be required to put the main roads in the Graaff-Reinet Division into good order. The districts east of Graaff-Reinet cannot now be approached without encountering serious obstacles to traffic in proceeding to them over the Goliads Kraal Hoogte, the Naudé-Berg, and the Wagenpads Berg. All these must be passed, as well as the Sunday's River at Roodebloem, between Graaff-Reinet and Goliads Kraal Hoogte, which in summer is occasionally impassable for several days; and since it will be necessary to retain the present line, the obstacles referred to must be removed and the roads improved.

“Much work is also required on the road over the Lootsberg to the Achter Rhenosterberg, to give direct communication between Graaff-Reinet and Colesberg, as well as on the present road over the Oudeberg, which now gives

Graaff-Reinet access to the Northern and Eastern Districts, —as also to those of Richmond and Beaufort, &c.

“ All these lie sufficiently close to Graaff-Reinet, and are of sufficient magnitude, to afford profitable employment to a convict road gang, which could be removed from one work to another as they were successively completed.

“ These works, however, will not be sufficient for the important trade of Graaff-Reinet unless greater facilities are afforded for shipping produce and obtaining imported articles than at present exist. Much variety of opinion prevails as to the best line for that purpose. Algoa Bay is obviously the shipping port of Graaff-Reinet, and the traffic is now conducted between those on places along the west bank of the Sunday's River, through the Swarteruggens to Port Elizabeth. This road (which for the three first miles after quitting Graaff-Reinet is also the present road to Graham's Town) crosses the Sunday's River twice within two miles of the town of Graaff-Reinet. Another line, which, from the information I have been able to collect, I certainly prefer, would run as follows:—On leaving Graaff-Reinet to keep on the east side of Sunday's River (and by going out of the town near the pound both crossings of the Sunday's River, to which I have just alluded, will be avoided), cross the Vogel River on the farm of Christoffel Lotter, and thence proceed to the north base of the Zuurberg Mountains, where it would meet the road I have proposed to have made from that base to Cradock, avoiding the Bruintjes Hoogte altogether, by passing through Vogel River Flat. In addition to the advantages of being a better line, and better supplied with grass and water, than that by the Swarteruggens, the road I propose will also afford greater facilities for traffic between Graaff-Reinet and Graham's Town than now exist, or could be obtained by any other route, by its proceeding from the point of road at the north base of the Zuurberg Mountain to which I have already alluded, to Graham's Town by the Steenkom's Vlakte, and thus avoiding crossing either the Great or Little Fish Rivers.

“ Immediately on leaving Graaff-Reinet for the Oudeberg, the Sunday's River must be crossed. When that is considered always passable, then the whole line of road from



Graaff-Reinet to Beaufort will be made good by the improvement in the Oudeberg already suggested.

“ But for the town and district of Beaufort greater facilities in transport are much required, and should be made.

“ At present Algoa Bay is their principal shipping port, but the road to it is not available during the summer months from the want of water for the cattle. Table Bay is obviously at present the preferable port for Beaufort, but it is rarely used on account of the difficulties of reaching it. But these difficulties are not of great magnitude, and ought to be overcome by the Board. One of them, the passage of the Hex River, has been completely conquered by the recent opening of Michell's Pass, which has shortened the journey by a bullock-wagon from Beaufort to Cape Town by three days; and when the new road now making through Bain's Kloof is finished, it will diminish it two days more, by the substitution of a straight, good, and easy line for the roundabout, bad, and difficult line through Tulbagh Kloof. The only remaining difficulty will then be the Karoo between Karoo Poort and Beaufort. Beaufort lies nearly east of Karoo Poort, but in travelling from the one to the other a large arc is described to the southward, which adds nearly one-fourth (about sixty miles) to the distance the straight line would give between those two points. This deviation is occasioned by the want of water for the cattle, and other physical causes, on the straight line. But from a very careful examination and survey lately made, under the Board's instructions, it has been ascertained that these difficulties can be removed without any very great expense. I traversed the greater part of the straight line, which passes close under the Klein Roggeveld Mountains, and through the Moordenaars Karoo, and I can speak confidently as to its superiority, and the facilities for making it available for transport of every description at all times of the year. The adoption of this straight road through the Karoo will shorten the time now required in transporting produce, &c., between Karoo Poort and Beaufort three days,—thus reducing the time for a bullock-wagon from twenty to twelve days, in the whole, between Cape Town and Beaufort.

“ When the Board have formed their opinions upon this

Memorandum, and submitted them to the public, I would suggest to them to advert, at the same time, to the information lately obtained by Messrs. Wentzel and Bain, on their recent tour through the Divisions of Malmesbury and Clanwilliam, relative to the main roads needed for those divisions, in order that the views of the Board upon the works to be hereafter undertaken by them, throughout the whole Colony, may be laid simultaneously before the Colonists for their observations and suggestions."

The Road Board's high estimation of Mr. Montagu's indefatigable exertions and enlightened suggestions connected with this tour of survey, are found recorded in the subjoined extract from its Minutes of December 26th, 1849.

"1. After the reading of the Minutes, Mr. Gie as well for himself as in the name of Mr. Wentzel, addressed the honorable Chairman in regard to the Memorandum produced by him at the last meeting, as follows:—' We have had the pleasure of perusing the Memorandum which you took the trouble to write for, and submit to, our consideration, as your colleagues at the Central Board of Commissioners of Public Roads, giving us a description of your journey through the Eastern and Western parts of the Colony during the months of September and October of this year, travelling a distance of at least 2000 miles, in your capacity of Colonial Secretary, and performing at the same time the duties connected with that office. This document clearly shows the attention you have bestowed, and the trouble you have taken to discover the nearest and most eligible lines of roads for general traffic, and the best points in the mountain chains where passes can be opened for general communication, in order, by the removal of those barriers which formerly were deemed so hopelessly insurmountable, to open the sources of wealth throughout the length and breadth of this Colony.

" ' We therefore consider it our duty to thank you for the trouble you have taken in exploring the country in the manner you have done during your last tour, which has certainly not been completed without great exertion and fatigue;

and which has placed us, as Members of the Central Board, in a position to be able at any future period, to form our judgment in regard to, and recommend with confidence the proclaiming of, such main roads as will tend to the welfare of the Colony at large.'

"Mr. Gie further proposed the following resolution, which was seconded by Mr. Wentzel, and unanimously adopted, viz. :—

" 'That the thanks of the Board are justly due to the Honorable Mr. Montagu for the important services rendered by him in the bestowing of such unrenmitting attention on what may be fairly considered the best interests of the Colony—the laying out and construction of the most eligible lines of roads through it, and thus developing its sources of wealth by a system which originated with him, and was adopted by his means, and whereby the Board received the valuable assistance which enabled it to proceed with its labors for a period of nearly seven years, and which they are fain to hope has proved satisfactory ; that the Memorandum submitted by the honorable gentleman, independent of being at all times a most valuable document, will be of the utmost service to this Board in guiding their future operations, and in profitably employing the convicts of this Colony at the places and in the manner therein proposed.' "

On the occasion of this tour of survey Mr. Montagu had full proof of the trying and hazardous state of many of the roads of the Colony : one of his travelling companions in this journey, describing a short distance to be passed over on a visit to the Cango Caves, states, that "from the Oliphant's River to the Cango Caves is a journey of about twenty miles, but in that distance Grobbelaar's River is crossed six and thirty times : " and describing one of the roads he writes :— "The Caledon's Kloof Road is the mere rocky bed of a mountain torrent, between perpendicular rocks of 200 feet in height, and winding a weary length of ten miles, the whole of

which we had to walk under a vertical sun, and every now and again had to lift the cart over enormous rocks or lower it down jagged precipices."

An accident which befel Mr. Montagu during this journey, will serve to show his intrepidity and presence of mind. On crossing the great Brak River,\* which besides being effected by the sea-tide was, at the time of his passing, considerably swollen by recent rains, Mr. Montagu suddenly found that he was within the influence of a strong current setting down to the sea; his horse in an instant lost its footing, and in vain tried to stem the current *à la nage*; the flood was too strong and threatened to sweep both horse and rider to the sea. In this danger Mr. Montagu preserved his presence of mind, and seeing his horse nearly spent, took the advantage, on turning an elbow in the bank of the river, of disengaging himself from his stirrup; and, striking off over the horse's head, after many a struggle reached the bank: but here he seemed in almost

\* The following South African mode of crossing an unbridged and unfordable river may be novel and amusing to European readers. It is from the account of Sir J. Brenton, already quoted:—"As it was late to get the wagons over that evening, which requires a tedious process, they were unloaded and the baggage taken over in a small boat, not more than twelve feet in length. The boat returned for the horses which swam over, having their heads tied up to the gunwale of the boat two at each side. It consequently required three trips to get over the eight wagon and four saddle horses. Much difficulty was experienced and time lost in getting them to take the water. Some of them having been accustomed to it, took their stations on each side of the boat at once, whilst others could scarcely be brought to the water's edge. At daylight we rose in order to see the process of getting the wagon over. The river might be about one hundred and fifty yards across, and perhaps two fathoms deep. A large empty *leaguer* (or wine cask), well bunged up, was placed in the wagon, and lashed to the framework at the bottom, a line was then brought from the opposite shore and made fast to it, it was then pushed into the water, and hauled over to the other side without any difficulty, by two or three men; when a pair of horses were ready to receive it, and draw it out of the stream."



greater danger of being lost: the bank, which was composed of mud and silt, at every step he took, threatened to enswamp him; while around him he saw nothing but a dreary waste of the gigantic reeds of the *palmiet*: nevertheless to these he clung, and by degrees waded wearily, till he was out of immediate danger, and the means of rescue arrived.

A short description of the mode of Cape travelling may not be here thought irrelevant or uninteresting.

For all long journeys the traveller must resort to one of three modes of transit; either to a travelling cart, or bullock-wagon, or horseback with a sumpter horse.

The travelling-cart or wagon, is either with or without springs; if the latter, it is necessary, in the prospect of a long journey, to bind the springs well round with *reims*, or thongs of hide. The interior of the cart is conveniently fitted up with boxes, spring-seats, pockets, cushions, and various contrivances, for carrying the traveller's commissariat stores, and giving him the luxury of a bed, if night should overtake him far from any habitation; or if from any cause, his progress should be delayed. In this case the interior of the cart becomes the master's dormitory, and an arrangement beneath the cart that of the driver's. Six or eight horses are commonly used for a journey of any continuance; and two drivers are always required, one to hold the reins, the other to flourish the long whip, so necessary an adjunct to Cape driving. Independent of this "division of labor" in driving, two servants would be necessary even for the purposes of *in-spanning* and *out-spanning* (as the colonial phrase is for *putting to* and *taking out* the horses). The same span of horses

serves, in ordinary cases, for the whole journey ; and thus travellers on a tour seldom accomplish more than about forty<sup>1</sup> miles a day. A day's work is, for the most part, uniform, with little variation except that of scenery and adventure. Start at sunrise, and drive on for about sixteen miles. Outspan the horses, supply them with oat-sheaves, and take your own breakfast in the *veld* (Anglicè, on the turf). Remain about two hours, and then on again for another stage of from fourteen to sixteen miles. Stop again, go through similar proceedings as before ; enjoy a noontide *siesta*, wherever shelter can be found, beneath the bush, or in the shadow of the cart ; and then up and on for the third stage. The end of this you descry about sundown ; and seldom fail, though an utter stranger, to meet with hospitable reception at whatever farm-house you find it necessary to halt. Here, perhaps, your only substantial meal in the day is to be obtained : almost immediately after which you are expected to retire to your assigned dormitory ; and there from heat, and the effects of diet well steeped in sheep's tail fat, pass a night disturbed with visions,—

——— “ of most disastrous chances, °  
Of moving accidents by flood and field ;  
And hair-breadth 'scapes.”

The glorious morning sun dispels them all : and the freshness and buoyancy of the free air cause you soon to forget a troubled night ; and you enter on a new day to pass almost through the same routine as the day before.

Travelling by a bullock-wagon is far slower and more monotonous, though on the whole easier and safer, than a travelling-cart. An ordinary *span* or team consists of sixteen oxen. The wagon is ex-

tremely rude, but strong, and so adapted that it can twist and turn and recover itself, through roads and ruts which would be thought utterly impassable. A portion of it is protected from weather by a tilt, or frame-work, of bamboo overspread with canvas. The journey is performed in *skofts*, or distances from grazing-place to grazing-place. These *oases* on the dreary road are reserved, on the sale of all Government lands, and are known as *uit span*, or outspan-places; they are ten, twelve, or fourteen miles apart, as the case may be, and on reaching them, the wearied team is almost certain of finding grass and water. On halting at the outspan place, the oxen are unyoked, and turned to graze, the yokes and long *trek-touw*, or draw-rope, being laid orderly down against the time to *inspan*. When the oxen are freed, the drivers are not long in kindling a fire, and preparing the rude meal, often the product of the long gun which is slung up beside the wagon. To the repast succeeds repose; and after a two hours' sleep, often in the scorching sun, the drivers and *voor-loopers*\* collect the oxen together, and prepare for another *skoft*, in their long and tedious journey; if at any time the oxen become lazy, they are speedily roused by the animating cry of the driver, *Loop! loop!* On! on! a cry they quickly heed. In the summer season the greatest distances are performed by night.

Travelling on horseback is the simplest mode, but trying, in the heat of a burning sun; besides which, rivers have often to be crossed, and rocky defiles to be surmounted, and many contrivances to be resorted to, which would at first tax the ingenuity of the

\* Boys who accompany the wagon to go before or lead the team, when approaching a town, or passing through difficult places.

European horseman, but which the Colonist, with a soon-acquired *savoir-faire*, must prepare himself to invent in his hour of need. The horse-traveller, on reaching the *outspan*, or other halting-place, *off-saddles*, and knee-halters his steed, tying the long halter (which, in riding, is neatly wound up and fastened by the side of the cheek) to one of the fore-legs, so short, that when the horse's head is raised, the leg is lifted from the ground. Some practice is required in *knee-haltering*, so to tie the *reim* that it shall not slip.

The first feat of a Cape horse, when his saddle is removed, is to roll from side to side, and well over in the sand; and if he is equal to accomplish this with something like ease and spirit, he is considered a good roadster.

To resume the part of our subject from which we have digressed. In commending and claiming credit for Mr. Montagu, for the active and wearied labor and talent bestowed by him, in the projecting and completing the above-mentioned Public Works, it is by no means intended to detract from the energetic labors and acknowledged skill of others who were connected with them: yet few will deny that Mr. Montagu was the prime mover, and the indefatigable stimulator in their execution. The resolution passed by the "George Agricultural Society," as given above, after the opening of the "Montagu Pass," as well as the following eulogium from the Civil Commissioner of the District, on the opening of the "Michell Pass," will show the acknowledged credit given to Mr. Montagu by those in the Colony, for his exertions in these great public undertakings. The Commissioner, on addressing the Road Board, said:—

"Honorable Chairman, and Gentlemen Members of the Central Board, on this memorable day you see the work, to



which you have bestowed so much attention, during two years, and for which you have spared no expenses, completed in a masterly style, under the superintendence of your very able officer, Mr. Bain, whose talents in this respect, exclusive of his great talent as a Geologist, will not be surpassed in this Colony. I have lately had an opportunity of visiting the lines of roads over the Gydow (formerly a most formidable and dangerous pass), over the Hottentot's Kloof, and the Lecuwen Hoek, which, I am happy publicly to state, are all laid out in a most judicious manner, the work under construction most ably performed, and will afford through the Karoos Poort the shortest and easiest line of road to the capital of the Western Province of the Colony. These improvements and numerous others already completed in different parts of the Colony, we are indebted for to the perspicuity of our most active and talented Secretary to Government, the Honorable J. Montagu, whose penetrating eye immediately perceived that the capabilities of the Colony were dormant, from the want of regular communications and good roads to the emporium of the Colony. May that gentleman, this is perhaps a selfish wish, in which I am, however, fully confident, every well-wisher of the Colony will join with me: May that gentleman long be spared to us as a member of our administrative and executive Government; future generations who will, unbiassed, judge of his acts, will hail his arrival in this Colony as the dawning day of the real improvements of the Colony.

“I have had occasional opportunities to visit the Convict Station, by whose manual laborers the hard work of making this road has been performed, and I have no hesitation to mention that the Convict system observed in it is most perfect, and the officer to whom the superintendence of the Station has been intrusted, Mr. Short, a most valuable officer of the Central Board. This perfect system of Convict Discipline has also emanated from our most talented Secretary to Government, the Honorable Mr. Montagu.

“May the events of this day be recorded from generation to generation, is the wish of the inhabitants of this Division.”

To this highly merited commendation of Mr. Truter, the Governor, Sir H. Smith, who was pre-

sent when it was spoken, added his testimony as to Mr. Montagu's untiring zeal and public worth. Expressing his anxious desire to foster and encourage the advancement of the Colonists, he observed "that no scheme for that purpose could compete with the invaluable labors of the Central Road Board. To Mr. Montagu personally, they were all indebted for his unwearied exertions in carrying out the details of these labors, and for the intellect which proposed and guided them. It might be selfish to wish for his continuance among them, but though his departure would be the greatest loss to the Colony, his abilities and energy pointed him out as worthy of a higher sphere for his exertions. By such peaceful operations as these before us, the permanent tranquillity and advancement of the Colony will be insured."

In addition to this public testimony, Sir H. Smith, in one of his despatches, writes of Mr. Montagu's road improvements in the following eugolistic terms:—"The Roads, through the exertions of Mr. Montagu, have improved beyond my power of description; the one extending for twenty-five miles over the Sandy Flats, and which before long will be completed to George, being of peculiarly substantial and excellent construction. Bridges have been thrown over rivers formerly impassable, and the gigantic work on the once awful pass of the Craddock's Kloof is an undertaking which would do honor to a great nation instead of a mere dependency of the British Crown. I trust it may prove as beneficial to the community as we have reason to expect. This pass, at the request of the Colonists, and by my sanction, is to be designated the 'Montagu Pass,'\*—a compliment this gentleman richly deserves."

\* See Engraving.

It may not be inappropriate to conclude the foregoing description of the old and new roads of the Colony, with the following summary from a *Cape Magazine*, published about eight years since:—

“The present road-system, which has been in operation since the year 1843, speaks for itself. The Cape Flats, the Houw-hoek, Cradock’s Kloof, or rather, ‘Montagu Pass,’ (now so called in honor of the talented individual whose energy and ability planned and led to the completion of these grand undertakings,) the numerous bridges over rivers, whose sudden floods after heavy rains used to occasion so much danger and delay:—the extensive works now going on at Mosterd’s Hoek, and the Zuurberg, all these important improvements indicate that the same energetic mind is still alive in the prosecution of this system, and that it is now for the Colonists to acknowledge the immense benefits arising from it, especially, by adding their hearty co-operation in its advancement, for is it not the means of inducing an increased population to throng wherever new lines of road extend in a new country,—now, by opening out some rich valley or plain beyond a hitherto impassable chain of mountains, thereby giving life and scope to extended agriculture, or by affording easy intercourse between separate communities, by which frequent means of observation tend to enlarge the mind, and lead to speedy improvement in every thing that gives impulse to commerce, the arts, education and society? Do nations or individuals ever become great by wars, and dominion alone? Certainly not. Eighteen hundred years have passed away since the first Cæsar lived, to whom a long line of mighty emperors succeeded, many of whom caused

those splendidly solid works to be constructed, which still exist throughout Italy, Spain, Gaul, and even Britain, and it is to such things, aye, *to the very stone viaducts* which time has as yet spared, that their names are indebted for more lasting renown than to the record of their victories, now mixed up amidst the confused mass of war's transitory triumphs and hallucinations. Again let it be asked, for which will Napoleon, the Cæsar of the modern world, be most admired by posterity? for his military skill and daring ambition, which made all the earth wretched, or for the magnificent road of the Simplon, which his genius planned and caused to be made? There is but one true test of greatness, *that*, which leaves its works to benefit mankind."

POSTAL ARRANGEMENTS.—One of the speedy results of good roads, and open communication to all parts of the Colony, soon made itself visible in the arrangement for a more rapid transit of the inland mails, and more frequent opportunities of transmitting letters.

In the year 1844 there was a post between Cape Town and Graham's Town but once a week. The mail was carried, by a main line through Swellendam, George, and Uitenhage, in 135 hours, contract time: but owing to unbridged rivers and bad roads, a longer period was usually occupied; sometimes extending several days beyond the contract time. If the post which left Cape Town on Saturday at six P.M., arrived in Graham's Town on the following Friday evening, it was considered a good, if not an expeditious delivery.

The above was the only main or trunk line on which the post was conveyed: from it several minor



posts branched off; the principal of which was that from the Lange Kloof in the George district, to Beaufort West and Graaff-Reinet.

There were also from Cape Town posts to Simon's Bay, Stellenbosch, the Paarl and Worcester, and one to Clanwilliam, all carried on horseback, at the rate of six miles an hour, according to contract; but no regularity was preserved in the rate of speed, inasmuch as every contract contained a special clause, relieving the contractor from any fine for the post being retarded, if he produced certificates that the delay arose from any circumstances such as would cause detention to an ordinary traveller: for instance, if his over-jaded horses knocked up; if it rained so that he could say the rivers were out; if the night was unusually dark and it suited the post-boy's convenience to affirm he lost his way; if the led horse tripped, and the boy let go the bridle; or any like frivolous excuse: so that the contractor need not trouble himself, either by care for his horses, or by a vigilant scrutiny in case of irregularity, to provide against any of these emergencies; nothing being required but the affidavit of the post-boy who was usually a colored person, with all the coolness and easiness of his class.

The postage on letters was necessarily heavy, and ranged from three-pence halfpenny to one shilling and two-pence according to distance.

In the Governor's Minute for 1845 it was stated:—

“In the Post Office Department, I have proposed an increase of 524*l.* for the expenditure of 1845. This department is daily increasing in importance and revenue, and it is, at the present time, under the consideration of the Government to increase its efficiency and usefulness to the

public, by altering the postage to one uniform rate, chargeable upon weight only, without reference to distance, and, also, by adding to the opportunities for correspondence.

“I am in hopes, that a uniform rate of postage, not exceeding three-pence or four-pence the half-ounce, will produce a revenue equal to the present collections; and when the existing contracts for the conveyance of the mails expire in December, 1845, it is my intention, in calling again for tenders, to require the contractors to travel at such a rate as will enable the post to be conveyed between Cape Town and Graham’s Town, twice a-week, each way in seventy hours.

“I have no doubt, from the great improvements now making in the roads, that this will be perfectly practicable. This time last year, that distance was not performed by the post in less than 135 hours: it is now accomplished in about 105.”

In the Minute for 1846, the Post Office Department was again brought under notice:—

“In the Post Office Department there is an increased charge of 2,388*l.* 14*s.* 8*d.*, as compared with 1845. This is owing to the formation of contracts for the conveyance of the inland mails twice a-week each way from Cape Town to Graham’s Town, from the 1st January next, and to some increased facilities, which will be proposed to you, for the posting and delivery of letters in Cape Town.

“I have already alluded to my intention of laying before you a plan for the establishment of a uniform rate of postage; the rate which I shall propose at first will be 4*d.* per half-ounce, whatever the distance; but as I have no wish to make the Post Office a source of revenue, I shall be prepared to reduce the postage further, as the revenue exceeds the expenses of the department. With the view of facilitating this reduction, I shall endeavor to keep down the expenses of the Post Office, as much as is practicable; and I therefore propose to employ as Postmasters the clerks to the Civil Commissioners and resident magistrates, with the exception of those at Graham’s Town and Port Elizabeth; a saving will be thus effected of 387*l.* per annum.”

In the Minute for 1849, it is stated yet further:—

“In consequence of the great additional facilities for internal intercourse, afforded by the important improvements in the public roads throughout the Colony, I propose, after the 1st of January, 1849, to establish a postal communication, in seventy hours, three times a-week, from Cape Town to Graham’s Town, and *vice versá*, and twice a-week to all other parts of the Colony; and from the great increase which has taken place in the Post Office revenue, since the postage was reduced to the uniform rate of fourpence on every letter, I feel justified in recommending to your consideration an ordinance having for its object the reduction of the postage charge to one penny on every letter not exceeding half an ounce in weight, and so in proportion, as in England.

In 1846 the present rate of postage, of fourpence per letter, commenced. Prior to that time, the average charge upon a letter was one shilling, and the revenue amounted to 8,000*l.* a-year. In the first year the loss of revenue was about 1,200*l.*, but in the second year, 1847, the gross revenue amounted to 10,091*l.*, from which must be deducted the sum of 1,986*l.* payments from the Colonial Treasury for official letters, leaving the nett revenue for that year at 8,105*l.*, or 105*l.* more than it reached under the former system.”

The penny rate of postage has not, however, been yet established; and the general arrangements for letters are as follows:—a uniform rate of postage is charged upon letters according to their weight, without reference to distance; the charge as stated in the above minute is 4*d.* per letter, if not exceeding  $\frac{1}{2}$  oz. Additional posts have also been supplied, and greater order and despatch are observed: There are now three posts a-week between Cape Town and Graham’s Town, *via* Port Elizabeth, carried in light spring carts the whole distance,

the greatest regularity, and in most cases having, in addition to the driver, a guard to take charge of the mail. The post leaving Cape Town on Saturday evening at 6 P.M., arrives in Graham's Town on the following Wednesday early in the morning.

A new trunk line from Cape Town to the northern frontier, *via* Ceres, Beaufort on the Karroo, and Richmond, is also opened; and the mail is carried at the same speed as on the other great trunk line connecting the capitals of the two provinces.

There are also daily posts to Simon's Bay and Stellenbosch; and twice a-week to the Paarl and Worcester, Tulbagh, Malmesbury, Picketberg, and Clanwilliam; all these are regularly dispatched.

HARBOR IMPROVEMENTS. — Another result of the facilities of transport, by forming roads and opening fresh lines of communication through mountain passes, was the attention which was drawn to the necessity of better harbors for the Colony; the harbors, generally, being little better than open roadsteads. The inefficient state of the ports and the urgency of adapting them to the better and safer accommodation of shipping, had often been insisted on; and so far back as 1836, a commission was appointed by Sir B. D'Urban to inquire into the state of Table Bay, and the facilities of erecting stone piers, for the greater convenience of lading and unloading vessels. Mr. Montagu, when he became aware that improved harbor accommodation was imperatively needed, requested the Port Captain to furnish him with his opinion with regard to the want of safer anchorage for the shipping in Table Bay. The Governor then appointed a second commission to inquire into and report upon the



character of that bay, and the probable estimate of piers and a breakwater. The result of the Commissioners' Report was communicated to the Secretary of State in the following despatch, such parts of which only are given as serve to illustrate the character, state, and requirements, of the harbor at Cape Town.

“Government House, Cape Town,

“14th August, 1845.

“MY LORD,—With my despatch, dated 3rd March last, I had the honor to transmit to your Lordship the Report of the Central Board of Commissioners of Public Roads for 1844, the first year of its labors.

“That document, I feel assured, will have afforded you ample and satisfactory information in regard to the proceedings of the Board, and the progress which has already been made in the opening up of an improved and continuous line of communication between Cape Town and the Eastern Frontier.

“In a few years, I trust, this great public work will have been completed, and subsidiary lines of road, at the same time formed, to connect it both with the seaports of the Colony and the extensive inland districts, where numerous tracts of fruitful soil may then be profitably cultivated, the produce of which, in the present state of internal intercourse, would be virtually shut out from the general market, and consequently limited to the scanty supply of local demand.

“It will, however, at once occur to your Lordship that, indispensable as public roads and bridges unquestionably are to the advancement of the Colony in civilization, industry, and good order, as well as to the profitable employment of labor and capital in the extension and improvement of its productive economy generally, their true value can only be realized, and their full effect on its social condition felt, when the harbors of the Colony shall have become adequate to the extent of domestic and foreign intercourse which its position and resources command.

“Impressed with a sense of the vast importance to the

Colony itself, the mother country, and the commerce of the world at large, of rendering the chief port, Table Bay, a safe harbor of refuge at all seasons, and also, of effecting improvements on the other seaports, by the erection of wharfs or jetties calculated either to improve or wholly supersede the present system of expensive and dilatory transport between ships and the shore. I have felt it my duty to submit to Her Majesty's Government—which I now proceed to do with great deference—the views I have formed in respect to the feasibility of carrying out, and the advantages that are likely to accrue from, so important a measure of improvement.

“The anchorage ground is of easy access, the entrance into the bay, both from the north and west, being spacious and clear. It is considered good holding ground, and in extent amounts to two square miles. It consists of loose sand, having in some spots an intermixture of clay and silt. This covering of sand rests at no great depth on the floor of compact clay slate arranged in vertical strata, and running across the bay in a south-easterly direction. The distance at which vessels anchor, reckoned from the jetties, or landing-places, varies from 400 yards to a mile and a half.

“The space referred to as available for anchorage is exposed to the winds from the north and west, over a range of the horizon equal to an arc of 80 degrees. The exposure is somewhat modified by Robben Island, and is greatly diminished along the western shores of the bay, which is the part chiefly resorted to for anchorage. These winds prevail mostly in June, July, and August, though occasionally, and with violence, at other seasons. During those months the number of ships frequenting the bay is greatly reduced, from the general apprehension of seamen as to the risk then incurred.

“From the open character of the bay no current can be produced, from the action of the tide, capable of transporting materials or accumulating them at any particular spot. Its rise does not exceed five feet. A slight movement or lateral drag passes along the shore of the bay, entering from the west and escaping by the northern channel, but its influence in transporting any but floating matter, is equally inappreci-

able with the other. On the whole it may be asserted that no extent of structure requisite for the purpose of a safe and commodious harbor will run any risk of being affected by the deposit of sand, silt, or other matter, within low-water mark.

“The average annual loss of shipping in the bay, during the last ten years, amounts to nearly 380 tons, being three-tenths per cent. of the average annual amount frequenting the port during the same period. The loss of life connected with the shipwrecks of that period amounts to ———.

“The delay arising from the interruption of work by unfavorable weather has been ascertained, by the Commission of 1836, to amount, on an average of five years, to nearly seven days in each month, or about one-fourth of the time available for work; and to impose on each vessel five days’ detention beyond the period required, under ordinary circumstances, for loading and unloading.

“The loss of time occasioned to shipping, even in the most favorable weather, from the inadequate system of communication between the ship and the shore, is calculated to amount to six working days out of every eighteen so occupied: that is, with a better system for the transit of goods, there would be effected in twelve days what now requires eighteen.”

Local circumstances have hitherto prevented any considerable and permanent Harbor works being carried into effect; and at this present time there is, probably, no great public undertaking more urgently required than that of the formation of docks and piers, to facilitate the repairing as well as unloading of the increasing number of vessels resorting annually to the Cape; and also of means of protecting ships at anchorage from the violence of prevailing north-west winds in the winter months, and detention by south-east winds in the months of summer. In winter, on a gusty night, with wind and tempest from the north-west, guns of distress are continually

heard from vessels which have parted their cables in the open bay, and are drifting ashore; and in the summer months, sometimes for nearly the whole of a week, while a south-easter prevails, communication is almost cut off from the merchant vessels rocking in the bay; and not unfrequently, in the past three years, have the mail steamers been delayed three and four days from the utter impossibility of coaling, and the danger of getting passengers on board. Table Bay presents capabilities of being made one of the finest harbors in the world, and yet scarcely a vessel touches there without murmurs and complaints from the officers and crew; and the resolve vociferously uttered, that nothing but sheer necessity shall cause them again to put into so vexatious a harbor.



## CHAPTER VIII.

## ROBBEN ISLAND.—HOSPITAL FOR LUNATICS, CHRONIC SICK, AND LEPERS.

ROBBEN ISLAND, ITS POSITION, AND TO WHAT APPROPRIATED.—MR. MONTAGU'S VISIT OF INSPECTION TO.—REPORT ON ITS SALUBRITY AND GENERAL FITNESS AS AN ASYLUM FOR CHRONIC SICKNESSES.—ROBBEN ISLAND CONVERTED TO THIS USE.—APPEARANCE OF THE ISLAND AND THE PRESENT BUILDINGS THERE.—DEPARTMENTS FOR THE SICK AND DISEASED LUNATICS.—INCURABLES.—STRIKING KINDNESS OF THE SICK ONE TO ANOTHER.—LEPERS.—GRATEFUL RECOLLECTIONS OF MR. MONTAGU EXPRESSED BY THE SUFFERERS AT ROBBEN ISLAND.—TESTIMONY OF A VISITOR TO THE ISLAND, AS TO ITS ADMIRABLE MANAGEMENT.—SOMERSET HOSPITAL.—OTHER PUBLIC UNDERTAKINGS FOR THE RELIEF OF SUFFERING HUMANITY.—LIFE-BOATS.—LIGHT-HOUSES.

ROBBEN ISLAND appears destined, under all changes, to remain a spot of melancholy interest. Cut off from the mainland by a wild sea, prevailing impetuous winds, and a distance of six miles—yet constantly in sight of it—it is a fit emblem of the miserable inhabitants who have, in successive ages, been transported there, severed from all association with the rest of their fellow men.

For more than 150 years this island was the Dutch Penal Settlement, and, if the old records speak truth, most rigid were the punishments which

were there inflicted. On the transference of the Cape to the English, the island continued a convict station under British rule; but, as we have seen, there was no extraordinary desire manifested, even then, to make its discipline such as should reform the criminal, or hold out to him the prospect of restoration to that society whose laws he had transgressed. So that the island may be figuratively said to have wafted on its gales sighs and groans, and to have been moistened with tears of the wretched and the outcast, for nearly two bitter centuries.

It is a spot of painful and touching interest still! The unapproachable asylum of the leper and the lunatic: the *ultima linea rerum*—the last shore of the disabled sailor stranded there, an utter wreck of humanity: the remote infirmary and resting-place for decay and sickness hopelessly incurable. It seems a kind of half-way halt in                    from the world; for many of its sojourners have bidden the happy face of mankind, and the spots of active life, a long and last farewell!

From this description we would not have it inferred that there is now anything severe or unfeeling in the system adopted there; or any parsimony of such comforts as can be afforded to persons whose visitations from God have rendered them objects of extreme compassion. The regulations, the abode, the treatment in each department of Robben Island, have been dictated in sympathy, and are administered with kindness and considerateness. But the characteristics of the diseases from which those removed to the island suffer, are of that distressing nature which requires the patients to be separated from mankind. The very sight of leprosy, the piteous vacancy of the

idiot, and the wild ravings of the lunatic suggest the necessity that those, who are thus visited with the heaviest calamities which can befall our race, should be, as far as practicable, withdrawn from the habitations and intercourse of the rest of the world. Yet with all its melancholy associations, Robben Island is a Bethesda,—a house of mercy,—in its present aspect and application, as compared with its criminal annals and inflictive appropriation of a few years back ; and to this change it is indebted to the feeling and Christian heart of the subject of this Memoir.

When on a visit of inquiry to the island previous to the removal of the convicts, he noticed its healthy position, and its fitness as an hospital for those whose complaints rendered it necessary for them to be removed from the less afflicted of their race. Leprosy in almost every shade and aspect of its repulsive variety had long been known in the Cape settlement, especially among the colored races ; and there had been for some time two Leper in the country, one at *Hemel-en-Aarde* in the Caledon district, and another in Uitenhage. Nevertheless several cases of leprosy existed where the distemper was under no medical treatment, and the diseased lived with their families at large, in different parts of the Colony ; so that this frightful malady must have rapidly increased, had not steps been taken to confine it, as far as possible, to some particular locality. From its isolation and general healthiness, Robben Island seemed particularly calculated for this purpose ; and so it at once struck Mr. Montagu on his visit of inspection.

In his Report on that occasion, he thus refers to the suitability of the island for patients, and to the condition of the sick and diseased and insane who

were under the charge of the government in different infirmaries and establishments of the Colony :—

“ As the salubrity of Robben Island has long been acknowledged, and there is abundance of stone, lime, and labor on the spot to erect the necessary buildings, I would strongly recommend for your Excellency’s serious consideration, the expediency of removing the leper and pauper establishments of Hemel-en-Aarde and Port Elizabeth, to Robben Island, also the pauper establishment of Cape Town, and the lunatics at present confined in the Somerset Hospital at Cape Town. The leper and pauper establishments which I have referred to, are, I am informed, wretchedly conducted, at a very heavy annual expense to the public.

“ I have visited the pauper establishment in Cape Town ; it is most inappropriately situated adjoining the South African College, at the top of the Government Gardens, which is the only place of recreation for the inhabitants of Cape Town. The building is in a very dilapidated state, and if the establishment be continued, a very heavy expense must shortly be incurred on account of it. I have also visited the lunatics confined in the Somerset Hospital ; anything more wretched and inappropriate for its unfortunate inmates cannot be imagined than the lunatic wards ; they are about fifty in number. There is no other lunatic asylum in this Colony, and lunatics are sent to this one from all parts of the Colony. It is quite impossible that the present mode of confining and treating these unhappy people can be much longer continued ; a separate and proper building must very soon be erected for them somewhere, and I know of no place better suited for them than Robben Island.



“Somerset Hospital is a large straggling building, and occupies a large extent of ground adjoining the New Commercial North Wharf, in the most valuable part of Cape Town. It was intended originally as a receiving hospital for the poor, and for sick sailors visiting the port, whose cases might require medical treatment for a limited time; but it has become a hospital for acute and chronic cases. If a hospital for such cases were erected at Robben Island, and a small receiving hospital erected in Cape Town, I am assured, by those whose opinions may be relied upon, that the land where the Somerset Hospital now stands would sell for much more money than it would cost to erect leper and pauper buildings, lunatic asylums, and a hospital for acute and chronic cases, at Robben Island.”

In addition to the incidental mention of the necessity for immediate measures being adopted for better and more systematic treatment of the afflicted and diseased, Mr. Montagu drew up a ~~scheme~~ scheme of arrangements for their removal to the island, and for the most humane provision for them when there. This plan met the full concurrence of a Medical Board appointed to report upon the subject, and was then communicated to the Home Government by Sir P. Maitland as “a plan proposed by Mr. Montagu:” it was subsequently approved and sanctioned by the Secretary of State for the Colonies. At this time there were in the different wards for the sick and needy:—

Lepers in two establishments . . . . .	56
Sick of chronic diseases . . . . .	17
Lunatics in Somerset Hospital . . . . .	51
Aged paupers and others . . . . .	101
	<hr/>
Total	225

When it was decided that the indigent, and various patients in the hospitals of the Colony, should be removed to Robben Island, measures were promptly taken to erect suitable dwellings and infirmaries for their reception. The convicts were removed to road stations; the old convict buildings, which were much dilapidated, were pulled down; and this once barren scene which had so long withered under the accursing influence of crime and the stern frown of retributive justice, began to smile under the beneficent influences of human kindness, sympathy, and mercy.

There are now on the island about twenty buildings, with spacious apartments, airy, healthy, and scrupulously clean. Externally, the sunny, white-washed appearance of the present houses has an air of cheerfulness, and the neat church rising near them speaks of solace to the sick soul, as the rest of the institution does of care to the diseased body.

Robben Island consists of a dry, sandy soil; its general appearance is barren, and it is covered with a short thick bush, which affords most nutritious pasturage for sheep and cattle; and the butter produced there is the best sent into Cape Town. The island also abounds in quails, pheasants, and rabbits.

The establishment of the island, as at present arranged, consists of three distinct departments; one for lunatics, one for chronic sick, and a third for lepers. There are besides these some few superannuated persons living in separate dwelling houses.\*

\* The number of patients in the establishment as reported in May last (1854) was—

	Men.	Women.	Children.		
Lepers . . .	38	20	8	=	66
Lunatics . .	49	53	4	=	106
Chronic Sick	106	21	2	=	129
					301
				Total .	301

LUNATICS.—The division for the lunatics is commodious, well-arranged, and striking, from its great cleanliness; the chief occupation of those who are merely idiotic, or but periodically insane, being to keep it neat and wholesome. The sleeping compartments are ranged round two small court-yards, one for the men, the other for the women. In the day-time few of the lunatics are to be seen in the court-yards or dormitories, as the plan pursued by the medical officer is to allow all but the most violent and unsafe to roam at pleasure about the island. One is commonly set to watch another; and if you question A, whom you see on a strict and consequential look-out in some part of the island, on what he is so closely intent, with a sly smile he will point to B, and say, "I am taking care of that poor fellow:" but when you approach B, and put a like interrogatory to him, he will tell you, casting a cunning glance at A, "I am looking after him; he is not quite right." The less violent are also used as servitors in the general establishment, and perform much out-door work about the island, and even take part in the management of the island boat, which crosses to and fro to the mainland three times in the week.

Amongst the most confirmed lunatics, who seldom go at large, are some painfully ludicrous cases. A sturdy black woman dressed in male appearance, if not absolutely in male attire, personates an African king, and certainly in words and imperious looks lords it over her subjects there, in "King Cambyses' vein."

Another case, from which the spectator almost religiously recoils, is that of a little man from St. Helena, who is sane enough when spoken to on ordinary subjects, but if the Bible be mentioned becomes instantly furious, and asserts that the New Testament

(a copy of which he always has about him, and can read fluently in English, and even quote with considerable correctness) is *his* gospel, and that he is Jesus Christ. If reasoned with on this point, he falls into such fierce paroxysms of wildness and violence, as may well cause him to be taken for one of those demoniacs whom the merciful Saviour came to liberate and heal. But even with these most extreme cases, the lenient and judicious treatment which is practised in this department, keeping the occasionally furious under close surveillance rather than iron restraint, is found to answer far better than the old custom of the narrow cell, the griping gyve and unmitigated confinement.

INCURABLES.—On a remarkably healthy, and, as to aspect, cheerful spot near the sea, and commanding a fine view of Table Mountain, and of the bold rocky coast behind it, are the buildings which contain the wards of the chronic sick. Here are to be witnessed some of those sorrowful cases which are to be met with in all such asylums; such as slow wasting disease; the incurable maladies of the long sick, who have consulted many physicians and been nothing bettered; the gradual sinking into the grave of those who have seemed for years upon its brink. For these, all that can be done is to relieve pain, and make the last moments of life tranquil and free from want; and certainly at Robben Island this is done. The treatment, the dietary, the attendance, and even the kindness of one patient towards another, are here most praise-worthy. It may, haply, be that the invalids are all alike severed from their distant homes; it may be that here lingering recollections of country, and happy days spent under the old domestic roof-tree, and faces and fond voices of kindred, seen and heard



in the times long, long ago, flooding in various degrees on the remembrance of each, cause them to feel a common sympathy, and to cling closer together, as those who will no more know other associations or fellowship upon earth. Be this as it may, I can fully testify that in those sick wards of Robben Island, there is so much true compassion, such cheerful readiness to help one another, and console one another, as serve to throw a ray of Christian love throughout the place, and to prove that fellow-suffering can call forth some of the finest feelings and most touching actions of our common nature.

LEPERS. — Of all the aspects of human misery which the island affords, the most touching and humiliating is the Leper Hospital. It may be visited with impunity to the body, but cold and callous must be the heart and feeling of those who could visit it and not be themselves afflicted in soul, and humbled in heart, at the view presented to them. The lepers are of all ages, and the disease may be seen in this hospital in almost every stage, and of every variety. The leprosy, as there seen, is not that cutaneous leprosy which covers the surface of the body with spots and blains, or gives to the skin a white scaly appearance, and renders the object stricken with it infectious to the touch, as in the cases of which we read in the Holy Scriptures; it is rather a slow, crumbling, dry cancer, or gangrene, acting on the extremities, and taking away, almost imperceptibly, joint by joint; the nail joint of the fingers first disappearing, and then the next, and the next, until the hand is consumed to the wrist, which presents an appearance of a tumorous stump, on which may be seen the distorted relics of contracted nails, as if the hand by degrees had been absorbed and drawn

up into the arm. The same wasting process takes place at the feet, and this fretting away at both extremities goes on, in most cases, simultaneously. Yet the progress of the disease is generally slow in its wasting ravages, and a leper may live for many years after its first appearance. Nor are those who are afflicted with it altogether disabled; they work with their mangled hands, make shoes, and wash linen, and perform other like occupations among themselves, and seem in most respects, if we except their peculiar disease, strong, hearty, and healthy; and I could not ascertain from the most intelligent, or seemingly the most sensitive among them, that they suffer from any great depression of spirits, or that the mind is in any way enfeebled.

The above is a description of the prevailing species of the disease. In addition to this, however, there are more striking varieties, according to the stage and exact nature of the malady; such as *lupus*, *elephantiasis*\* and *leontiasis* (a peculiar form of tubercular leprosy so called), attacking the face and causing large hard swellings, which greatly distort the features, and give to the profile somewhat of the appearance of that of a lion, from which circumstance medical writers have appropriated to it the name *leontiasis*.

The sight, in one respect the most deplorable, in these wards, is that of little children with their mothers, the latter refusing on any terms to part with them. The distressing anticipation cannot but present itself, that these children, healthy as

\* Of about sixty cases of leprosy at Robben Island, in the beginning of 1854, the majority were of that kind commonly known amongst medical men as *Elephantiasis Græcorum*, very different from another disease often termed simply *Elephantiasis*, or by some *Elephantiasis Arabum*.

they for the most part look, are slowly contracting the same frightful disease, and carrying its deadly seeds into another generation. For these little children there is daily instruction, and also for the adults, if they desire it.

The lepers are kept in the most cleanly state, and appear cheerful and content; and I was surprised to hear from the medical man who, by a long and sad experience, seems fully conversant with the several varieties of this malady, that the lepers, with all their cause for humiliation, are the proudest persons in the island; their great aim is to dress in smart finery, and they display in other respects much personal vanity. On asking on what account they could be vain, or feel proud, I was astonished at the reply, that they were sometimes conceited about their personal appearance; and, by a strange contradiction of human nature, that some were proud because they were lepers; as if considering it a cause of vain feeling, to be thus distinct from their fellows, though in the hideous rank of visitation and a wasting plague.

While speaking with the various representatives of human misery, when on a visit of duty and melancholy interest to the island a few months back, I was gratified to hear the many feeling inquiries which the patients made concerning Mr. Montagu, then absent from the Colony for his health; this was just before his death. Most of them seemed quite familiar with his name, and on the mention of it uttered a hearty "God bless him;" some of them spoke gratefully of his personal kindness to them; and all bore testimony to the care and treatment bestowed upon them. The one common resort and remedy for them all, if anything went wrong, or they thought

themselves aggrieved, was to acquaint Mr. Montagu. It is consoling to know that he who in his health, and in his many engrossing occupations, cared and “provided for the sick and needy,” had the blessings of many as he lay on his bed of sickness and languishing, and that as he had done to others so the merciful Lord did for him, “making all his bed in his sickness.”

This section of our work cannot be more appropriately concluded than by the subjoined testimony of a visitor to the island, about seven years ago:—“The admirable manner in which all the patients are rendered serviceable in maintaining order and cleanliness through the establishment is one of the most pleasing features of the whole; and I should be inclined to doubt whether there is to be found, in all the British dominions, an asylum for the reception of so many patients which is managed by so little extraneous assistance,—a circumstance which reflects equal credit on the Government, and their zealous servant (Dr. Birtwhistle), to whom has been committed the charge of this valuable establishment.”

It will not be irrelevant here to add, that Somerset Hospital, mentioned at the opening of this chapter, is still used as the Government infirmary for cases which do not come under the intention and regulations of the Robben Island establishment. In this hospital Mr. Montagu took the very liveliest interest, and was familiar with its most minute details. Such are the order, cleanliness, and attention there, and such the kind and very able treatment of the chief medical officer, Dr. Bickersteth, that sick persons who have landed at the Cape, and been received for a few days into Somerset Hospital, until private accommodation could be



procured for them, have preferred remaining in the sick wards; and, in more cases than one, strangers of considerable means have requested to stay in the hospital, proffering to remunerate the establishment for the care and expense bestowed on them; and this request has, in some interesting cases which have come under my notice, been granted.

While speaking of public works in aid, or for the relief of suffering humanity, it may not be out of place to mention here, that means for the preservation of seafaring men were also benevolently considered and strenuously recommended by Mr. Montagu. In Table Bay, for some successive winters, there had been several lives lost from shipwreck, yet no available means had been permanently arranged for the rescue of drowning seamen. On this being brought under the notice of the Government in 1845, two life-boats were provided (one for Table Bay, and one for Port Elizabeth), and placed under the charge of the Port Captains; these have been of frequent use in saving human life. The life-boat at Table Bay, under the management of the deputy Port Captain, Mr. Wilson, with his gallant life-boat crew, has already rescued from sudden death many a drowning seaman.

LIGHT-HOUSES have also been, within the last few years, constructed on the two most dangerous portions of the coast of the Colony: one at Cape Recife, at the entrance of Algoa Bay, and another on the Cape L'Agulhas,\* which forms the land's end at the

\* Frequent shipwrecks had long rendered this undertaking imperatively necessary, and in order to promote the erection of a light-house at L'Agulhas, a public meeting was held in Cape Town in the year 1840, when the Attorney-General, then recently arrived in the Colony, most earnestly advocated its erection. The building now constructed,

extreme point of Africa, being south of the Cape of Good Hope more than 30 miles. Off this coast there are many local currents running in contrary directions, and, near in land, are sunken ledges and reefs of rock, which have proved fatal to almost countless vessels, whose wrecks strewed the beach from the point to Struy's Bay continually. On this strand many shipwrecked sufferers, though saved from an ocean grave, have perished in cold and destitution, from the desert and uninhabited state of the country round, and their "decaying corpses on the shore, the Hottentot herdsman of a farmer's flock was often the first to discover."

In the construction of these light-houses, Mr. Montagu took the very liveliest interest, and to his energies mariners are chiefly indebted for their erection. The fishery on the L'Agulhas bank is said to be scarcely inferior to that of Newfoundland; but the treacherous nature both of the currents and coast long rendered it formidable in darkness, and at all times perilous to approach, from the hidden ledges, on which the waves incessantly roll with deafening roar and a broken, foaming surf. And, as there was formerly no beacon to guide seamen, a slight error in the reckoning has led many a ship to steer a north-west course before the dangerous and hidden rocks of the point were fairly cleared, or even discovered till the vessel was breaking there, when it soon became a total and disastrous wreck. Now the clear light of the far-looked-for beacon may be seen at several miles distance, and wrecks on that

presents a face of about 100 feet to the south, consisting of a central tower and flank walls. Its light may be seen at a distance of fifteen miles from the deck of a vessel, and nearly twice that distance from the mast head.

part of the coast are comparatively few. The Cape Recife Lighthouse, at the west point of Algoa Bay, is also one of the greatest boons to navigators, and was constructed at an expense of 20,000*l.* It is a strong erection, and exhibits a stationary light, visible to a radius of ten miles.

## CHAPTER IX.

## JUDICIAL REFORM.

JUDICIAL INSTITUTIONS OF THE COLONY.—JUDICIAL REFORM SUGGESTED.—COMMITTEE APPOINTED TO INQUIRE INTO THE SYSTEM OF ADMINISTERING JUSTICE THROUGHOUT THE COLONY.—MEETING OF THE LEGISLATIVE COUNCIL TO DEBATE ON THE REPORT OF THE COMMITTEE.—SPEECH OF MR. MONTAGU ON THE OCCASION.—OUTLINE OF THE SCHEME OF ALTERATIONS IN THE ADMINISTRATION OF JUSTICE.—IN WHAT RESPECTS THE SCHEME OF THE MAJORITY WAS RECEIVED FAVORABLY BY THE SECRETARY OF STATE, AND IN WHAT RESPECTS DISAPPROVED.

THE laws of the Colony of the Cape of Good Hope are based upon what is termed the Roman-Dutch Code; the great authorities with the Cape juriconsults being Grotius, Voetius, and Van der Linden. The "Statutes of India," a collection of laws made by the Dutch East India Company in 1715, have also been introduced at the Cape, and are often cited as precedents in the courts of law. Since the possession of the settlement by the English, and especially since the institution of the Supreme Court at Cape Town, many points in the civil law have been, from time to time, amended by local ordinances; and the severity of the old criminal code has also been greatly mitigated.

There existed, however, considerable room for further improvement. The great social changes



which have of late years taken place at the Cape, particularly those relating to master and slave, have caused many former usages to become obsolete; and many enactments for the public prosecution of offenders to be imperatively required. And Mr. Montagu had not been two years in the Colony before he found reasons for laying before the Government the necessity of reform in the then existing arrangements for the administration both of civil and criminal justice in the Colony.

The judicial institutions of the Colony consist of a Supreme Court, Circuit Courts, held twice a year in the chief district towns by the judges of the Supreme Court, and inferior courts, held by stipendiary magistrates, resident in the several judicial districts into which the Colony is divided.

The Supreme Court, which was first instituted by a royal charter of justice in 1828, consists of a Chief Justice and two Puisne Judges. Their powers, constitution, and jurisdiction, are analagous to those of the Courts of Record at Westminster, with the exception, that trial by jury in civil cases, has not yet been established, and that all crimes and offences are prosecuted by a public officer, at the instance of the crown.

The Supreme Court sits four times a-year in Cape Town, for the trial of civil cases, where criminal sessions are also held four times a-year by one of the judges in rotation. There is also a Vice-Admiralty Court, which is held as often as cases occur requiring its decision. In this court, the Chief Justice also presides.

The Circuit Courts are also held by the judges in rotation in the chief towns twice a-year. These courts have concurrent jurisdiction, both civil and

criminal, with the Supreme Court. The magistrates' courts are held twice a-week in the district towns in which the several magistrates reside. The proceedings in these courts are entirely summary. The powers of the magistrates are limited to the trial of civil cases not exceeding 10*l.* in value, and in criminal offences, to the infliction of punishments not exceeding one month's imprisonment with hard labor, or seventy-five lashes.

On the 31st March, 1845, a committee of the Legislative Council was appointed, at the instance of the Governor, to inquire into the then present system of administering justice throughout the Colony.\* On the results of this inquiry, very different opinions were held; not only by the members of the committee, but also by those of the Executive and Legislative Council.

At a meeting of the latter, held December 4th, 1845, his Excellency the Governor presided, when the various measures suggested in the report of the Committee of Inquiry were fully debated. At the opening of the proceedings, the Governor laid on the table two letters addressed to him by Mr. Justice Menzies, respecting the changes proposed in the report of the committee on the judicial establishment; also a memorandum from the Chief Justice, and another from Mr. Justice Musgrave, upon the same subject; also a letter from the Chief Justice, inclosing a memorandum "in relation to, and in explanation of, certain inquiries put to himself when under personal examination before the committee." The Attorney-General then laid before the Council a petition from the attorneys of Cape Town, bearing

\* The Report of the Committee will be found in the Appendix. •

the signature of every attorney in the place, with the exception of one, whom domestic trouble suspended from any public act.

After this petition was read and received, the Secretary to Government rose and spoke to the following effect :—

“ I quite agree, sir, with the remark which fell just now from the Attorney-General, that this subject is one of great importance and great difficulty. I am quite aware of my inability to engage in it as I should have done if I possessed his professional knowledge. I am quite aware that subjects of this kind, to be completely sifted and properly treated, should have the assistance of a professional man ; but, unfortunately, that section of the committee to which I belong has not in any way had that advantage. We have, consequently, had many difficulties and a great increase of labor to encounter in various ways, which we have endeavored to overcome to the best of our abilities. But, sir, I feel that there have been not only serious difficulties to encounter, but a duty, and a most responsible duty, to be performed ; and in the performance of it every one who has a voice in the decision must reject from his mind every feeling but one,—namely, what is due to the public weal. With that object solely in view, I have faithfully and fearlessly pursued this investigation from its commencement to the present moment.

“ I feel that I labor under great disadvantages in rising to advocate the views of the majority of the committee as contained in the report which I, as chairman, had the honor to bring up and submit to your Excellency and this Council three weeks since, from having, most probably, hereafter to encounter the arguments and opinions of my learned and esteemed friend the Attorney-General—whose acknowledged talents, professional experience, and powers of oratory, enable him not only to dispose of his arguments to the best advantage, and exhibit his views in a lucid and impressive form, but at the same time to clothe his opinions with an authority to which many will no doubt defer. But, sir, these disadvantages cannot deter me from expressing freely

—but I trust not presumptuously—what I conceive to be a vast improvement in the administration of justice; and while I shall always be ready to defer to the bench and the bar when their opinions differ from my own, yet I cannot consent to yield the authority of facts to that of opinion.

“I am sensible that great delicacy is required in examining into the working of any public department, and the more so when it relates to the administration of justice. I am sensible that when evils are discovered, traced to their true source and exposed, and remedies suggested—the inquirers are in danger of the imputation, however sincerely they may not have intended it, of reflecting on those connected with the matter in hand; and they are also in danger of approaching persons of weight and consideration, some of whom may, perhaps, be rather mortified at the discoveries than thankful for the opportunity of removing them. I am also sensible that the motives of the inquirers will be impugned, and unworthy designs ascribed to them, which never crossed their own imaginations. But, sir, these are trials every one engaged in the conscientious discharge of a high public duty must be prepared to submit to, however painful they may have been felt to be during its performance. For myself, and the members of the committee, I can safely say, that throughout the whole of the inquiry we had only one object, one design in view, which was to promote the public welfare; and I take this opportunity to state, that although we differed widely in opinions, as our proceedings show, there was not on any occasion the slightest departure from kindly feeling or perfect harmony.

“In conducting the inquiry intrusted to the committee by your Excellency’s Minute of the 31st of March last, it occurred to us to examine the subjects in the order they are to be found therein: and we accordingly proceeded first into the expense of the judicial establishment,—next into the necessity for increasing the number and powers of the resident magistrates,—and, thirdly, as to the establishment of inferior courts of justice which should be empowered to adjudicate upon cases which were deemed too grave for a single magistrate, but not sufficiently grave to wait the return of the half-yearly circuit court. And during the time we



were procuring the evidence of intelligent opinions upon these points, official returns were ordered and procured in all the various forms which could serve to illustrate the working of the present system. I am free to confess that it was from these returns, and the evidence thus obtained, that I first perceived that the evils to be remedied were far greater than any subject suggested for inquiry in your Excellency's minute. The evils are detailed in the thirty-first paragraph of the report, which I will take leave to read. It states,—

“The committee, then, are of opinion :—

“ ‘ I. That from the nature of the country and the great distance at which many of the inhabitants live from seats of magistracy, the present system of dispensing criminal justice in the country districts by means of circuit courts held twice a-year, is attended with serious evils both to individuals and society, from the long period that often intervenes between the committal and the trial of the accused party,—the average length of imprisonment before trial during a period of six years, reaching in one district as high as  $181\frac{3}{8}$  days—while instances occur, sufficiently frequent to draw attention, in which periods are exceeded of 300, 350, and 400 days.

“ ‘ II. That the evils referred to are greatly aggravated from the defective state of prison discipline, and total absence of classification of prisoners in all the gaols of this Colony—from the painful means sometimes resorted to for safe custody in prisons deemed insecure—and from the fact, arising, it is presumed, from deficiency of accommodation, that the witnesses imprisoned to secure their appearance, are not unfrequently confined in the same apartment with prisoners committed to take their trial.

“ ‘ III. That, irrespective of the considerations now adduced, it becomes a duty of the Executive Government to devise, if practicable, some means of reducing the heavy expenditure inseparably connected with long circuits, and of alleviating the hardships imposed upon the inhabitants of the country districts by the impressment of transport service; seeing that the number of men exceeds 1,100, and of horses and cattle 8,000, that are brought upon the

line of road annually, and at seasons often the most inconvenient.

“‘ IV. That the administration of civil justice in the country districts, from the analysis of the returns of country cases brought into the Supreme Court during a period of three years, would be rendered cheaper, and more accessible, were the sessions held more frequently than the present system admits of; a large proportion of the country cases brought into the Supreme Court being what are technically termed liquid, in respect of which the saving of time is of the most consideration.’

“ Upon these evils I will now remark.

“ Regarding the prompt administration of justice as forming one of the most essential features of its purity, and regarding the accused as unfortunate, but not guilty until proved to be so, and as having an unquestionable right to his liberty, which the ends of justice only, and not expediency, can compromise; I candidly confess that I readily sacrificed every view I had thought of for improving the administration of justice, to the evils of long-pending imprisonment, both of the accused and of those who had to witness against them, in the district gaols of the Colony!

“ The report states, that the average period of imprisonment before trial in the country districts, varies between  $98\frac{1}{10}$  days, and  $181\frac{3}{5}$  days, during a period of six years; and that the average individual detention during the same period was 135 days; and that the committee are not aware of any circumstances existing during that period, and likely to influence the averages quoted, which do not at all times exist, and with a corresponding effect. The report further states, that, long as the average of imprisonment is, and grave as the evils undoubtedly are, which such a length of imprisonment must inflict on all, these evils are greatly aggravated from the character of the gaols, the fearful exposure to contaminating association, and the painful means—other fetters or stocks—which are resorted to for their safe custody.

“ I can state, that although I have not been long in the Colony, I have already travelled over a great part of it, and have seen most of the gaols. It will hardly be believed that,

with the single exception of Graham's Town, there is not a district gaol in which the stocks are not resorted to at night to insure the safety of those confined in it; and I myself saw very lately sixteen or eighteen persons so secured. They had their clothes on, and were all lying upon a long stretcher, like what soldiers use in a guard room, which was about six inches from the ground at the foot and about six inches higher at the head. Each man had one leg in the stocks, which were fixed to the foot of the stretcher, and extended the whole length of it. An iron bar ran through the stocks from one end to the other, and secured all the legs in them;—the bar went through the wall of the prison into the adjoining room, occupied by the gaoler, and was secured down by a padlock. This is the way persons are secured before trial, as well as after it. If it is necessary that persons should be so secured when apprehended, and our poverty will not enable us either to maintain a sufficient police to guard them, or to build some secure gaols for keeping them in without resorting to such means, the next best thing to be done is, to take the most effectual means for keeping them there the shortest possible period.

“ With half yearly circuits that period cannot be reduced below ninety days,—as that must, for that term, be the mean. But the report has shown that the average is 135 days for six successive years; and that in one gaol the average detention of prisoners exceeded six months during the whole of those six years.

“ It may be said that, after all, the imprisonment before trial here, cannot exceed that endured by those committed to the county gaols in England, where the circuit courts of assize are also held half yearly, as in this Colony. This argument has already been met, in general terms, in the 39th paragraph of the Report of the Committee; but in order to satisfy the Council on this point, which I consider a vital one, I will read the result of an analysis of the criminal statistics of England and Wales for 1837, the only one I could obtain, in which a return is given of the number of days each prisoner was confined before trial.

“ In that year, the total number of prisoners before trial in the prisons of England and Wales, amounted to 33,673.

Of these 16,185, or  $50\frac{1}{5}$  per cent., were imprisoned for periods under fourteen days;—6,548, or 23 per cent., for periods exceeding fourteen days and under one month; 5,587, or  $17\frac{3}{8}$  per cent., for periods exceeding one month and under two;—2,902, or 9 per cent., for periods exceeding two and under three months;—885, or  $2\frac{3}{4}$  per cent., for periods exceeding three months and under six;—and 115, or  $\frac{7}{6}$  per cent., (equal to 1 in 300 prisoners) for periods exceeding six months and under twelve. Whilst no return is made of any period of imprisonment amounting to or exceeding twelve months.

“Analysing our own statistics in a similar manner, the following results are obtained:—

“From 1st January, 1828, to 31st December, 1833, there were committed for trial before the supreme and circuit courts, 1,585 persons. Of these 18, or  $1\frac{1}{7}$  per cent., were confined before trial for periods not exceeding ten days;—127, or 8 per cent., for periods not exceeding one month;—260, or  $16\frac{2}{5}$  per cent., for periods not exceeding two months;—284, or  $18\frac{3}{5}$  per cent., for periods not exceeding three months;—571 for periods not exceeding six months;—and 315, or  $20\frac{1}{2}$  per cent., for periods exceeding six months; 11 of which exceeded 360 days.

“Excluding from the returns those tried at the quarterly sessions of the supreme court for Cape Town and Cape Division, the results are as follows:—

“During the six years there were 1,291 committed for trial. Of those were confined before trial—

Under	10 days	7, or	$\frac{1}{2}$ per cent.
Not exceeding	1 month,	51, or	4
„	2 months,	178, or	$13\frac{4}{5}$
„	3 „	185, or	$14\frac{1}{3}$
„	6 „	545, or	$42\frac{1}{5}$
Above	6 „	325, or	$25\frac{1}{5}$

11 of which exceeded 360 days.

“Now, mark the contrast when the six months’ gaol deliveries in England are compared with the six months’ gaol deliveries in this Colony by the circuit judge. Without alluding to the other differences I would merely call attention to this fact, that while in England one person only out



of every 300 is confined in gaol before trial for a period exceeding six months, it will be seen that in this Colony 25 per cent., or one in four of the persons committed, is kept in gaol for a period exceeding six months before trial. I trust after this comparison, we shall have no more references made to England for the purpose of contrast on this head. I am not in possession of returns connected with the criminal statistics of Scotland; but taking into account the extent of criminal jurisdiction possessed by the local courts of that country; I feel assured that ample provision is made for the prompt administration of justice in a large majority of criminal prosecutions, whilst every prisoner is secured against undue delay in bringing on his trial by a law which entitles him to apply to any judge competent to try his case; who, within twenty-four hours after receiving the application, is bound to serve the public prosecutor with an order to bring on the trial within the space of sixty days. If at the end of that period no indictment is served, this person is set at liberty; and though, on application to the Court of Justiciary, he may again be apprehended, yet, if at the expiration of forty days after his re-apprehension his trial has not taken place, he is finally set at large, and can never again be apprehended on the same charge.

“ It may be said, that if we had a similar law in this Colony, the class of persons who are usually committed to gaols would not avail themselves of it, because it is asserted that the Hottentots, and lower orders of people here, prefer living in gaol in idleness, where they are well fed and well clothed. This may be true in an instance or two; but the more true it is, the more urgent becomes the duty of this legislature to arouse them from their insensibility to degradation, and teach them the value and importance of liberty. Our own characters are involved in this matter.

“ The next evil alluded to in the report respects transport. The hardship arising out of the present system of conveying the circuit Judge for so large a portion of the distance travelled over by men and animals impressed for the service upon terms which do not remunerate, have been already pointed out in the Report. And it must be obvious that this system operates as a most unequal tax upon the community

and compels those who are obliged to furnish impressed transport, to bear an annual amount of pecuniary loss, to the relief of the public treasury and the inhabitants who are exempted from this burden, equal to the difference between the sum paid to them under tariff rates, and the sum which the same would cost if performed by means not compulsory. It would be difficult to estimate the amount, but it may be safely put at many hundred pounds per annum. And it is not a loss of money only, but of time and labor, which have become so valuable, since labor for hire has become so scarce. Before the month of November last year, transport service was not paid for at the time in money, but a certificate was furnished to the provider by the officer to whom it had been supplied, to enable the farmer to obtain payment, which certificate he had to present to the Civil Commissioner of the district at great expense and inconvenience. It was not an unfrequent occurrence for a farmer to travel a hundred miles to obtain the payment of a few pounds. So great was the discontent in regard to the certificate system, that there is good ground for stating that impressment could not have gone on many months longer without resorting to force, if the order for ready money payment had not been issued at the time mentioned. Great as the advantage of the change has been to the farmer, it is not without its disadvantages. In consequence of the want of servants throughout the country, and particularly of servants who can be trusted with money, the farmers are now obliged either to go themselves, or to send a son, when their cattle are impressed; or they would be in danger of losing their cattle and money and all, by placing the temptation of the latter in the servant's power. The discontent which prevails against impressment is daily increasing, and unless some means are adopted to relieve the farmers, I have good ground for stating that the system will break down, unless force be resorted to to uphold it. These pecuniary losses and inconveniences, recurring annually to the farmers living on the line of road usually travelled by the Judges, is a grievance that no Government can justify after it has been so clearly ascertained. So impressed were the Committee of the injustice of the system and of the imperative necessity

for altering it, that they decided, by a majority of eight to two, that it ought to be abolished.

“ In regard to the administration of civil justice in the country districts, it has been conclusively shown in the 18th paragraph of the Report, that much greater facilities are required for trying what are termed the liquid cases. This class of cases, having reference to simple contract debts, and for goods sold and delivered,—*and in which time is of the greatest importance*,—may not inappropriately be designated the disputed or unsettled accounts of the internal commerce of the Colony. The importance of enabling every trader to realise his debts as speedily and as economically as the nature of things will admit, is too obvious to require elucidation; but the smaller the capital of the trader the greater is the urgency for speedy settlement, and the greater the injury inflicted by delay. That our internal commerce is not carried on by men of large capital is notorious; and it is equally notorious that many losses arise to them, and much injury is submitted to, in preference to seeking redress from courts of law which are so inconveniently infrequent of access, or so remote from nine-tenths of the inhabitants. The nature of the evil cannot be mistaken, and no remedy will be likely to remove it which does not afford the opportunity the committee recommends, of access to a local court at least once a month, and so render justice accessible to all within a reasonable distance of their homes. The cases which are tried in the supreme court, which belong exclusively to Cape Town and the Cape Division, are most probably the most important, and involve the greatest amount of money; but then they are not so numerous as the country cases—the proportions being as thirty-three to ten. The small sums usually sued for in the supreme court belonging to the country districts may appear but a small matter to the opulent merchant of Cape Town, but as these small sums may, and often do, constitute the only means of the remote and poor farmer, their speedy and easy adjustment demands the special consideration of an impartial legislature, who should afford equal facilities to the most numerous of the suitors who are seeking to recover small

sums, as are given to the smaller number of suitors who sue for large sums.

“ Having, in the Report, referred to the evils proved to exist, both as respects the trial of accused persons and their detention in gaol, of transport and the civil administration of justice, it then became necessary to consider what remedies should be applied; and I can most confidently state that no change whatever has been proposed from a mere desire for change, nor from the vain and foolish notion of introducing what might appear to us to be an improvement:—but from the necessity, and the necessity only, of the case. And so important in our eyes was it to remove the evils discovered, that the question of expense at once became a secondary consideration, and was thrown completely in the background. Of course, we did not omit to introduce every proper economy, but we no longer deemed cheapness an essential element; and rejected it altogether after the nature of the grievances had been ascertained. Our business was to consider how efficiency, justice, and humanity, could be best promoted; and we feel persuaded that no plan which has yet been devised will accomplish these objects so effectually as that which is detailed in the Report of the majority of the Committee.

“ Having made these cursory observations upon the evils the Report notices so prominently, I will now proceed to comment upon the Report which was proposed by the minority of the Committee, and is inserted at length in our proceedings.\*

“ I have many objections to make to their Report, but the main one is, that it does not deal with the matter in hand. It has glanced over the evils we have discovered, and has not introduced a practical remedy for any one of them. It is not based upon the evidence we have had before us, but on the contrary, is in many respects at direct variance with it. It is, no doubt, a very learned and elegant essay on jurisprudence, and would be nearly as applicable to any other part of the world as to the Cape of Good Hope. We

\* This Report will be found in the Appendix



might, so far as its usefulness for us goes, have been spared the trouble of so much investigation. It is true that it is a defence of the present system, and the authors may be looked upon as counsel for our bench and bar. Nor is it at all prospective. It assumes that the Colony will increase neither in its wants nor its wishes; and that by continuing things as they are, we are left to infer that our condition and necessities are similar to what they were eighteen years ago, when the court was first established, and what they are likely to be eighteen years hence.

“ Their report opens by assuming, that every sound judicial system should aim at three great ends:—namely, first,—so to compose the courts of justice that what they administer as justice shall really be such; secondly,—so to place the seats of justice, that justice shall, as much as may be, be brought home to the inhabitants; and, thirdly, so to fix the courts of justice, that upon the one hand, individuals shall not, by fear of the expense, be deterred from seeking it, and, upon the other hand, that a judicial establishment rendered inexpensive to individuals, shall not absorb an undue proportion of the general revenue. We admit the correctness of these assumptions, but we maintain that they are not to be carried out in practice in the minority’s Report; and we also maintain that there are two other essential qualities in a sound judicial system which they have wholly omitted. One is, that there shall be no undue detention in gaol between committal and trial, which we deem the hinge upon which any system in its purity turns: and next, that the expense shall be fairly and equally distributed upon the community, and not be made partial and oppressive, as is the case here in providing transport. We are reminded in their report, that the present expense for the administration of justice is not disproportionate to its efficiency; but your Excellency’s Minute required us to consider economy as well as efficiency. And although we have disregarded cheapness as an element in guiding us, we have not lost sight of economy, as I shall presently be able to show, in comparing our expenditure with theirs.

“ Their Report does not advocate any extensive alterations of which the expediency may reasonably be doubted,

and expresses the opinion, that while no organic changes should be made in a system which has been long tried, and which is not unpopular, except after the most cautious inquiry and upon the clearest reason,—so, on the other hand, should no proved abuse be permitted to continue, and all evident improvements should be carried into effect. In these propositions we concur; but could any one before this inquiry commenced have formed any idea of the nature and extent of the evils to be remedied; and can any one now reasonably doubt not only the expediency but the necessity for extensive alterations? The evils are not to be remedied, in our opinion, by such trifling means as the minority recommend. The present system has been tried for eighteen years, and so far from being not unpopular, we believe it is not desired by the people. What better proof could be advanced in support of our opinion than the fact that although our report has been published now for many weeks, and that the nature and extent of our recommendations were known and in circulation for as many more, you have not, with the single exception of the petition which has this day been read from the attorneys, a voice raised throughout the Colony for its continuance? I have spoken to very many intelligent persons upon our plan, and have found it approved of. Believe me, sir, there is no sympathy in the public mind for the court. The judges, individually, may be respected for their integrity and learning, but the public feel that they have no voice in the management of their own affairs. They have no affection for the existing system, which leaves them so completely to the judges. If so much alarm and apprehension would be likely to arise in the public mind upon the alterations proposed in the Report, what demonstration of it has been made? What indication has appeared that they feel their interests and property are to be placed in jeopardy, excepting the petition from the attorneys? On that petition,—of which I had no knowledge until I heard it read,—I cannot now remark, excepting to observe, that there is nothing surprising if they should petition to keep things as they are, seeing that their business will be affected as we dissipate the existing evils. But, sir, what have we to do with their profits? Our business is, to

promote the public weal, not private interests; to do the greatest good for the greatest number; and however much we may regret the effect to them which may be produced in carrying it out, we must not shrink from the execution of it on that account.

“ Under the heading ‘ Supreme Court,’ in their Report, the minority have stated that, in their opinion, the present constitution of the Supreme Court should remain unchanged; and that a court of three judges, in a Colony like this, is better than any lesser number. The reasons they advance for this opinion I will presently dissect; but there is nothing shown, or even to be inferred, either from the evidence or their report, to make this Colony an exception to the practice in other Colonies. Out of forty-five British Colonies, more than half have but one judge, while others have two only. The interests to be tried in those Colonies, if you will refer to the list of them, will be found of equal and in many of greater magnitude than here; and they have prospered and received justice with one judge. Her Majesty’s Government cannot, therefore, doubt the sufficiency of one judge for a court; and even if they did not feel disposed to interfere with those to which I have referred, experience would have taught them not to persevere in an objectionable course when free to make any arrangements they pleased. But see what they have done, no later than last year, at Hong Kong! The supreme court there is constituted with one judge only, and, reflecting on the enormous trade carried on there as compared to that of the Cape of Good Hope, any court sufficient for the wants of that Colony, would be ample for us; and notwithstanding the opinion of the minority, that a Colony like this should have three judges to compose the Supreme Court, every member of that minority has, within the last month, in this room, voted for constituting a supreme court at Natal with one judge only,—that Colony being a mere offshoot from this, composed of the same materials, and like it in all respects for the purposes of this comparison. If, therefore, this opinion is well founded, injustice has been inflicted by them upon the colonists at Natal, and the sooner it is remedied the better. Their Report gives many reasons for

not separating the judges, as proposed by the majority, which they term 'breaking up' or 'breaking down' the Supreme Court. They show the advantages a stranger judge, —by which is meant a circuit judge,—would possess over a resident local judge; and insist on the disadvantages of the isolation to the judges themselves, by rendering them mere arbitrators, and by its causing them to lose whatever law they might originally have possessed.

“After enumerating the objects and advantages the minority represent the majority had in view in recommending that the Colony be divided into five judicial circles, and that one judge be placed in each, their Report proceeds to state why neither those nor any other advantages have been suggested to satisfy them that the public welfare would be consulted by having five separate judges, deciding separately in five separate places, three of those places being remote villages, in which there is not, nor is likely soon to be, a public press or a public opinion, or professional aid. Now these, sir, are disadvantages which will soon be remedied. The very circumstance of establishing a permanent court in the town selected, will of itself lead to an increased expenditure of money in them, and create fresh demands for the produce of the neighboring farms. In time, these towns will become of importance like county towns in England. Their population will naturally increase, and the increased commerce of the towns will contribute to improve the country by encouraging cultivation and industry. Order and good government will be relied upon at the seat of a judge's residence, and with these, liberty and security will be more perfect. These will be inducements to the more wealthy neighbors to reside in them, and, by their living more expensively than on their farms, expend their surplus produce in a variety of ways, beneficial to commerce and cultivation. A public press cannot always precede the establishment of a court. In new colonies never. Instance Hong Kong. If this were deemed a *sine quâ non*, how many colonies which now have both, would never, perhaps, have had either. The court must precede the press in most cases, but the press will soon follow a court of justice. There is nothing in human affairs so likely to expedite it; and as for public opinion, that will be heard from the places



named just as well as from Cape Town, if occasion for it in the conduct of a judge should arise. Upon this point, we may make our minds quite easy.

“And with regard to professional aid, I can perceive no sound reason for supposing that the laws which govern supply and demand are inapplicable in this case. In the circuit courts there has generally been a barrister in attendance, who has found his advantage in it; but this has been accomplished by him at heavy annual expenditure for keeping up a travelling equipage and establishment, and at great personal fatigue and labor on the circuit, for above the half of every year. The travelling expenses will be so greatly reduced upon the plan proposed by the Committee, that there seems no reason to doubt that the sums which are now expended upon transport will, when applied merely to remunerate professional aid, afford sufficient inducement to professional men to settle in the towns proposed for the judges. No exertion has ever enabled the business of the Supreme Court in Cape Town to support more than four or five barristers; and the same law will prevent the country districts from wanting professional aid the moment there is a demand for it.

“But it may be inferred from the tenor of the Report of the minority, that the Supreme Court should remain undivided in Cape Town, because there is to be found the largest amount of business. In this impression the members are in error. Analyse the returns, and you will find the following results would be produced by the five judicial circles. In reference to the Cape Town and Graham’s Town circles,—

The annual number of criminal cases in Graham’s Town would be . . . . .	106
The same in Cape Town . . . . .	57
The annual number of civil cases, illiquid, in Graham’s Town . . . . .	83
The same in Cape Town . . . . .	52
And the liquid cases would be equal.	

From this it would seem but just and proper, in carrying out the principle involved in the reasoning of the minority, that the Supreme Court should, without delay, be removed to Graham’s Town

“Another objection to the places selected for the judges is the want of population. I have obtained information upon this head which I believe can be relied upon; and it will be for the council to judge of the weight due to it,—

The population in } George Town is }	1,000	George judicial circle,	20,583
Worcester Town,	1,800	Worcester circle,	32,174
Graaff-Reinet Town,	2,500	Graff-Reinet circle,	32,462
Graham's Town,	5,500	Graham's Town circle,	31,641
Cape Town,	22,543	Cape Town circle,	49,548

The Report of the minority tends by implication to the opinion that the courts proposed by the majority would be deficient in intelligence, impartiality, and uniformity in administering the law, but no reasons are assigned. In intelligence and impartiality they will, of course, continue unimpaired. These qualities in a judge are not affected by localities. But as respects uniformity, the plan proposed by us will be found far, very far superior to the existing system. Take the criminal sentences:—The great variance which has been observed from the beginning of the Supreme Court in the sentences of the judges upon cases as nearly alike as they could well be, has often been observed upon, but not comprehended by the community. I need not go far back for examples. A few months ago, one judge tried several Kafirs at Graham's Town for horse and cattle stealing, and sentenced them for periods ranging between ten years and life. In a short time, he was followed by another judge, who tried other Kafirs for offences precisely similar, so similar indeed that you may safely say there was no material difference between them,—and from him they received sentences not exceeding three years. Lately, one judge tried a man at Swellendam for theft, and sentenced him to five years and forty lashes. Six months afterwards, at the following circuit, his associate in the crime was tried before another judge for the same offence, and he was sentenced to six months! Talk no more of the advantages of uniformity after such examples as these. Let us have no more of such make-weights in support of a system. But it will be asked, how will our plan remedy these things? I will tell you. Upon our plan,

the same judge will always try the cases within his own circle; and whatever his views may be, whether for long or short sentences, they will, at all events, be uniform within his circle, and will be understood by the criminals. At the present moment, there is nothing more puzzling for the executive than the course to be pursued towards the Kafirs, whose sentences differ so widely for offences which can have no difference to justify them, so far as they can see or ascertain. They are unable to appreciate the policy or reasons which influence judges in their sentences. For a certain crime they expect to receive a certain punishment, if convicted, which would have reference to their crime only, and not to other considerations.

“With regard to uniformity in civil cases, I have always understood that the decisions upon appeals established their uniformity, and not the decision of the courts of first instance, and this advantage will be retained by our plan. At all events, I believe, the civil business in the country is so trifling in its nature as not to create any uneasiness under this head.

“The expression so frequently used in the Report of the minority of our plan ‘breaking up,’ or ‘breaking down,’ the Supreme Court, appears to me to require a short notice. This expression is evidently adopted to create an alarm, and produce an effect, upon the minds of those who are not likely to look deeply into the subject, but which the plan itself does not warrant. To break up, implies to destroy,—to annihilate. By our plan, the Supreme Court will not be destroyed, but enlarged: it will in no way be impaired in its powers. It will consist of five judges, instead of three; and though four out of the five would reside in the country, they would all be eligible to meet together to form a full court, and where any three of them were so assembled, they would have all the powers and jurisdiction of the present court. One out of the three judges is now more than the half of the year absent from Cape Town on circuit; and during his absence the other two are useless as a full court. As our plan proposes that three judges should meet always once a-year, and if occasion required it,—which is not likely.—

how the court can be said to be 'broken down,' or 'broken up,' because when three judges meet together, two of them come from the country, instead of meeting together after one of them has been absent in the country upon journeys which occupied more than one-half of every year.

"A good deal of pains is taken in the Report I am commenting upon, to prove that the courts for civil justice proposed to be held by our plan in the country districts under the local judges, would be inferior to the present circuit courts; but in truth, no difference whatever will exist, excepting that upon our plan, the judge would have the advantage of the influence and assistance of a jury, if desired; and if not, there will be no difference whatever between the two courts.

"It is also contended that the local courts would differ for the worse from the existing circuit courts inasmuch as the appeals from the circuit courts come on now for argument immediately after the conclusion of the circuits, and those from the local courts may lie over for a year. This is true to a certain extent,—but they may lie over for a week only. If an appeal is made just before the three judges assemble, it may be argued in a week afterwards; if immediately after the meeting, it must then lie over for twelve months. It is hardly necessary to observe that the mean will be six months; and so their Report ought to have stated. But let me show you what has been the time taken in practice, and how insignificant the point is after all. The Report states there were twenty-one appeals to the Supreme Court during the three years ended the 30th June 1844, being seven a-year. I have called for the registrar of the court for a return, showing what time elapsed between the appeal and the hearing. I will now read from this return. Out of the twenty-one cases of appeal, eleven were not prosecuted at all,—one is still pending, the declaration in which was filed on the 19th of January, 1844. Of the other ten, two were heard within one month, two in five, two in seven, one in eight, one in nine, and one in fourteen months and upwards, from the date of removal. The average period, therefore, of the appeals presented, viz. :—three in a year, appears to be five months. The mean upon our plan would be six.



“Objections have been raised by the other section of the committee to trial by jury in the local courts; and it is observed that whenever it is introduced the principles of our law and the nature of our pleadings will require, in every instance, the decision of a previous question, viz. :—whether or not any, and if so, what questions, on the particular case before the court, are proper to be tried by jury; and that when the decision of this question, always one of delicacy, must rest with a single judge, who will be liable to the suspicion of either unduly grasping at jurisdiction, or of getting rid unduly of individual responsibility, it will necessarily become peculiarly delicate. I will advert presently to trial by jury. In the mean time, I would remark, that I see no difficulty respecting the ‘pleadings’ nor the ‘previous question,’ nor any delicacy in the judge’s position. In all our colonies where there is but one judge, the same argument must, of course be as applicable as here; and yet we find these imaginary difficulties are satisfactorily overcome. Where there is a will there is a way; and an ordinance, or perhaps a rule of court, would remove them, by simplifying the form and nature of our pleadings. And I would ask, why should not the same course be adopted here as in England, of separating the law from the fact of a case, and trying them at the same time, if it be wished, at two different places? We know that this is an every day occurrence in England. A fact in a case may be tried in Leeds, while the law may be argued in London; and if such a course be pursued here, when desired, the fact might be tried in the country, and the law be argued before the chief justice in Cape Town, unless the parties preferred to wait the union of the three judges. In either case, the aid of the bar, which has been so much insisted upon, would be obtained when required. To introduce, with trial by jury in civil cases, all the cumbrous forms of written pleadings, for the simple transactions of this Colony, would be most undesirable, unnecessarily expensive, and dilatory. The number of illiquid suits, it will be seen by paragraphs fifteen, sixteen, and seventeen of the Committee’s Report, averages yearly one hundred and ninety, or thirty-eight for each of the five judges and it is for these few and generally speaking,

trifling cases,—for one-half are for sums under 50*l.*—that so many difficulties are conjured up to oppose an improved system of civil justice throughout the Colony. If truth is the object to be arrived at in an action, why should there not be a law so to simplify the pleadings as to enable the parties to go before a judge and state to him the case between them? Take such a case as this. A man complains that his neighbor has distrained his cow. The neighbor replies, ‘I admit I have distrained it, I have taken it because you owe me rent, and won’t pay me.’ The other denies that he owes him rent, and says that it has been settled. Now it is quite clear that in a case like this, the fact to go to the jury for trial, has nothing to do with the cow, but it is whether the rent had been paid or not. The judge would direct that fact to be tried before the jury; and if the parties had not counsel on the spot to argue the law, they might, if they wished it, have it argued as I have already said, at any time before the chief justice, or the three judges assembled, before whom professional aid can always be procured. I am aware that in some few cases such a course could not be adopted, but they are likely to be very few indeed; and provision for simplifying proceedings in them could easily be established. Now, as the judges would, upon the average, have but thirty-eight illiquid cases in the year to try, there ought to be no objection to their having these verbal pleadings conducted before them; and this plan would relieve them from all the delicacy of their position which has been referred to. Thus the court in Cape Town would not be a court of appeal from the local courts only; and its present constitution would therefore undergo no change; but it would continue to provide the means of hearing cases removed from the local courts for argument upon full discussion of the bar.

“The Report of the minority has made some mistake with regard to motions in bankruptcy and provisional cases being now decided in Cape Town by three judges with the assistance of a bar; and it attaches too much importance to those motions and to special verdicts in criminal cases, which it is stated are decided in a like manner. The motions referred to are made on the 12th of every month, and do not require

three judges; and if they did, they could not be heard, as during more than one half of each year, one judge is absent from Cape Town on circuit.

“Upon the subject of expense, the minority’s Report states, ‘It may be safely asserted that the system suggested in the Committee’s Report, would cost more than the present system;’—further on it represents that no accurate estimate can be formed of the two systems, and afterwards this is contradicted by asserting that it will be found that the system proposed is more expensive than the present. No attempt at comparison is, however, to be found in their Report, but I will supply the deficiency, upon the principle stated in that Report, namely, ‘that in comparing the expense of the two systems, all reductions equally competent to both must be thrown out of the calculations.’

“PRESENT SYSTEM.

	£	s.	d.
Chief Justice . . . . .	2,000	0	0
One puisne judge 1,500 <i>l.</i> one at 1,200 <i>l.</i> . . . . .	2,700	0	0
Three clerks to judges, one at 200 <i>l.</i> , two at 150 <i>l.</i> . . . . .	500	0	0
Annual expense of circuit judge . . . . .	2,466	5	0
Summoning jurors and witnesses . . . . .	1,803	0	0
Expenses of witnesses . . . . .	1,607	10	0
Conveyance of record books . . . . .	37	10	0
Provisions, clothing, &c., for prisoners in gaol . . . . .	2,295	0	0
Removal of prisoners . . . . .	600	0	0
A crown prosecutor, say . . . . .	500	0	0
Travelling expenses,—say about one-third of the sum expended by the circuit judge . . . . .	850	0	0
Fieldcornets, burghers, and civil commissioners ordering horses, travelling, &c., say . . . . .	100	0	0
	<hr/>		
	£15,459	5	0
	<hr/>		

“PROPOSED SYSTEM.

	£	s.	d.
Chief Justice . . . . .	1,500	0	0
Four circuit judges at 1,200 <i>l.</i> . . . . .	4,800	0	0
	<hr/>		

	£	s.	d.
Brought forward . . . . .	6,300	0	0
Four deputy sheriffs at 250 <i>l.</i> . . . . .	1,000	0	0
Four crown clerks at 250 <i>l.</i> . . . . .	1,000	0	0
Annual expense for travelling, &c., of four judges, and four crown clerks . . . . .	1,720	0	0
Expenses of witnesses . . . . .	800	0	0
Provisions, clothing, &c., for prisoners in gaol .	1,000	0	0
Removal of prisoners . . . . .	300	0	0
	<hr/>		
	£12,120	0	0
Deduct for civil process of supreme and cir- cuit courts executed by the four deputy sheriffs, the fees for which will be paid into the treasury . . . . .	3,766	0	0
	<hr/>		
	£8,354	0	0

The difference in favor of the proposed system is, therefore, 7,205*l.*, but from that must be deducted 300*l.* to defray the travelling expense of two judges to join a third, to form a full bench.

“I have already shown that there is no analogy between this country and England in regard to the detention of prisoners in gaols before trial; and I will now endeavor to point out some of the causes which disturb the mean which ought to be produced. The principal cause is in the distances to be travelled to the circuit towns,—the sudden and frequent swelling of the rivers, which then become impassable, for two or three days at a time;—the absence of medical men in case of sickness to witness on a journey,—and the numerous accidents to wagons on our wretched roads. When any cause prevents the arrival of a witness at the time and place appointed for a day, and sometimes even for a few hours, the case in which the evidence is required has to be postponed for six months for the next circuit, because the distances to be travelled, upon the present system, between the circuit towns, are so great, and the time allowed for performing them so limited, that the judge cannot afford to wait even a few hours. He must, if it be possible, keep his time at the next circuit town; and as no one can foresee the



impediments he may meet with on so long a journey, he is obliged to hurry through the business of the court, and postpone for six months every case not immediately ready for trial. And this evil will increase with the increase of magistrates, or longer time must be given to the judge on circuit, which will prevent him from meeting his brother judges at the next sitting in term.

“By referring to the table attached to your Excellency’s Minute, which the Attorney-General furnished, of the cases tried during the three years ending 30th June, 1844, it will be seen that out of 598 cases tried, 483 were convicted, 51 acquitted, and 64 were postponed. Now this postponement is at the rate of nearly eleven per cent. of the cases committed, and shows how very many disturbing causes operate in this country to produce such a result.

“Some considerable stress is laid upon the advantage to persons committed for trial, of having had their cases inquired into by stipendiary magistrates. But so far from concurring with the members of that section of the committee, that there is any advantage in a stipendiary magistrate, I am of opinion that it is a disadvantage. There is no difference of responsibility, in law, between a paid and an unpaid magistrate; but there is a very great difference in point of consequences, because unless it can be shown that injury has been inflicted by the negligence, or corruption, of the paid magistrate, it is not usual for a government to require him to pay from his own pocket any damages and costs to which he may be condemned for an error in judgment, in the faithful though, of course, mistaken discharge of his duty. An unpaid magistrate has no such relief to look for; and knowing it, is more likely to think of consequences and be more careful how he commits accused persons for trial. In England the unpaid magistrates are fully aware that they have a host of sharp-sighted attorneys ready to prosecute them whenever they afford them the opportunity. A strong presumption that the stipendiary magistrates here are not more careful than the unpaid magistrates in England may be gathered from the Attorney-General’s returns, already alluded to, in which it will be found that he either discharges absolutely, or remits for trial in a summary way before a

resident magistrate, (whose jurisdiction does not exceed one month's imprisonment,) twenty-five per cent., or one fourth of the cases committed for trial by our stipendiary magistrates.

“There is a paragraph in their Report which I sincerely wish had never been written. I regret it exceedingly; and I think that when the members opposed to our views calmly reflect on it, and are no longer excited by the anxiety to omit nothing which in their opinion would add weight to their arguments they will regret it equally. The paragraph states, that considering the paucity of criminal cases in this Colony, and particularly in the country districts, criminal sessions may possibly be held too frequently; and after commenting upon the process of crime, and of the importance of making the trial and the punishment public, it remarks, that when the sittings are held at intervals, to collect a sufficient number of cases to attract an audience and fix attention, salutary lessons may be given, which could not be inculcated if cases were to be disposed of pretty much as they come in, in the presence merely of the parties interested, the officers of the court, and such loungers as might straggle in. I candidly confess, sir, that such a principle of proceeding—such a sentiment—is repugnant to my feelings. If I had agreed in the measure proposed by the members of the minority, and had concurred in every other part of their Report, there is no consideration on earth which could have induced me to vote for that Report with that paragraph in it. I can conceive nothing to justify the detention of a prisoner before trial for an hour beyond what is necessary for his defence, and the assembling of the court. If the court could sit to try each case as it arises, as soon as the accused is prepared for his trial, it ought to be done. I am aware, however, that that cannot always be the case; there are various causes to prevent it; but according to my views of justice, it is not administered in its purity whenever an accused person is kept in gaol longer than the shortest time that is required, under the circumstances of the case, to bring him before the court. I admit the paucity of criminal cases in the Colony; they do not exceed 200 a-year; but I have already shown that the number at Graham's Town is double the number

tried in Cape Town. There is another error in the Report to which I must now advert. It is stated that the number of acquittals in the Colony, amounts to less than nine per cent of the committals, whereas in England they amount to twenty-eight and a half per cent., and this difference, it is submitted, should not be neglected, when we are reasoning about the evils of confinement before trial; and it is remarked, that it is only to innocent men, or to men who are finally acquitted, that previous imprisonment is really a hardship. This division of the Colony into convicted and unconvicted, is not flattering; but I cannot admit that the hardship of imprisonment is limited to those only who are not convicted. A long previous imprisonment is certainly an aggravation of punishment under any circumstances, and may be taken as an addition to the sentence imposed by the law; but if there are no evils and no hardships by imprisonment before trial, let us act impartially in this matter, and carry out that principle fairly. Let all bail be done away with, and let the rich man as well as the poor man,—the man with friends to bail him,—be treated equally. All should be imprisoned, or none,—if, as the Report asserts, there is only a hardship upon those who are acquitted. And now with respect to the error to which I just now alluded. The Report states that the number of acquittals amounts to less than nine per cent. of the committals. The Attorney-General's return, to which I have so frequently alluded, shows that the yearly number of committals is 323. Of that number, fifty-three were not prosecuted at all, thirty-five remitted to the resident magistrate for trial in a summary way, and twenty-one acquitted.

Add together the acquitted, the remitted, and the not prosecuted, and you will find they amount to thirty-three per cent. of the committals; and that number is, in spirit, though not in letter, when compared to the English acquittals, the proper number to be stated as the acquittals in this country. All the cases here are proceeded against by the clerk of the peace, and committed by the resident magistrate, both stipendiary officers of the Government, and neither of whom, it may be fairly presumed, would desire to send a case for trial upon which they did not fully calculate upon a con-

viction. Indeed they would not do their duty if they acted otherwise.

“In England, the grand jury never receives further evidence than is sufficient in their opinion to justify the indictment. It is neither their business nor their practice to ascertain that there will be found sufficient evidence to sustain it. If they did so, it is not unreasonable to conclude that they, like the public prosecutor here, would not have returned true bills for the cases he either did not prosecute, or remitted to the resident magistrate; because none of those cases would have been proper for the grand jury to send to the petit jury. Those cases in this country should, therefore, for the purpose of this comparison, be ranked with the acquittals, which would give the result which I have stated. But there are other cases which operate in England to increase the acquittals, which will not apply in this Colony. In the first place, the number of juvenile delinquents in England is very great; and it is well known that juries are exceedingly merciful to them, and extend to them, whenever it is possible, an acquittal which would not be extended to older prisoners. The hope that the lesson the juveniles receive after passing through the ordeal of a trial, may deter them from the further commission of crime, induces juries to be as lenient as they possibly can, and this greatly increases the acquittals. We have no similar class of delinquents in this country. In the next place, prisoners in England are everywhere enabled to obtain, at moderate remuneration, the services of skilful and experienced professional men, who, it is notorious, frequently succeed in procuring acquittals for the guilty by the quirks and quibbles of the law. Indeed under our own eyes, we have an evidence of the truth of this assertion. In Cape Town, where professional aid can always be obtained, the acquittals are one in seven; but in the country districts, where such aid cannot always be obtained, the acquittals are only one in twelve. Both the results are taken from the Attorney-General's return. There is another cause operating in England, but which finds no place here. With your permission, sir, I will read an extract from *The Times* newspaper, of September the 8th:—



“ ‘The appendix of the eighth report of the criminal law commissioners contains a considerable number of suggestions and discussions upon the law of *principals and accessaries*, and a large majority of opinions in favor of some alteration that shall lessen the number of acquittals on the ultra-technical ground of distinction between receivers of stolen goods and assisters in the theft. Lord Denman thinks the law herein susceptible of great amendment.’

“ Mr. Serjeant Ludlow, Mr. Bosanquet, Mr. Greaves, Mr. Ellis, the Attorney-General for the Duchy of Lancaster, and several other eminent barristers, all concur in opinion with Lord Denman. We have no such distinctions here;—no number of acquittals upon the ultra-technical grounds of distinction. All the reasons I have now stated go to show, that the comparison proposed in the report of the minority is not complete, and that the difference which it was assumed existed between the two countries must be rejected as of no value when we are reasoning about the evils of confinement before trial.

“ And now, sir, I approach the subject last in order in their Report, but not least in importance in our opinion,—namely trial by jury in civil cases. Nor is its importance smaller in their estimation than in ours, if we may judge from the labored arguments and incidents resorted to, to prove, or rather to endeavor in appearance to prove, that we are not yet ripe for that institution. The Report admits our fitness, our sufficient acumen, to weigh and decide on evidence involving the issues of life and death,—our ability to appreciate the nice distinctions between justifiable homicide and culpable homicide, between manslaughter and murder, even where the crime is to be established by circumstantial evidence only;—but they declare us to be wholly unequal for deciding upon the far less momentous question of ‘mine or thine.’ We have it in evidence, that the jurors have performed their duty well in criminal cases; and it should be remembered that in performing that duty, they are judges of the law as well as the fact, in a more enlarged sense than civil jurors can be. Ever since the year 1794, when Lord Erskine defended Hardy and Horne Tooke for high treason, it has been established, that an English jury is

judge of the motive, as well as the fact itself, for which the accused is tried. In the motive, or the *animus*, consists the *gravamen* of the charge; and it requires quite as much intelligence, if not more, to weigh the evidence, and decide properly upon it, as any civil case can do. We have the same in operation here with our criminal juries. They are as absolutely judges of the motive, and that motive they very often have to arrive at without having one palpable, one tangible fact, to guide their judgment. They have to weigh the most minute and critical circumstantial evidence before they give their verdict; and well as they are reported to have done this, we are told in the face of it, that they are unfit to be civil jurors. If we look to the Appendix, No. 17, it will be seen that the kind of cases which would have been brought before civil juries in this Colony, are far better suited for the decision of a jury than for judges, and the verdicts are likely to be much more satisfactory to the community. It will be seen by that Return, that out of 578 illiquid cases tried, 339 were for the simple transactions of debt, and the sale and delivery of goods, &c., which would not require any peculiar intelligence. The next in point of number, relates to transfer of landed property, and contracts for the purchase, sale, or exchange thereof; they amount to sixty-six, and this class of cases is one of all others upon which the verdict of a jury would be most satisfactory. The land cases are likely to become the most numerous, as land increases in value. The actions will be chiefly about disputed boundaries and beacons; and upon such points as these, I am persuaded that the local, practical knowledge and experience of a jury of Boers would be more satisfactory, and more likely to be correct, than a jury of judges. So also with regard to the cases of assault, slander, trespass, and several others enumerated in the Appendix. I admit that there may a case or two arise, where the decision of one judge would be better than any number of jurymen; but such cases only form the exception to the rule, and occur everywhere with trial by jury. In Cape Town, however, the minority would not be unwilling to make the experiment if there are three judges left, and an unbroken bar, to help our infirmities. But if, with all this, it should prove a failure,—if the Cape Town juries are not

found to be sufficiently obedient to the *dictum* of the bench, or sufficiently drilled and tractable to the arguments of the bar, then the project must be abandoned, and we may be left without jury trial to the Greek kalends; but if it work well, another step may be hazarded in its extension, 'cautiously and gradually,' to other parts of the Colony. Now, sir, from this last expression I infer that in the opinions of that section of the committee, trial by jury in civil cases is a desirable thing, but only under the tutelage of three judges and an undiminished bar. Under such circumstances, they incline to think it may work well; but, like the liberty of the slave, it must be introduced 'gradually and with great caution,'—in fine, we must go through our apprenticeship. In the principle of extension the two parties in the committee are one; the only question between us being one of time. They hug their pet scheme of apprenticeship; we advocate instant emancipation. But, sir, when I read the concluding paragraph of their Report, we are 'wide as the poles asunder;' for if I am to judge of their sentiments by their reference to the experience of Europe,—the practice of France,—the doubts of Scotland,—the process of transition which even the minds of English jurists are at present undergoing,—and to the increasing disposition of suitors to resort to courts without a jury,—I am forced to the conclusion, that in their hearts they are not friends to the intervention of civil juries. Now this apparent halting between two opinions,—this vacillating, vibrating motion, difficult as it may seem, I think I can account for. They love and admire, as much as we possibly can do, the system of trial by jury both in civil and criminal justice. They may have some misgivings about the fitness for the duties of a civil juror in some of the country districts, but they know full well how easily an error, of either judge or jury, can be remedied,—how easily the difficulties as to 'pleadings' or 'previous questions' can be removed; and they would hazard the experiment in all its length and breadth to-morrow,—were it not that in another part of their Report they are committed to a *quod erat demonstrandum* in opposing the scheme of superior local courts, and upholding things as they are, which runs

the superior local courts,) as they would exist without trial by jury in civil cases, your committee are compelled to regard them as a retrograde movement in the administration of justice, and to state their impression that the public in general would view such a change in our present system with well-founded apprehension.' This, to my mind, is proof positive that they are not the wavering men that this Report would seem to make them, but that their opinions are clearly on the side of trial by jury in civil cases, though in discussing the question in connection with others we have had under our consideration, they cannot afford to be more explicit, lest, as they think, a greater evil should happen than the non-introduction of civil juries into all courts where criminal juries are practised, as now proposed. Seeing, then, that the question of civil juries has been made *the question* now at issue, let us refer to the practice of the countries alluded to by the minority, and see what information we can obtain. First, then, as regards Scotland, their Report says thus:— 'In Scotland the policy of the Act of 1815, which for the first time established a rather restricted system of jury trial in civil cases, is still much questioned.' From 1815 to 1830 it rested with the bench, and not with the parties, whether a question of fact should be sent to a jury. In 1830, the unnecessary number of pleadings, prolix and complicated in style, and mixing up law with fact, presented formidable difficulties to the free exercise of the jury system, and although simplified in that year, difficulties remain sufficient to account for its slow extension. In 1830, a commission, having inquired fully into the working of the system from the bench, bar, and people, advised the legislature to provide for the absolute intervention of a jury in all cases of injury done to the person, to real or moveable property, policies of insurance, charter parties, &c., and also to give the option to either party of having a jury in any issue of fact, and at the same time recommended that the form of pleading should be so simplified and remodelled as to facilitate the full adoption of the system, which, from that date, became identified with the proceeding both of the supreme and circuit courts. Between 1815 and 1830, there were more appeals carried to the House of Lords from Scotland than from any other supreme



court in the United Kingdom. In 1838, further facilities for jury trials were introduced after another commission had inquired from the bench, bar, and people. These facts do not support the assertion that the policy of jury trial in civil cases is still much questioned in Scotland, but the reverse; since it has been sustained and enlarged by every succeeding commission. Civil juries were not first introduced into Scotland in 1815. They were suppressed when the court of session received its present form and constitution in 1592;—no doubt from the impression that a bench of fifteen professional men of itself formed a jury,—the existing divisions of the court into separate and independent chambers not being then known. With reference to one of the objections stated to the institution of civil juries in this Colony, namely, that the supreme court of this Colony is at once a common law, and of equity; the same is the case with the courts of session in Scotland, and has not been deemed by the commissions to which I have referred, as any impediment to the trial by jury in civil cases. And now I will refer to France.—It is stated in their Report that in France, while trial by jury in criminal cases has existed since the revolution, it has never been admitted in civil cases. This is true; *but the criminal juries in France are judges only of the fact, not of the law, as in England and in this Colony.* It is our duty to assimilate the institutions of this Colony to England, not to France, where, after the revolutions which have occurred during the last fifty years, she does not, and cannot for many years, possess those constitutional bulwarks of freedom, those unassailable guarantees of personal liberty, of which Englishmen are so tenacious and so proud. There is no analogy between France and the Cape upon this subject. Military dominion prevails in fact in France. But the number of judges assigned to the several courts in some respects compensates for a jury. There are twenty-seven judicial districts in France, in each of which is a royal or higher court of justice, which equals in jurisdiction the courts of Westminster. To each royal court is attached an assize court, which performs circuit four times a-year, for criminal business, to the chief towns within the district of the royal court; and from the royal courts appeals lie to the court of

cassation in Paris only, which has an appellate, but no original jurisdiction. The number of judges in the courts royal vary from twenty to twenty-five and thirty.—There are 360 civil courts of first instance throughout the provinces in France with seven, eight, and even more judges to each, whose decisions are final to the amount of forty pounds. Although trial by jury in civil cases has not been formally adopted in France, it is virtually so in all cases of a commercial kind, since in every town of importance either in respect to trade or population, a committee of five merchants, elected annually by the mercantile body from the tribunal of commerce, administers the commercial code, and whose decisions are final in all cases below forty pounds. Of these committees there are 160 in number. In a qualified sense there are civil juries in France, but she does not, for the sake of a bar, concentrate the judicial business of the country in the metropolis, by making it the residence of the supreme justices. Two countries have thus been selected which were deemed favorable to the design of the members; but if the design in alluding to other countries at all was to enlighten the members of the committee, and give us practical instructions upon the working of the English jury system, which we are desirous of extending to this Colony, they should have brought under review the countries which have taken it from England, and where its working has been tested. I regret very much they did not do so. Considering the connection of Ireland with England, and the former connection between England and the United States of America, where the institution has been tried, those countries ought certainly to have been referred to in preference. In Ireland, the jury system is precisely as it is in England, and is found to work well. And in the United States it is the same—not restricted as in Scotland,—and the forms of pleading are much more simple. Having, I hope, succeeded in showing that the allusions to Scotland and France were not happily selected, and that Ireland and the United States ought at all events to have been alluded to, and having abstained from entering upon any thing approaching a professional discussion of this question, I will now merely read a few extracts from the

Judicial Report of the Commissioners of Inquiry, which appear to me to bear immediately upon the matters under consideration."

[Here follow Extracts from the Report.]

"These, sir, were the opinions of the commissioners no less than twenty years ago; and surely it is to be hoped that we have made some progress since that period in our fitness for civil juries. Their reason for not recommending civil juries at the time they wrote was, not because they doubted the fitness of the community, but because they conceived it was better to wait five years for the English language to make some progress. These commissioners were all men of ability and good judgment; they were five years in this Colony before they wrote that Report, and had ample time and opportunity to inform themselves upon the fitness of the people for the duty; and were quite competent to form a correct opinion upon the subject. And, moreover, they were quite disinterested, having neither local feelings, prejudices, nor interest to bias them; and one of them who was a lawyer, and a very able lawyer too, saw none of the difficulties which have now been started up by the minority in their Report to the intervention of civil juries where criminal juries now practise. There is only one other point to which I will now allude. Considering the very doubtful position in which the Colony is placed by the contrary opinions respecting our fitness for the introduction of trial by jury in civil cases, it appears to me to be most fitting that the sense of the Council should be ascertained respecting it. The experience the Colony has derived after eighteen years of trial by jury in criminal cases, is not, I hope, to be thrown away. Nothing could have been more alarmed than the public mind when the introduction of criminal juries was determined upon. We have all seen how senseless that alarm was. And I feel persuaded that the attempt to create a similar alarm upon the proposal to introduce civil juries will meet with a like result. Emigration from the United Kingdom is now about to commence upon a large scale, and the emigrants will doubtless expect to obtain like rights and privileges as those they leave behind them. In 1841, at public meetings

held for the purpose of petitioning Her Majesty to extend legislation by representation to this Colony, it was unanimously resolved that the inhabitants were fit and qualified to be intrusted with that power. If it is now to be announced that we want the fitness of the lower duty of civil jurors, we at once stamp ourselves as a retrograding community, and are bound, in common honesty, to declare it to the emigrants before they leave their native country, that they may not afterwards complain of being deceived. By referring to other countries it will, I think, be found that whenever immigrants are introduced into a Colony at the public expense, persons of intelligence and character, with small means but sufficient to remove and establish themselves in various ways, usually follow, and add much to the industry and prosperity of the place. The importation of labor at the public charge is generally received as an indication of an advancing and prosperous community; and there is no reason for supposing that this Colony will be an exception in this particular. But it is right before it is too late, that the emigrants should know what institutions they will have to live under, and that they should be clearly apprised of our present condition, if this Council should unhappily decide that we are unfit for civil juries, and so proclaim us to be a falling society—a retrograding community—inferior even to what the parliamentary commissioners declared us to be twenty years ago, and what was unanimously resolved at the public meetings of 1841. For these reasons I trust the Council will not object to the motion I am about to submit, and I do not apprehend it, seeing that there are several amongst us who expressed themselves strongly in 1841 as to our competence. Before reading the motion, I beg to apologize for having occupied so much of the time of your Excellency and the Council, and am thankful for the consideration I have received. I now move—

“That this Council concur with the committee in the opinions expressed in the 31st paragraph of their Report, respecting the evils connected with the present system of administering civil and criminal justice in the Colony.

“That the Council approves of the suggestions con-



lency the Governor, that measures be taken for carrying them into effect.

“That the Council further approves of the adoption of trial by jury as to issues of fact in civil cases in all courts where trial by jury in criminal cases now obtains.

“That it be left to the option of either of the litigants to apply for a common or special jury, or neither, as it may best consist with his interests, and that in all cases brought before such a jury in which the aggrieved party seeks for redress by pecuniary reparation, it shall belong to the jury to assess the damages.

“That in regard to the organic changes proposed by the committee, and detailed in their Report, in respect to the existing constitution of the supreme court of this Colony, the Council recommend that his Excellency the Governor transmit to the Secretary of State for the Colonies a copy of the Report of the committee, with the Minutes of evidence, Returns, and other Annexures, in order that this grave and important question be brought under review of Her Majesty's Government before this Council enter upon its final consideration.’”

For the sake of fairness it is necessary to state, that a very able and elaborate reply was made to this speech by the Attorney-General; but the intention of this Memoir, although it calls for an exposition of the views and measures of him whose life and opinions it purposes to pourtray, scarcely calls for a consideration here of the answer made to him by the opposition, much less for a republication of the full debate. The speech of the Attorney-General will be found in the blue books,\* (published by the command of the Government) together with a voluminous mass of inquiries, letters, replies, and a full report of the different meetings held for the discussion of the important questions connected with

\* “Report of the Debate in the Legislative Council on the Judicial and Law Establishment of the Colony of the Cape of Good Hope.” Cape Town, Gazette Office, 1846.

judicial reform. This report will also serve to show the great labor and pains devoted by Mr. Montagu to the subject.

The wide diversity of opinion on the points under discussion, expressed as those opinions were by persons of the greatest weight and ability in the Colony, induced the Governor to postpone all legislative proceedings on the matter, until the reports of the two sections of the committee, and the changes they had respectively recommended, had been brought under the consideration of Her Majesty's Government.

It would be irrelevant to pursue here the progress of the inquiry instituted with reference to an alteration in the administration of justice throughout the Colony, or to enter into the divisions on the subjects of debate before the Legislative Council; but as Her Majesty's Government decided on some of the most important points in the scheme recommended by that section of the committee which constituted a majority, and had Mr. Montagu as its leader; and as the principles involved in this decision formed the basis upon which improvements have been introduced into the judicial system of the Colony, it may not be improper to give the following brief outline of their scheme, together with the views thereon entertained by Her Majesty's Government:—

“ 1st. The eighteen judicial districts of which the Colony consisted, were to be formed into thirty districts; each consisting of a specified number of entire field-cornets or wards.

“ 2nd. There shall be to each judicial district a resident magistrate, who, in addition to the courts held at the seat of magistracy, as at present, shall hold courts at such other points within his district, as shall from time to time appear eligible to the Executive Government.

“3rd. The jurisdiction at present vested in resident magistrates shall be increased in civil cases to 30*l.*, and in criminal cases to three months’ imprisonment, with or without hard labor: but their power to inflict corporal punishment shall be limited to thirty-six lashes.

“4th. Though not proposed by Mr. Montagu in council, the following suggestion is submitted. The increase of civil jurisdiction from 10*l.* to 30*l.*, to be held concurrently by the court of the resident magistrate and that of the civil judge, referred to in another part of this outline.

“5th. To each judicial district there shall be attached an organised police, for the more efficient prevention and suppression of crime, which shall be placed under the control and direction of the resident magistrate of the district.

“6th. The thirty judicial districts to be thrown into the five Judicial Circles enumerated in Annexure A. to the Report of the Committee, one of which, namely, the Cape Circle, to be placed under the immediate jurisdiction of a court to be held by the Chief Justice in Cape Town; the other four under courts to be held in each respectively by the two Puisne Judges of the Supreme Court and two additional Judges to be appointed. The court of the Chief Justice shall be held once every month in Cape Town, both for civil and criminal business, and, in like manner, the head courts of the other four Circles should be held once every month at Worcester, George, Graham’s Town, and Graaff Reinet, respectively, with sessions of circuit either quarterly or half-yearly, in each judicial district, as specified in Annexure A. to the Report of the Committee.

“7th. The Circle Court, whether in session at the residence of the Circle Judge, or in any one of its judicial districts, shall, within its own bounds, exercise the same jurisdiction, power, and authority as is vested in the Supreme Court of the Colony. In respect to the court held by the Chief Justice in Cape Town, of which no session in circuit is required, it is proposed, that in addition to its concurrent jurisdiction with the Supreme Court within the bounds of the Cape Circle, it shall, as it respects the other Circles, stand in the same relation to the Supreme Court, as the

Court of Lord Ordinary in Scotland does to the Court of Session, and thus have concurrent jurisdiction in each with the Supreme Court.

“8th. It shall belong to the five Circle Judges, each within the bounds of his jurisdiction, to exercise a supervisory authority in all matters affecting the judicial administration of his Circle. In addition, therefore, to the powers now vested in the circuit magistrates, it is proposed that monthly returns, signed by the gaoler, and countersigned by the resident magistrate, shall be made from each judicial district to the Circle Judge, of all persons that are in custody, or have been; whether convicted, committed for trial, apprehended on criminal information, or placed in custody to secure their evidence at trial, or on preliminary examination. This return will also state how the prisoners are classified in the day time, and during night, not only in respect to sex, but also in regard to the several heads above-mentioned. And the Judge shall be vested with full power to direct a proper classification of the prisoners, and to remedy, as far as may be, any unnecessary evil that may appear on the face of the return. To this should be affixed a report of the dates on which the gaol was inspected by the visiting magistrate. In order to remedy the serious evils of long previous imprisonment, both to accused parties and witnesses, it is proposed that the resident magistrate shall, in his capacity as Commissioner of the Circle Court, report monthly to the Circle Judge, all persons committed to gaol, or otherwise placed in custody, or under personal restraint, in consequence of not finding bail, or bail having been refused; and it will be the duty of the Circle Judge at once to review the proceedings of the resident magistrate in this respect, and if necessary, to order the release of the parties or witnesses, or to accept of bail. And it is further proposed to empower the Judge, either on the petition of the prisoner, or otherwise, to serve notice on the public prosecutor of the Circle, within a given time from the date of commitment; that if the accused party be not brought to trial within the space of 100 days from that date, either at the Circuit Court of the Circle, he will order his discharge from gaol; and it shall not be competent for any other than the Circle Judge to authorize his



re-apprehension for the same offence, and that only when the public prosecutor shows that he is prepared to proceed to trial at the first sitting of the Circle Court.

“9th. The Supreme Court of the Colony shall continue to exercise the jurisdiction, power, and authority, now vested therein by charter. It shall sit in session once every four months for the dispatch of business, at which sessions any three of the five Judges shall form a quorum. And in addition to the original and appellate jurisdiction which it now exercises, it shall belong to this court to hear and decide on all new trial motions connected with the issues of civil juries referred to in the next paragraph of this outline.

“10th. It forms a prominent part of the scheme recommended, that trial by jury as to issues of fact in civil cases shall be introduced into all courts where trial by jury in criminal cases is now practised. In no case, however, shall the intervention of a jury be absolute, and it shall rest with either party to apply, or not, either for a common or special jury, as it may best suit his interests. In all cases brought before a civil jury, in which the aggrieved party seeks for redress by pecuniary reparation, it shall belong to the jury to assess the damages. The duties of common juror to be performed by those jurors who have been summoned to attend the criminal sessions.

“11th. The grand jury system having been hitherto limited to Cape Town, it is proposed, and in this the committee were unanimous, that it be abolished as superfluous, if not anomalous, when crime is prosecuted at the instance and expense of the Crown, under the counsel and instructions of a responsible public prosecutor for the whole Colony.

“12th. It is proposed that the present office of Clerk of the Peace be also abolished, and a public prosecutor, to be designated Crown Clerk, appointed to each of the four inland Circles, who shall act on the authority, and under the directions of Her Majesty's Attorney-General for the Colony. This officer will also act as registrar and master of the court of his Circle.

“13th. To each of the four inland Circles will be attached a deputy sheriff on a fixed salary, who shall

the sheriff of the Colony, as that officer now does to the Government. All fees hitherto received in the sheriff's department to be paid into the treasury and accounted for with the other branches of Colonial revenue. Execution of process in either of the Circles may be made returnable either at the office of the deputy sheriff of the Circle, or of that of the high sheriff of the Colony.

“ 14th. The office of messenger to the magistrates' courts to be abolished, and his duties to be performed by the head of the police of each resident magistrate's district.

“ To the scheme of dividing the Colony into five judicial Circles, each having its resident Judge, who were at the same time to be members of the supreme court, Her Majesty's Secretary of State objects, as not only being new and experimental, but involving a sacrifice of important advantages which are secured by the maintenance at the capital, of a supreme court as at present constituted, and more especially that of preventing the growth of conflicting systems of law and judicial practice in adjacent districts.

“ The maintenance of a responsible public prosecutor, with an adequate number of deputies in the interior districts, the Secretary of State considers indispensable to the due administration of the penal law. He is further of opinion that an additional number of resident magistrates is equally indispensable; and to meet the increased expenditure which such a measure must entail on the Colony, he is prepared to sanction any retrenchment in the list of the judicial establishment, which is not essential to the protection of the Queen's subjects in their persons, property, and reputation.

“ On the subject of trial by jury in civil cases, the Secretary of State thinks, that if public opinion demanded this change, it should first be introduced into the supreme court in Cape Town, and there as an experiment only, until the result shall have been carefully observed, when it might then be decided whether or not it should form a part of the judicial system of the Colony.

“ In regard to the compulsory impressment of transport service for the conveyance of the judges on circuit, the Secretary of State observes that ‘this is a proceeding utterly indefensible.’ And he directs that the administration of

justice must not in future be accompanied by so flagrant a violation of one of the first principles of justice.

“The necessity for more frequent gaol deliveries in the Colony, for the relief of accused persons, as also of witnesses committed merely to insure their appearance at trial, is acknowledged by Her Majesty’s Government to be beyond dispute: and for this object it is suggested that advocates might be associated with the Judges as junior commissioners, and be executing their commissions while the Judges were resident in Cape Town. The imprisonment of witnesses simply because they cannot find bail, is considered oppressive and absurd.

“Acting on the instructions and principles laid down by Her Majesty’s Secretary of State, measures will be shortly taken by the Government for establishing eight additional magistrates in the more extensive districts in the interior. The compulsory impressment of transport service for the conveyance of the Circuit Judges has also been abolished, and transport in its stead secured by contract. Other measures are also under consideration with a view to carry out, so far as practicable, the instructions of Her Majesty’s Government in respect to the judicial administration of the Colony.”

From this outline it will be seen that several amendments were instituted in the administration of justice, especially in such matters as tended to the more easy apprehension of criminals and the prosecution of crime. For this purpose a rural police has been formed and stationed in the different divisions of the Colony. Additional courts of resident magistrates have been appointed, and the powers of jurisdiction committed to these magistrates have also been enlarged. The District gaols have been considerably improved, and new regulations drawn up for their management; though still, it must be allowed, that few (if any) of the places of detention now existing at the Cape are worthy of the name of

gaols, either in appearance or security. The impressment of relays of horses for the conveyance of the judges on circuit has also been abandoned, and a system of providing horses by public contract been successfully substituted. And if other parts of the scheme of judicial reform moved by Mr. Montagu have not been carried into effect, it was not owing to the conviction that no further improvements were necessary, or that there was anything absolutely faulty in the changes proposed, but that the state of the Colony was not sufficiently matured for alterations so immediate and fundamental, and, as it was wisely expressed by the Secretary of State, when his sanction was asked to these measures, because—

“The local legislature had proposed to themselves an object far too comprehensive. By one general enactment, or by one series of simultaneous enactments, they proposed to mould the whole of the Judicial system of the Colony into what they regarded as the best attainable form. All was to be changed, and all at once;—it seemed not to have been sufficiently borne in mind that the essential condition of every real social improvement is the maintenance of certain fundamental principles and of certain fixed institutions, to which the proposed novelties are to be reconciled and adapted.

“I can have no faith in changes,” observed Lord Grey, “which do not pre-suppose the stability, if not the immutability, of many parts of that political system which it is designed to amend.”

The greatest and most important change contemplated in the judicial alterations, and that which was most strongly objected to by the judges and legal men of the Colony,—viz., that the Colony should be divided into five judicial circles, and that a judge should be resident in each of these, instead of there being one Supreme Court presided over by all



the judges, Lord Grey discountenanced for the following weighty reason ;—

“I am disposed to attach great value to judicial circuits, such as exist at present with us, in which the judge goes forth from the seat of Government and the fountain of legal authority, and bears with him the majesty of law through the country districts, with an impressiveness increased by the infrequency of his appearance, and adapted to exert a salutary influence over the country population in favour of subordination and peace. I should be sorry to see such circuits exchanged, except on unavoidable necessity, for the short circuits of local judges, each in his own province.”

## CHAPTER X.

## ECCLESIASTICAL GRANTS.

ECCLESIASTICAL GRANTS IN THE COLONY.—VARIOUS CHURCHES ACKNOWLEDGED THERE BY THE GOVERNMENT.—APPOINTMENT OF A BISHOP OVER THE ENGLISH CHURCH.—GRANT PROPOSED FOR THE TRAVELING EXPENSES OF THE BISHOP, AND FOR AN ARCHDEACON.—SPEECH OF MR. MONTAGU IN DEFENCE OF THESE GRANTS.—STATE OF THE MEMBERS OF THE ENGLISH CHURCH BEFORE THE APPOINTMENT OF A BISHOP.—THEIR MEMORIAL TO THE COMMITTEE OF THE COLONIAL BISHOPS' FUND.—LETTER TO THE BISHOP OF LONDON FROM SIR J. BRENTON ON THE SPIRITUAL WANTS OF THE COLONY.—MANY OF THE EVILS MENTIONED IN THIS LETTER NOW REMOVED.—PROGRESS OF THE ENGLISH CHURCH AT THE CAPE SINCE THE BISHOP'S ARRIVAL.—CONTRAST IN ITS POSITION WITHIN A PERIOD OF EIGHT YEARS.—ENERGETIC LABORS OF THE BISHOP OF CAPE TOWN.—GRANTS OF LAND MADE TO THE ENGLISH CHURCH.—GRANTS MADE TO THE DUTCH CHURCH, TO MISSIONARY SOCIETIES, AND OTHER RELIGIOUS BODIES IN THE COLONY.—MR. MONTAGU'S CONDUCT IN ECCLESIASTICAL MATTERS.

In the Cape Colony there is strictly speaking no one Church acknowledged as the Established Church. Annual grants, however, have hitherto been made by the Legislative Council to the Church of England, the Dutch Reformed Church, the Scotch Presbyterian Church, and the Romish Church: application for aid has also been made by the Lutherans, but hitherto the pecuniary support granted to their Ministers has been but little more than nominal.

The grants made to different Churches are thus stated in a "Report of the Regulations and Expen-

diture in the Colony," dated June, 1847, and forwarded to the Secretary for the Colonies; its correctness may therefore be depended on. "In support of thirty-three ministers of the Dutch Reformed Church, stationed in various districts of the Colony 7,000*l.*; of twelve chaplains belonging to the Church of England 2,945*l.*; the Scotch and Lutheran Churches in Cape Town 203*l.* 14*s.* 6*d.* The Wesleyan Church, Salem, 150*l.*; and the Roman Catholic Church in Cape Town and Graham's Town 300*l.* In the Dutch and English Churches the Government reserves the right of appointment to all vacancies.

"Beyond this the Government claims no interference with the internal economy and order of the Dutch Reformed Church, which is exclusively ruled by its own judicatories. With respect to the English Church the Governor was, in the absence of a bishop, ex-officio the ordinary. \* \* \* \* \*

"With the exception of the Dutch Reformed Church there is no religious community that has parochial limits; neither are there, strictly speaking, vicarages or livings."

On the appointment of the first bishop to the See of Cape Town, the question came more decidedly forward with reference to the government support of the clergy of the Church of England; and an annual sum of 800*l.* was placed upon the estimates for 1849, viz., 400*l.* for the bishop's travelling expenses, and 400*l.* for the archdeaconry of Graham's Town. This grant met with some opposition at the time, and four petitions against it from members of different denominations, and one in favor of it from the members of the Church of England, were presented to the Legislative Council.

When the question came before the Legislative

Council, Mr. Montagu stood up as the firm advocate of these two additional grants in the ecclesiastical estimates, and explained and defended, at considerable length, the reasons for which they were asked. The following speech delivered on the occasion will serve to exhibit his zeal and firm outspokening for the church of which he was a consistent and hearty member.

“In rising, sir, to propose to this Council the several items which are introduced into the estimates of expenditure for 1849, for the ecclesiastical department, I desire to preface the proposal by a few remarks. Under ordinary circumstances there would have been no necessity for so doing, seeing that the principle, as well as the practice, of the Home and Colonial Governments, in regard to ecclesiastical grants, have been upon previous occasions, during the last few years, so fully explained and acted up to. But an extraordinary circumstance has occurred to require it. The appointment of a bishop, for the superintendence of the Church of England within the Colony, for whose travelling expenses, and for the salary of his necessary adjunct—an archdeacon—the sum of 800*l.* has been estimated, has called forth one petition in favor, and the four petitions which have been presented and read to this council against this grant. In alluding to the general and special reasons, the petitioners have urged against this appropriation of the public money, I trust I shall be enabled to prove that those of a special character cannot be sustained; and, further, I hope also to show that the statements in two of the petitions, to the effect that these grants are contrary to the principles propounded in this Council in 1846 by myself, as the organ of the Government, are not relevant. The petitions which contain the general reasons of objection, are to the effect that the petitioners disapprove of grants of money from the public revenue for any church or sect. To enter into the discussion of such a ground of objection would be foreign to my duty, as it involves considerations and principles of too high and important a character to be lightly handled upon an occasion like



the present. Upon this point, therefore, I shall content myself by remarking, that until the attention of Her Majesty's and this Government is directed to the policy of refusing money grants to all denominations and sects, I shall not presume to enter upon the merits or demerits of such a question. I will, therefore, restrict myself to observing, that the principle of grants to religious bodies has been hitherto maintained by this Government; and unless, therefore, now and henceforth, that principle is to be entirely abandoned in all cases, and all grants whatever, in these estimates, are to be forthwith discontinued in toto, no valid objection can be made to this grant as a matter of *principle*. It would be unfair, at least, to apply a different rule and measure to this grant, from that applied to all other ecclesiastical grants in the estimates. Are we prepared, then, to suspend all religious grants whatever, and together with them, by parity of principle, all educational grants also? If the ends of Government comprise the highest and best interests of the community, it cannot safely or rationally neglect those means of moral improvement, without which even social and physical advancement must languish and recede. It is hardly necessary to do more than contemplate for an instant the effect of withdrawing all Government aid from the various ministers and schools of this Colony, and abandoning the community to all the evils of irreligion, without any counteracting influence. The objections, then, to this grant must be considered as matters of detail, and not of principle. The special objections set forth against it in the petitions are substantially, that it is unnecessary and injurious—that it manifests a desire to invest the English Church with a paramount ascendancy in the Colony—that a dominant Church would cause much dissatisfaction to the several other Churches not of the episcopal persuasion—and that if any Church can pretend to such a claim, it must be conceded to the Dutch Reformed Church. Two of the petitions object to it on the ground that the Government is now about to depart from the principles enunciated in 1846. Let us examine into these objections.

“1st. Is the grant proposed to an improper body or agency? •

“2nd. Is it necessary for the efficiency of the agency?  
And,

“3rd. Is it immoderate in amount, relatively to the resources of the Colony, and the amounts contributed to other denominations for the like purposes,—or relatively to the efforts made by the body itself?

“The propriety of this grant cannot, I apprehend, be objected to, when this Church receives the consideration to which it is entitled, as the communion whose canons, constitution, liturgy, and formularies, are approved and recognized by the parent state, and whose teaching is guarded against everything contrary to the well-being of the State. It is further entitled to consideration, as the religion to which vast numbers of the colonists from England necessarily belong, though many have been driven out of it by the want of its churches and ministers. Moreover, the present system of an extensive immigration from England is daily and rapidly augmenting their numbers. The necessity for this grant for the efficiency of the Church is apparent when we reflect that the episcopal constitution is inherent in the English Church, and recognized to be so both by the Church itself and the civil power. Placing ourselves then in the position of third parties, we cannot object to the mode of government of the Church of England any more than to that of any other religious body, whether by presbyteries, synods, or congregations. As a fact, bishops are acknowledged to be a necessary and a most important element in the English Church. Without a resident episcopacy, indeed, we may readily see that the scattered ministers and congregations of that Church (except so far as her written formularies act as a corrective), must be but congregational or independent bodies;—and as synods cannot be held without a bishop, these bodies are deprived of that bond of union which synods and presbyterial meetings afford to presbyterian churches. We may assume, therefore, that by the very constitution of the English Church, episcopacy is necessary. In fact, without episcopacy, we have not the Church, but something else; and it follows, that a grant in aid of the episcopacy is a grant in aid of the Church's efficiency.

“And now as regards amount. I wish I could, in

stating it, have been spared a comparison with any other Church, but as that is impossible, I can only say, that although I do it reluctantly, feeling how invidious it is, I have at the same time the satisfaction of believing that the Church with which my chief comparison must of necessity be made, will acquit me of all improper motives, and that its members will feel satisfied that nothing but the urgency of showing that the Church of England is making no undue demand, could have impelled me to it. Indeed, amidst the objections to this grant, and the nature of those objections, it is no small consolation to know that the Dutch Reformed Church as a body, do not participate therein. On the contrary, I have good grounds for stating that amongst their leading and most influential members and ministers, the hostile course pursued towards the Church of England in this matter is deprecated. And now to return to the point. The amount for the bishop and the archdeacon is but the same as that granted to the chief minister of the English and Dutch Churches in Cape Town, and when it is considered that the bishop, incidentally to the performance of his functions, must travel to every part of the Colony where a few members of his Church may be gathered together, it can hardly be regarded as excessive in amount. The bishop, I am informed, contemplates four to six months' absence on duty, and his expenses must necessarily be double or treble the amount proposed. The ordinary circuit of a judge costs three times the amount proposed.

“In considering the amounts granted to the Church of England and other recognized Churches, it is necessary to bear in mind that the principle by which the Government appears to have been governed is, to contribute in proportion to the respective numbers of their employed clergy and their places of public worship, and not in proportion to the respective nominal populations or communions. And the equity of this principle is apparent, when you analyze the process which must precede the consent to, or refusal of, every application for pecuniary aid for any denomination. In the first place, there must be proof, to the satisfaction of the Government, of a sufficient congregation, sufficiently concentrated, to ensure a sufficient average amount of attendance at the

Government must be satisfied that the proposed locality for a new minister is sufficiently removed from any other of the same denomination, to preclude his ministrations being made available for the new congregation.

“And in the third place, the desire of a congregation for a minister has to be tested, and satisfactory assurances afforded, that they will contribute in part to his stipend. This last condition is, however, of recent adoption. The comparison I propose to institute to be of any value should be general and not partial, and should include advantages of every kind, as well as pecuniary grants and salaries. I will begin by inquiring whether the contributions to the Church of England are immoderate, relatively to the contributions to other denominations for like purposes.

“In regard to salaries, they range for the Dutch Reformed Church and Church of England between 100*l.* and 400*l.* per annum. The maximum and minimum in both are the same. There are thirty-three ministers of the Dutch Reformed Church between whom 7,000*l.* are to be appropriated, at an average of 212*l.* 2*s.* 6*d.* per annum. There are sixteen ministers of the Church of England to receive salaries, including the archdeacon, between whom 3,500*l.* are to be appropriated, at an average of 218*l.* 15*s.* The salaries are thus appropriated. The principal ministers of the Dutch Reformed Church and of the English Church at Cape Town, are to receive each the same salary, 400*l.* The English minister at Graham’s Town, being the capital of the Eastern province, to receive the same, and the archdeacon the same. The three ministers of the Dutch Church at Cape Town receive together 1,000*l.* The same number of English clergymen at Cape Town receive 800*l.* At Wynberg, the Dutch Reformed minister receives 200*l.*, and the English 150*l.* At Uitenhage the same. At Graaff-Reinet the Dutch Reformed minister receives 300*l.*, the English 100*l.* There are twenty-four Dutch ministers in different stations receiving 200*l.* each, while there are but four English at that sum.

“Out of the sixteen English clergy receiving Government aid, there are six under 200*l.* Out of thirty-three Dutch receiving aid, there are but three under 200*l.* The Roman Catholics have one at 200*l.* and two at 100*l.* each; the Scotch Presbyterians, and a missionary to the heathen—formerly of



the Lutheran Church—200*l.* each, and the Wesleyans one at 150*l.* To the Dutch Reformed, Lutheran, and Scotch Presbyterian Churches, loans have been made at various times,—but which the Government remitted in 1843, and they amounted without the unpaid interest to that date, to the, Dutch Reformed Church 4,050*l.*, Lutheran Church 375*l.*, Scotch Presbyterian 390*l.* Grants have at various times also been made from the public treasury to the Churches of several denominations, to the following amount. Church of England, 11,141*l.* 0*s.* 3*d.* This includes 5,000*l.* for St. George's Church in Cape Town, and 4,873*l.* for the Church at Graham's Town. Scotch Presbyterians, 1,235*l.* 9*s.* 6*d.* Dutch Reformed Church, 462*l.* 10*s.*, and further grants of 2,000*l.* for churches of the Dutch Reformed Church will be proposed to you, at this Session of Council, and 500*l.* for the churches for the Roman Catholics.

“In addition to these grants, a Church-tax is authorized by proclamation of 1st April, 1814, to continue in Swellendam, George, Graaff-Reinet and Uitenhage, until the debts of the churches shall be discharged, and to be levied also in those country districts in which the Church is still charged with debts. Under this authority the amount received as church tax by the Dutch Reformed Church, between the years 1836 and 1847, in those districts from which accounts have been furnished, has been 3,872*l.* 9*s.* 6*d.* The Church of England has received from this tax between the years 1836 and 1842, in the solitary district of Port Elizabeth, the sum of 90*l.* 11*s.* 3*d.*, and in the latter year this payment to the Church of England appears to have ceased. It further appears that the Dutch Reformed Church had derived a revenue, between the years 1836 and 1845, in various districts, from the lease of salt-pans, salt-permits, and timber licenses, the sum of 2,118*l.* 11*s.* 1*d.*, and the salt-pan revenue to the Church of Uitenhage was authorised by Government to continue from the 1st May, 1844, to the 1st May, 1850, the leasing of which by auction in 1844, realised to the Church the sum of 997*l.* 10*s.*, payable in twenty equal instalments of 41*l.* 11*s.* 3*d.* each, thus bringing in, up to the year 1850, at the rate of 166*l.* 3*s.* per annum. The Church of England has never received any such advantages. Grants of land

have also at various times been made to the various religious denominations within the Colony, of which I will give you the summary. You must understand that for these lands, grants, that is to say, title deeds, have been actually issued by the Government, in favor of the respective denominations.

“ 1st, Dutch Reformed Church . . . . .	51898 acres.
2nd, United Brethren . . . . .	7856 do.
3rd, London Missionary Society . . . . .	5045 do.
4th, Church of England . . . . .	43 do.
5th, Wesleyan Methodists . . . . .	13 do.
6th, Roman Catholics . . . . .	7 do.
7th, Mahometans . . . . .	6 do.
8th, Congregation at Philipstown . . . . .	1 do.

“ In addition to these, lands are held by some of the denominations, by what are termed tickets of occupation or permission, but for which no titles have been issued, viz:—

“ Rhenish Missionary Society . . . . .	148,886 acres.
Church of England, as glebe for the use of the clergyman at Port Eli- zabeth . . . . .	4893 do.

The United Brethren hold large tracts, in the same manner, at Genadendal and Groenekloof, and the Wesleyan Methodists at Lelie Fontyn, but as the exact extents have not been ascertained, I cannot state them, although we all know them to be very considerable. The Dutch Reformed Church holds no land upon this tenure. The widows of ministers of the Dutch Reformed Church receive pensions for life of twenty-seven pounds each from the public treasury. The widows of ministers of the Church of England are not allowed pensions. Having shown you how the contributions, of every species, from the Government to the Church of England bear relatively to similar contributions to other denominations, I will now take leave to submit to you how these contributions bear relatively to the efforts made by the Church of England itself for the support of its ministers. The number of ministers who, it is proposed, shall receive salaries from the public treasury are sixteen, at an annual charge of 218*l.* 15*s.*, and an aggregate of 3,500*l.* In addition to these, there is one minister who receives no salary at all, and five catechists

now employed in different parts of the Colony, all of whom are candidates for ordination, but for whose present religious services no payment is made from the public treasury. Exclusive of the munificent endowment of the bishopric, the English Church is now contributing by private means, and associations in and out of the Colony, the sum of 2,755*l.* per annum, towards the support of its ministers in this Colony, besides having raised a fund of 8,000*l.* principal money, for church purposes generally, in the Colony. The peculiar position of the members of the Church of England here must not be forgotten. They are to be found in smaller or larger parties in almost every district of the Colony—and the present immigration system will augment that difficulty. Many have never received, since their settlement, the ordinary ministrations of their clergy, and none have enjoyed, either for themselves or their offspring the highest ministrations, which, by the constitution of the Church, a bishop alone can impart to them. To remedy these serious drawbacks, the great exertions to which I have alluded have been made by the Church's members and friends, both in and out of the Colony, to place at the disposal of the bishop, the means to enable him to contribute largely and liberally to supply them with churches and ministers. To fold this widely-scattered flock will be the bishop's first care, and will, in some degree, account for the long and expensive journeys he will have for some years to make, before he can accomplish it. I have now faithfully, and I hope fairly, put before you the circumstances of the Church of England; and I have, I trust, satisfied you that the objections to which I have referred cannot be sustained. I feel a confidence, too, that the amounts of the proposed grants must be looked upon as moderate, whether you regard them in comparison with the support contributed to other religious bodies, or in comparison with the benefits the Colony will receive from the internal efforts of the body for which they are proposed. The objections to the grants on the grounds of their manifesting a desire to invest the Church of England with a paramount ascendancy, and that a dominant Church would cause much dissatisfaction to other Churches, can surely not be intended for more than make-weights. I cannot therefore

better dispose of them than in the words of the petition I presented, namely, that they are "too extravagantly absurd, in these days, to require exposure." But it is asserted in one petition that if any Church can pretend to a claim of ascendancy in this Colony, it must be conceded to the Dutch Reformed Church. A few words on this point will suffice. Neither Church pretends to, nor desires, such an ascendancy. Nor is any fear or jealousy entertained by the Dutch Reformed Church because the Church of England solicits a moderate contribution to give efficiency to a complete ecclesiastical constitution and episcopal superintendence. Had the Dutch Reformed Church, by its constitution, required such a head, it knows full well, from the liberal aid it has always received, that it would have been granted years ago at the charge of the public treasury, as was every other charge for its ministers. There is another point connected with these questions, and raised by the petitions against the grants, to which I think it necessary to advert, as a charge of inconsistency appears to be made against the Government, founded upon the sentiments I expressed in council in 1846. I allude to passages in two of the petitions, from which I will read the following extracts. First—from the petition of the undersigned:—

“ ‘Your petitioners desire to fortify their opinion as to the non-necessity and injurious effects of these further grants for religious purposes by a reference to the opinion expressed by the representative of the Colonial Government, in the debates on the estimates for 1847, when an application for an increased grant was resisted on the ground that the amount then voted for ecclesiastical purposes was already disproportionately large, and that it was the wish of the Government to draw out and encourage the generous efforts of the people.’

“ Second,—extract from the petition of the English Congregational Church in Cape Town:—

“ ‘That it is the firm conviction of your petitioners that the free and cheerful offerings of the individuals composing any congregation, aided (if it so happen) by the voluntary contributions of their friends, are the only means which that congregation are authorized by Christ or his Apostles



to adopt for the support of religion; and that compulsory payments, whether directly or indirectly obtained, are a plain violation of the laws and spirit of that Christianity, for the maintenance or propagation of which such payments are enforced,—while, as a consequence naturally to be expected, they have proved a fruitful source of political disaffection and disorder, a serious obstacle to the progress of the gospel, and a bane to the social and religious interests of man. That your petitioners approach your Excellency and the council with greater confidence upon this last ground, because the same principle was, to a certain extent, recognized and acted upon by the Colonial and Home Governments in the year 1846. That your petitioners know of no circumstance which has occurred to account for its abandonment, and they are unwilling to believe that the just and manly sentiments expressed at that time by the representative of the Colonial Government would not meet with a response from the members of the Churches which receive allowances from Government, if an appeal were made to them on the subject.'

"Having read these extracts from the petitions, referring to what I advanced in council in the year 1846, on the question of an increase in the ecclesiastical grants for the year 1847,—I will now refer to what I stated on that occasion. I then stated that 'although the voluntary principle is not sought to be established by the Government in this Colony, yet it is recognized and encouraged to a certain extent.' I stated that 'within the last three years Her Majesty's Government had required some fixed amount of a minister's salary to be paid either by the congregation or a society before they would sanction any new appointment, and that the proceedings of this council had subsequently been based upon the principle of providing from the public revenue, in part only, where the congregations could themselves contribute; but to provide wholly where they could not.' I further stated that 'the principle upon which this council had lately acted had this obvious and beneficial result,—it enabled the Government to do more good than could be done if it supplied the whole stipend.' I added that, 'in this Colony, where, in many places, thousands of the population had yet to learn the vast importance of religious instruction, it was desirable

that the Government should not be deprived of the means of assisting those who had as yet no desire to assist themselves,' and I allowed that, 'although I was not a disciple of the voluntary system, I was in favour of it to a certain extent.' I thought it objectionable where a minister's stipend depended exclusively upon his congregation. I approved of so much of the voluntary system as leaves the congregation to supply a portion of the stipend, provided the minister obtain from the public revenue, from a society, or by endowment, sufficient to make him independent of his congregation.' I stated that to be 'the principle upon which Her Majesty's and this Government were now working in this Colony, and that I hoped to see it more extensively applied, as existing appointments become vacant.' The whole of my remarks on that occasion tended to show that the Government was desirous of bringing out the efforts of societies or of individuals, as a primary foundation of any grant by the Government. To those sentiments I now fully and entirely adhere, and I have the further satisfaction of stating, that the principles to which I have alluded are fully coincided in by the bishop of Cape Town, on behalf of the Church of England in this Colony. His lordship is anxious to admit, and is prepared to abide by, this as a principle, in all grants relating to the Church of England, that no grant shall be made excepting where a sum equal to that sought for from Government shall be contributed by private or associated efforts within the Church, and that only where the usual condition hitherto required by the Government in the case of all grants, viz., that of a sufficiently numerous congregation which cannot be otherwise supplied than by a new appointment, shall be proved to exist. It is in full accordance with the principles I stated in 1846, and which I now reiterate, that the present grants for the bishop and for the archdeacon of the Eastern Province are proposed. The sum proposed in aid of the travelling expenses of the bishop and for the salary of the archdeacon of the Eastern Province, whose office and duty are consequent upon the appointment of the bishop, and who will have the entire superintendence of the church affairs and ministers of that district under his Lordship, and in his absence, amounts in all only to the sum

already brought forward by the English church in favor of the Colony for the specific purposes for which this grant is proposed. I should rejoice, sir, if the principles which I stated in 1846 could be applied to all the ecclesiastical grants in this Colony, as they are applied to this. I should rejoice if the Government were enabled to do so much more good with the same amount. I should rejoice to see the number of pastors, and diffusion of religious instruction, thus doubled throughout the Colony. It is, therefore in perfect accordance and consistency with so much of the voluntary principle as I ever advocated, that I now propose the grants of 400*l.* a-year for the travelling expenses of the bishop, and 400*l.* a-year for the salary of the archdeacon, be retained in the estimates now before the council for the expenditure of the ecclesiastical establishment for the year 1849."

These contested grants for the bishop and archdeacon have since been allowed. But on his first visitation the bishop found that in many parts of the Colony the members of the English Church were truly "as sheep having no shepherd." Nor can we reasonably suppose it could be otherwise. For more than forty years Great Britain had held the Colony, and during that period numbers of our countrymen had settled there, and made it a home for themselves and their children. But in leaving the home of their fathers many of them were not aware that they would be wholly separated from the Church of their fathers. They were of the communion of the Church of England; but the centre of communion, and the ordinances and blessed sacrament of communion, and the holy rite which was to admit them as members to communion, were not within their reach. In many parts of the Colony the members of our Church were three and four hundred miles from a clergyman of the Church to which they belonged. This might

up their residence in a country sparsely populated, and among people of another race, of a different language, and another Church. But this state of things existed also in a part of the Cape territory which was becoming altogether colonized by British settlers. In 1820 a number of enterprising families were induced, by a Government grant to emigrants, to seek a new country in the Eastern province of the Cape of Good Hope : and the representatives and descendants of these families have by their energies already raised Graham's Town, Port Elizabeth, and other places of that promising district known as Upper and Lower Albany, to places of considerable wealth and commercial importance. But a want was soon felt by those who emigrated ; a want which no success in their worldly undertakings, and no change from new habits acquired in a strange land, could cause them to disregard or to forget—they were members of an Episcopal Church, but without the episcopate. Their children, growing to manhood and womanhood, were unconfirmed ; their rising churches were unconsecrated ; no visitation was held among them by any bishop or his appointed officers ; there was no chief pastor who by his vigilance and admonition might uphold uncorrupted the doctrine and discipline of the Church, and encourage uniformity to the same ; or who by his episcopal authority could supply the spiritual need of many scattered hundreds of our communion “ by faithfully and wisely making choice of fit persons to serve in the sacred ministry of the Church,” and setting them over appointed portions of Christ's fold.

How sorely this want was felt and deplored and represented by the members of our communion, and how desirous they were that they might enjoy the



full privileges of the Church of which they were members, may be gathered from the following earnest appeal which was forwarded to the Committee of the Colonial Bishops' Fund, after having been numerously signed by the inhabitants of the Eastern province.

“The Memorial of the Clergy and Laymen of the United Church of England and Ireland, resident in the Eastern Province of the Cape of Good Hope, to the Committee of the Colonial Bishops' Fund,

“Humbly Sheweth,—That the Colony of the Cape of Good Hope, which has been annexed to the British dominions since the year 1806, contains, as appears from official returns, about 110,000 square miles, and 160,000 inhabitants: that of this number about two-thirds reside in the Western Province, and the rest in the Eastern Division. That in the Eastern Province about one-half of the inhabitants are European, and the other half natives of the different tribes. That there are in the Western Province about 6,600 persons belonging to the Church of England, while in the Eastern they are computed at 3,400, making together 10,000 souls. That there are at present six clergymen employed, and six churches in the Western Division, while five clergymen and two catechists are employed in the Eastern Province, where there are five places of worship already completed, and three others in contemplation. That though the members of the Church of England resident in Cape Town and its immediate vicinity have occasionally enjoyed Episcopal visitation and confirmation from bishops proceeding to the eastward, yet the other parts of this extensive country, including the Eastern Province, in which a large number of British emigrants were settled in 1820, have never enjoyed any of these advantages; so that in this respect the Church of England has been left in a much worse position than any other denomination of Christians in the Colony; for, while the Dutch Reformed Church has its Presbyters and Synods, the Wesleyans, and even the Independents, their Missionary Superintendents,

own rules and discipline, or any bond of union to connect and combine her efforts; without any spiritual authority to which her ministers or members may refer in cases of difficulty or irregularity, or any proper channel of correspondence with the Home or Colonial Government; since in a word, without taking into account the Mauritius or St. Helena, which might conveniently be annexed to the See of the Cape, there are in this Colony alone 10,000 souls belonging to the Church of England, eleven clergymen already employed, together with two catechists, eleven churches or chapels occupied, and several others in contemplation:—therefore, on these grounds your memorialists do humbly pray that you would be pleased to use your influence in procuring the early appointment of a Bishop for the Cape of Good Hope.

“And your memorialists, as in duty bound, will ever pray, &c.”

Memorials to the same effect were also forwarded from Bathurst, Fort Beaufort, Mancazana, Sidbury and Port Elizabeth. Long previous to the drawing up of these memorials, however, the spiritual wants of the Colony had been understood and strongly represented; for as far back as the year 1818, when Sir J. Brenton passed through the districts of Caledon, Swellendam, and George, the heathenish state of the colored people, and the religious destitution of the scattered settlers in these divisions forced themselves very powerfully upon him; and he expressed most earnestly to the Bishop of London, as will be seen in the following letter, his conviction of the necessity of extending the Church's ministrations more fully through the out-lying portions of the Colony. His statement will probably be read with the more interest, from the unlooked-for source from which it proceeded.

“Cape of Good Hope,  
• “24th March, 1818.

“To the Lord Bishop of London.

“My Lord,—My professional duty as Commissioner of

His Majesty's Navy resident in this Colony, lately induced me to take a journey through the south eastern parts of it, in order to visit a port recently discovered at the mouth of the river Knysna; and in the course of it, I have made such observations upon the state of the country, through which I have passed, with respect to its inhabitants, as appear to be deserving of your Lordship's notice. Under such an impression I take the liberty of offering them, in the conviction that should they open any means of extending the influence of the Church of England, and consequently of diffusing the knowledge of the Gospel, your Lordship will excuse the intrusion.

“ Throughout the whole extent of country between Hot-tentots' Holland and Plettenberg Bay, there are but three clergymen, viz. :—one at Caledon, one at George, and the other at Swellendam. The population exceeds 7,000, and is constantly increasing. The dwellings of the inhabitants, generally speaking, are scattered through these districts at such a distance from the places above-mentioned, that very few can form a part of the weekly congregation. The farmers have no means of instruction within themselves; in some instances a schoolmaster is kept in the family, or rather a person, who can barely read and write, of low origin and often of vicious habits. Books of any description except the Bible (and not always that) are seldom to be seen in their houses. The *boers* of this Colony are by no means deficient in capacity, or good dispositions; on the contrary, I have generally remarked amongst them great intelligence, much frankness and disinterestedness, and their hospitality is a theme of praise with all who have had recourse to it.

“ Their defects and privations arise from inveterate prejudices, inherited from the early colonists, and fostered by the state of gross ignorance in which they have been brought up. No amelioration can take place whilst these obstacles exist; and I feel convinced they can only be removed by religious instruction. No legislative measures for the improvement of the country (of which it is greatly susceptible) can be efficacious, until the understandings of these people are made parties in the cause.

tageous. The radical evil I consider to be the state of slavery in this country, or rather the manner in which this wretched class of men are viewed by the colonists. The slaves here labor under disabilities which I believe are peculiar to this country. They are, by the existing laws of the Colony, prohibited from becoming Christians, and from marrying.

“The first of these cruel restrictions has, in a few instances, been dispensed with, but the latter never. On the contrary, it is most pertinaciously adhered to. The effect of such laws is but too evident, not only to the judgment, but to experience. The first gives the utmost facility to the diffusion of the Mahometan tenets, whilst it impedes the progress of Christianity; and the most immoral and pernicious consequences inevitably result from the latter. These are too obvious and too well-known to admit of their being dwelt upon. I will only observe, that the youth of the most opulent families are, in consequence of such a system, brought up in total abandonment of those principles from which alone they can ever be expected to become worthy and exemplary fathers of families. The most unquestionable authority may be referred to in support of these observations. Many of the principal slave proprietors, it is notorious, give a preference to their slaves being Mahometans instead of Christians; in the first place, because they conceive it induces sobriety, and in the next, as it gives them a power over their female slaves which is incompatible with Christianity. These practices which in the educated colonists are to be viewed with just abhorrence, must, amongst the illiterate boers, be deplored as the effect of dark ignorance. A total reformation of the former class I consider as almost hopeless. They may be awed by the expression of public reproach, but the inclination will remain, and every means will be resorted to to retain their power. With the latter class (the great majority) it is very different. They err from want of knowing better; and, I am convinced, possess feelings which, if properly directed, would glorify their God, and bring down His blessings upon their country. The disposition of the present Government of this Colony to



efforts have been made by his Excellency the Governor to ameliorate the situation of the slaves and lower classes, but his power is not sufficient to produce the desired effect. The persons of influence amongst the colonists are too jealous of the articles of capitulation to hear of the smallest alteration being made in these laws; they instantly take the alarm, and join unanimously to reject every idea of improvement which they suspect may, in any way however remote, interfere with their interests; and their slaves are considered as the most valuable part of their property. All hopes of reform must be derived from the exertions of the mother country; not by an infringement of its engagements with the colonists, but by earnest recommendations and persevering efforts to increase the Christian population, by the instruction of the Hottentots and Negroes, as well slaves as free. I am prepared to find that the first endeavors may not be greatly successful, but they will gradually increase in influence, and the public mind may in the meantime be improved and enlightened by religious instruction. The success of the Moravians, at their establishment for the conversion and civilization of the Hottentots at Bavian's Kloof, which I visited on my journey, affords the strongest encouragement to similar efforts being made by the Church of England. The contemplation of the truly benign effects resulting from the mild and patient conduct of these excellent people—the rapid progress their converts were making in religion and in the acquisition of the comforts of life, first excited in me the wish to address your Lordship, firmly impressed with the conviction, that one amiable, benevolent, and consistent clergyman of the Church of England would, in the course of a very short time, produce effects equally salutary, not only on the poor and destitute inhabitants of the Colony, but that his influence would extend to the wealthy farmer and his dependents. The expense of such an undertaking need not be great. A certain extent of land given, in the first instance, by the Crown, for a church and glebe, and another for distribution amongst free persons of every description, whether Europeans, Hottentots, Negroes, or Malays, might be granted

infancy of the institution with a small—but very small—portion of capital, so as to enable them to provide articles of the first necessity, such as clothes, furniture, implements for building, cattle and corn for the first year, the amount of which might be paid off by very moderate instalments.

“I am firmly convinced that the happiest effects would very soon result from such an undertaking. It would be no wild speculation, but one that must be of essential benefit to the Colony, and thence to the mother country; for the expenses would in a short time be defrayed by increase of trade, and national prosperity. I beg leave to give your Lordship an instance of the value that becomes immediately attached to land in this Colony when put under cultivation, or rather when it is only in contemplation to cultivate it.

“The proprietors of different estates in Hottentot’s Holland, about thirty miles from Cape Town, were desirous of building a church to which their families might resort on the Sabbath, instead of having a journey of twelve miles to perform in going to the church at Stellenbosch. A piece of ground was selected for the purpose, and purchased by subscription for 23,000 guilders; a portion of it was marked out for the church, another for the clergyman’s house and garden, and, as there remained a considerable quantity beyond what was required for these purposes, it was sold by auction in small lots, for building houses near the church, and brought the extraordinary price of 161,000 guilders. A similar effect, although probably not so great in degree, will result whenever a government establishment may take place. By building and endowing a church, Government would be enabled to sell the contiguous ground so advantageously, as to remunerate them for all the expenses; and by sending inhabitants from England for these new settlements, the chief want of the Colony would be supplied—that of population; whilst numbers now starving and destitute in the mother country would be provided for, and the poor-rates relieved in proportion. But what is of still greater importance, the Christian religion would be promoted in every part of this extensive Colony. An establishment of this kind would be particularly desirable in the vicinity of

and the Brede River are secure and valuable ports, only ascertained to be such within the last two years; and Mossel Bay may, at a very trifling expense, become such in a very short time. They are all situated in fertile corn countries. The Knysna has the additional advantage of being in the immediate vicinity of an extensive and valuable forest, where timber for building the largest ships is to be had in abundance and with facility.

“Upon an attentive consideration of all these circumstances, I cannot resist the impulse I feel to entreat your Lordship’s notice of them, and that you would be pleased to recommend the measure of even one clergyman of the Church of England being sent out and established in either of the places above-mentioned, with a very limited number of poor families from England, by way of an experiment, upon the success of which may depend the extension of the plan. \* \* \* \* \*

“I have the honor to be, &c.,

“J. BRENTON.”

Of the most startling statements in this letter some, though strictly true, are liable to be misunderstood; and others have been of late years happily removed. It was true that “throughout the whole extent of country between Hottentot’s Holland and Plettenberg Bay (a distance of nearly 300 miles), there were but three clergymen, viz: one at Caledon, one at George, and the third at Swellendam;” and these were ministers of the Dutch Church, and administered their service in the Dutch language; but it should be remarked that every Dutch family, however far removed from the church, has its parish and appointed minister; and it is no uncommon thing for these families to drive as many as twenty and even thirty miles to their church, especially to the *nacht-maal*, or administration of the Lord’s Supper. And even where this cannot be done, there is an annual visitation made to every family.

parish by the minister, accompanied by one or more of his elders. It was otherwise, however, with the scattered English of the Colony; in the districts far from Cape Town and Graham's Town they were cut off almost entirely from the offices and services of their Church.

It is also gratifying to state, that by the abolition of the Slave Trade the colored people have now opportunities of sharing in that spiritual "liberty wherewith Christ hath made us free." The Government has appointed several provisions for their instruction, both temporal and spiritual. Many of them have embraced the Christian Faith. Most of them in towns avail themselves of schools for their children. Many are under Christian instruction, and these after they are baptized seek Christian marriage, instead of living in that state of unhallowed union still too common among the dark population.

Since the appointment of the bishop, too, the greatest visible change has been manifested in the extension, progress, and vitality of our own branch of Christ's Church in the Colony; and especially in those parts described by Sir J. Brenton. At George there is at present a numerous congregation of colored people in the communion of the Church of England; at Plettenberg Bay there is a similar congregation, although not so numerous; and at Schonberg, in the Long Kloof, beyond the Cradock Mountains, there is a most promising Mission Station, with a resident Deacon Schoolmaster, and a neat church, in the early English style, appropriately called the Church of "St John in the Wilderness."

The following statement will illustrate the striking contrast that exists between the position of the Church of England, at the Cape now, and eight years back.

Before the erection of the See of Cape Town there were thirteen clergymen of the English Church in South Africa, to which number must be added two military chaplains. The grants for twelve of these were as follows :—

Cape Town, Senior Chaplain . . . . .	£600
Assistant Chaplain . . . . .	200
Wynberg . . . . .	150
Rondebosch . . . . .	150
Simon's Town . . . . .	350
George . . . . .	200
Sidbury . . . . .	200
Port Elizabeth . . . . .	200
Graham's Town . . . . .	400
Bathurst . . . . .	200
Uitenhage . . . . .	100
Graaff-Reinet . . . . .	100
	—
Total . . . . .	£2,850

Since the erection of the See, the following nineteen parishes have been formed :—St. John's, Cape Town; Mowbray; Claremont; Stellenbosch\* ; Worcester; Beaufort\* ; Caledon\* ; Swellendam\* ; Schoonberg; Knysna\* ; Riversdale; St. Paul's, Port Elizabeth; Southwell; Somerset (East)\* ; Cradock\* ; Colesberg\* ; King William's Town; Fort Beaufort\* ; Post Retief\*. The ten marked \* have each 100*l.* a year from Government; the others are provided for by private liberality; yet the main responsibility for their maintenance rested, till very lately, solely on the Bishop of Cape Town.

But to put this matter in a less statistical form. For the services of the thirteen clergy of our Church, which were formerly administered widely apart



through the Colony, we have now in Cape Town and parishes within a few miles of it, eleven places of worship, either churches or licensed stations, wherein Divine Service is performed regularly every Lord's Day, and to which appointed districts for the cure of souls are assigned. Whereas, seven years back, there was no hope of visitation, even from a passing missionary of our Church, now there are three bishops, each a centre of the Church's Missionary work; in addition to whom archdeacons and rural deans in their appointed charges at intervals visit every parish and station submitted to their supervision. The number of sixteen clergy of seven years back (in which is included two military chaplains and the chaplain for St. Helena), is now more than quadrupled, there being in the Dioceses of Cape Town, Graham's Town, and Natal between sixty and seventy. Since the See of Cape Town was erected in 1847, there have been two additional Sees appointed; the whole Diocese has been subdivided into parishes, and there are few spots so lonely or remote, that they claim not the periodic visit of a clergyman. The mountain barrier no longer insuperably divides, and the waste karroo no longer hopelessly separates the sheep of Christ's fold from their earthly shepherd. The summer's drought and burning heat, the winter's storm and rushing torrent, check not the progress of many a self-denying parish clergyman in laboring through his wide-lying district, and holding fixed services at his appointed stations. The long neglected English emigrant knows now that his church is near him; and the unbaptized and untaught negro is learning his prayers in our tongue, and being received into our Communion. Our younger members have now

their due opportunities for confirmation, and our elder ones of partaking of the full and most blessed ordinances and means of grace which our Lord has provided for His Church. Many of our parishes have their English schools; many their already built or rising churches; and some their branch depôts for the supply of religious and educational books. In a word, the fallow ground is broken up, the seedsmen are sent abroad, the seed of life is being scattered on every hand; our Church has but to continue sowing in faith and praying in faith, lifting up holy hands and holy hearts, without fear and doubting, appealing to the Mother Church to send out her laborers, and to the Great of the Church to stir up the hearts of His faithful people,—and the dew of the Spirit's blessing, we believe, will abundantly descend, the beams of the Sun of Righteousness will shine upon our field of labor, and where once, as we have instanced, the passer by looked on the spiritual desert, he will behold "a field which the Lord has blessed" bringing forth fruit to the strengthening of the Redeemer's kingdom upon earth, and fulfilling its part in the Divine purpose of making "the kingdoms of this world to become the kingdoms of our Lord and of His Christ."

This great change has mainly taken place, under the Divine blessing, through the energetic and unwearied labors of the Bishop of Cape Town. After his first visitation he addressed a letter to the Governor, stating what he found to be the spiritual condition and religious wants of the members of that portion of Christ's Church over which he was placed as the chief pastor; and from what he heard and

state :— that “ a very general opinion prevailed throughout every part of the diocese he had visited, that the Church of England had not, up to the period of the appointment of a bishop, met with that measure of public support to which it was entitled.” Since this representation by the bishop, and in consequence of his repeated application for help to second the efforts of newly-formed parishes in connection with the Church of England, several grants of land have been made in different localities, and the community of the Church of England has been otherwise aided to a considerable extent, by the moiety of a stipend to the clergy, on the condition that the parish receiving such assistance should pledge itself for the other moiety.

The following grants of land made for the use of members of the Church of England, as compared with those made to other religious bodies in the Colony, is extracted from an article recently published in a local periodical. The same article also states what are the efforts which have been made to support the English Church by her own members.

“ With respect to grants of land to the English Church, they have been chiefly sites for churches, schools, burial-grounds, and parsonage houses. Grants of land for glebe have been made at Caledon and Knysna, in lieu of a portion of income, which has been deducted. Grants have also been made at George, for the Archdeaconry, and at Rondebosch : we believe neither of these has yet produced anything to the holders. Before the bishop’s arrival, a glebe of about 5,000 acres was given at Port Elizabeth (the title for which is not made out yet), worth twenty pounds a-year.

“ In 1849, the grants of land to different denominations were stated to be,—

Rhenish Missionary Society (by ticket) about 149,000 acres.

Dutch Reformed Church

52,000

United Brethren . . . . .	(by ticket) about	7,800 acres.
London Missionary Society . . . . .	„	5,000 „
Church of England . . . . .	„	43 „
Wesleyan Methodist . . . . .	„	13 „

Besides this, the United Brethren held (by ticket) extensive tracts at Groenekloof and Genadendal; and the Wesleyans, at Lelie Fontein.

“ The question may be asked: what has been done by the English Church to meet this aid? Has she been numbed and torpid, or exerted herself? We do not produce the following particulars in any spirit of boastfulness, but in self-defence, and for the encouragement of those who are doing what they can. We ask other religious bodies to produce similar or more accurate statements of what they have done for the promotion of religion in the Colony. We give the best information we can procure; but some of the returns on which it depends are defective.

“ For the purposes of church-building, the sum of 38,000*l.* has been raised,—partly in England, partly here. It has not been all actually expended,—as some churches, for which there is money in hand, are not yet begun; some are only just beginning.

“ For all purposes connected with the Church, the sum raised yearly in the Colony is about 4,000*l.*: of this, St. George’s, Cape Town, raises about 1,000*l.*; Graham’s Town, about 770*l.*”

In the progress and extension of the Church of England at the Cape, Mr. Montagu took the warmest interest; but it cannot be said of him, with truth, that he pleaded on its behalf, for public aid, or conceded to it a position or temporal privileges, which he would not equally allow to other Churches, acknowledged and supported by the Government. In him the Church of England has lost an exemplary member, and a staunch advocate. He loved it, and adhered to it on conviction, and defended it on principle: but in all questions of State support and in

matters connected with the position and rights of the different Churches, he acted most scrupulously on fixed regulations ; and was constant in affirming that the Government at the Cape knew no one established Church, exclusively or especially as such ; he deprecated also every act or measure, whether public or private, which could create jealousy or sow animosities between the members of the Dutch and English Churches. He maintained that it was the primary duty of a Christian State to support and disseminate the Christian faith ; and to make provision for the religious instruction and godliness of all its classes, whether rich or poor, white or colored, civilized or savage ; and with this conviction he had most warmly at heart every effort for the conversion of the heathen of the Colony. His opinion of the responsibility of a Christian government he has left clearly expressed in his own words :—“ If the ends of Government comprise the highest and best interests of the community, it cannot safely or rationally neglect those means of moral improvement, without which even social and physical advancement must languish and recede.”



## CHAPTER XI.

## GOVERNMENT SCHEME OF EDUCATION.

AT WHAT EDUCATION SHOULD AIM.—FORMER LACK OF THE MEANS OF EDUCATION IN THE COLONY.—DEFECTIVE AND PERNICIOUS STATE OF INSTRUCTION.—EFFORTS MADE TO INTRODUCE A SYSTEM FOR PUBLIC INSTRUCTION BY SIR J. BELL AND SIR J. HERSCHEL.—THESE EFFORTS SECONDED BY THE GOVERNOR, SIR G. NAPIER, AND BY THE HOME GOVERNMENT.—NEW SYSTEM INTRODUCED.—SUPERINTENDENT-GENERAL OF EDUCATION.—GOVERNMENT REPORT OF SCHOOLS.—CONDITIONS ON WHICH GOVERNMENT ALLOWANCES ARE GRANTED.—FIRST CLASS SCHOOLS.—SECOND CLASS SCHOOLS.—AID TO PARISH SCHOOLS.—MISSION SCHOOLS.—SOUTH AFRICAN COLLEGE.—BISHOP'S COLLEGE.—HOW FAR MR. MONTAGU WAS CONCERNED IN THE PUBLIC SCHEME OF EDUCATION.—SCHOOL OF INSTRUCTION FOR GIRLS IN CAPE TOWN.

So closely are the religious and secular instructions of a people connected, that it is difficult to decide, very precisely, where to draw the line of demarcation which may be said to separate them. In truth, whenever secular education is of a high standard it will tend to the amelioration of the heart as well as to the cultivation of the mind. Even the heathen moralist perceived this, and his maxim is familiar to us from our very boyhood :—

“*Ingenuas didicisse fideliter artes  
Emollit mores, nec sinit esse feros.*”

But I believe we may go beyond this and say, that whenever education aims to fulfil its true mission, viz. :—that of leading out whatever is capable

of expansion in the human faculties,—it will not stop here, but that it will aspire to work upon whatever is moral and spiritual, as well as whatever is rational and intellectual in our nature. Education has accomplished but half the high purpose of which it is capable,—nay, not one-half of it,—if it merely inculcates what is to fit us for the purposes of this present life, and does not aim so to lift up the soul and rectify the heart that it may lead them, and influence them, to centre their highest affections and aspirations on Him who requires His reasoning creatures both to know Him and to love Him, “with all their heart, and with all their soul, and with all their strength, and with all their mind.”

It was a due sense of the importance of education, and with the conviction expressed at the close of the former chapter—“that the ends of government comprise the highest and best interests of the community,” and that a government “cannot safely or rationally neglect the means of moral improvement” among any class of its subjects,—that caused Mr. Montagu to take the liveliest interest in the Government Scheme of Education at the Cape. He by no means considered that scheme perfect, or that it was in the healthiest state of operation through the Colony at large; yet his energies were constantly directed to make it as efficient as possible, and to amend by degrees whatever was proved to be faulty in its practical workings.

For many years the means of instruction were rarely to be met with in the interior parts of the Colony. The merest rudiments, such as reading and writing, could only be obtained through some illiterate pretender, who, finding every other scheme of obtaining an easy livelihood to fail, resorted to teach-

ing. Young-men of no character, runaways from ship-board, disgraced clerks, were often received into the families of the Dutch farmers as tutors, and in many instances disseminated there not only very imperfect teaching, but very loose morals.

This deplorable state of things presented itself to the minds of several intelligent persons as they travelled through the country. We see from a letter in the former chapter that it did not escape the notice of a mere passer by, as Sir J. Brenton. But, in time, it did more than claim a passing notice ; with some it became a matter of deep interest and growing concern : Colonel Bell, when Secretary to the Government, gave the subject his most serious attention ; and through his exertions, aided by those of Sir John Herschel, who for scientific purposes made a short residence in the Colony in the year 1832, the present Government system of general education was eventually established. Owing to their representation of the defective state or rather the almost utter neglect of instruction throughout the Colony, Sir G. Napier, on his appointment to the Cape, as Governor, very earnestly advocated that measures should be introduced to supply the want of schools, by some extensive and general plan of Government Education. His views on this subject he made fully known to the Secretary of State for the Colonies ; and the result was, that orders were forwarded to the Cape that Government Schools should be established, under a system and regulations, calculated to afford general instruction.

Under the new system, one of the first steps was to appoint a "Superintendent-General of Education." This office was intrusted to one of the professors of the South African College ; and Sir J. Herschel, it

is currently said, greatly interested himself in seeking out qualified teachers, men both of experience and ability to take the charge of the higher schools. After several fruitless endeavors, the Superintendent-General finding that the Colony could not supply the want of fitting teachers, made a visit to Scotland, and there selected several young men from the Scotch Universities, who should be put in charge of the schools at the principal stations.

In the year 1841, when the new system had had a fair trial, the following Government Report of its progress was published :—

“ Ten Government Schools have been established on the new system, under the superintendence of the teachers sent from home. These schools during the last six months have had an average attendance of 1,169 pupils. The branches taught are :—

“ A. English language, reading, orthography, grammar.

“ B. Dutch language, reading, grammar, translation.

“ C. Arithmetic ; abstract and commercial.

“ D. Geography, elements of history, chronology.

“ E. Elements of natural history and physical science.

“ F. Writing, and the first principles of drawing.

“ Religious instruction is given daily from the Scriptures.

“ Besides these branches, which are embraced in the elementary course, and in which instruction is given free of charge, the senior pupils, in six of the schools, have commenced Latin and elementary mathematics.

“ At three of the stations, boarding establishments have been formed by the teachers, which afford accommodation to some fifteen or twenty pupils.

“ In addition to the schools now alluded to, there are seven others of a more elementary character in the establishment, which are attended by 396 pupils, making the aggregate attendance in the Government Schools during the last six months, to be 1,565. It ought to be observed that the attendance is steadily on the increase.

“ The normal seminary for the training of future teachers will be opened with its model schools, in Cape Town, under the superintendence of the Rev. Mr. Buchanan in the course of the ensuing month.

“ Besides the schools in the establishment there are eleven others which receive aid from Government, on the following conditions :—

“ ‘ Memorandum of Conditions upon which Allowances will be granted from the Colonial Treasury, in aid of the Funds of Mission, and certain other Schools not on the Government Establishment.

“ ‘ 1. Every such school shall occupy some district of the town not otherwise provided for, or be removed to a district of which Government shall approve.

“ ‘ 2. The aid afforded shall be in a shape of a grant, renewable annually (reckoned from the 1st July of one year, to the 30th June of the succeeding year), should the school be conducted to the satisfaction of the Superintendent-General of Education, and should the necessary funds be voted by council for that purpose.

“ ‘ 3. The Government grant shall be exclusively appropriated to the support of the teacher or teachers as the case may be.

“ ‘ 4. The Superintendent-General of Education shall have the right to inspect all schools receiving aid, and to call for such returns as will enable him to ascertain to what extent and with what efficiency the schools provide for the education of the district in which they are placed.

“ ‘ 5. The schools shall be accessible to all, and the religious instruction given to the pupils during the ordinary school hours, shall be confined to the Scriptures. This condition has no reference to the Sunday and evening schools, which may be opened in the several districts, in connection with the schools receiving aid.

“ ‘ 6. The English language shall form a branch of instruction in all schools thus aided, and, where practicable, it shall be used as the colloquial language of the school.

“ ‘ 7. Though the first object of such schools must be the religious education of the poor, yet such objects of a secular



character as are laid down in the elementary course of the Government School shall be gradually introduced, to a greater or less extent, as circumstances may admit.' ”

Such is the Government scheme of instruction as it still exists. On the Superintendent-General devolves the over-sight of the schools, the locating masters in different towns and districts, and the recommendation for Government grants, in full payment, or in part salary, for masters. The Normal School, contemplated in the above Report, is now in operation in Cape Town, and is designed to train teachers for the district schools. In other parts of the Colony, there are what are denominated First Class and Second Class Schools.

The FIRST CLASS SCHOOLS are in the large towns: the masters of some of them are men of considerable qualifications, especially those selected by Sir J. Herschel. One of these masters is in Deacon's Orders in the Church of England, and his school cannot be too highly spoken of whether with reference to the moral influence exerted there, or to the sound and well grounded instruction he imparts. The schools at Stellenbosch and Uitenhage are also conducted by masters of considerable ability.

The SECOND CLASS SCHOOLS are among the agricultural inhabitants of the country districts; to these a fixed salary is attached, for a limited period, upon conditions stipulated by the Government. These second class schools are in some places but very thinly attended, and in many instances are complained of as sadly inefficient. The difficulties of obtaining proper and duly trained teachers are very great, and the superintendent of education has expressed a strong desire to engage a superior order of masters for this class of schools. The Holy Scriptures are

enjoined to be read both in the first and second class schools; but the inculcation of the distinct doctrines of any particular religious body is not openly allowed, at least in school-hours. The regulation issued on this head is in the following terms. "That during the ordinary school hours the Scriptures be alone used in giving religious instruction, and that, for this purpose, the reading of the Scriptures form one of the daily exercises of the school."

Aid is also granted by the Government to parish schools of the Church of England, and also to schools in connection with bodies of different denominations. In these cases an annual sum is granted, but beyond returns of the number of children under instruction, and the branches of education in which they are taught,—no direct interference is offered to the method of teaching; and the masters are chosen and appointed by the projectors of the school. In schools connected with parishes belonging to the Church of England, there are now being introduced able and diligent masters from the English training schools; these are principally in Cape Town and the neighboring village of Rondebosch; and it is much to be desired that more young men, duly qualified, and of zealous minds, would give themselves to the important duties of schoolmasters at the Cape and in other Colonies.

There are also, in some districts, places of instruction classed as MISSION SCHOOLS. To these, if twenty children can be obtained, a grant of about 20*l.* is made for a master, and for every additional ten an increased grant of 5*l.* There are also sums voted from a fund distinct from the Government grants, and known as the "Negro Fund;" aid is given from this source to

schools in proportion to the number of colored children and Negro apprentices taught in them. For the purposes of general education the Government annual grant is above 7,000*l*.

Irrespective of this general scheme of education, there has also been, for some years past, under the patronage and part support of the Government, an institution known as the "SOUTH AFRICAN COLLEGE." For some years this afforded instruction to several youths, whose attainments acquired much credit both to themselves and to the institution. Some time back, it had fallen into considerable decline; few youths attended its classes; and it existed as a college in nothing more than the name. Within the last two or three years considerable efforts have been exerted for its efficient revival; and it remains to be seen whether it can be made available for the higher branches of education in the Colony. Its present professors are using the utmost diligence to advance it, and are fully qualified for the task. Two of them, the classical and mathematical professors, are graduates of Oxford; and the Hebrew and Dutch professor distinguished himself in the University of Leyden.

The BISHOP'S COLLEGE, at Woodlands, five miles from Cape Town, at present known only as the "Diocesan Collegiate School," receives no Government aid; nor is it expected that a like institution, long projected in connection with the Dutch Church, will obtain any such support; it being contrary to the design of the Government, as stated above, to give a preference or countenance to any particular one, as an established church. The Collegiate School promises to be of the very greatest advantage to that

part of the community, which may be expected to avail itself of its proffered instruction. The principal is a scholar of sufficient reputation and attainments to insure him the mastership of any of the first class English schools.

The system adopted at the Bishop's College is in close accord with that which obtains in the great public schools of England, and the tuition is of the first-rate order, and based strictly upon the of the English Church. By the liberal aid of the two great church societies for "Promoting Christian Knowledge," and "Propagating the Gospel in Foreign Parts," commodious buildings, in the style of some of the good old scholastic edifices of Europe have been erected. Two scholarships have been also founded for the encouragement of "sound and religious education." This institution, it is hoped, will not only serve to supply clergy for the future ministry of the Church in the Colony, but also enable the present clergy to give a high order of education to their sons at a moderate expense; an object much to be desired, as the clergy, from the circumstances of the country, are but poorly paid. This excellent institution has not yet received that aid from the wealthier members of the Church of England at the Cape, which it deserves.

It may, possibly, be thought by some that this summary of the state of education in the Colony is not in any way connected with the subject in hand, the life of Mr. Montagu; but he was, during his Secretaryship, in so many ways, a part of the system, and so strenuous a promoter of education among every class, that it would have been an omission to have passed it by. The direct part which he took



in the carrying out the above educational measures cannot be particularly defined ; but as the scheme was to a considerable extent a Government scheme, much of the direction of it came under his observation, and an application to him to further a school in any locality, where it would clearly be of advantage, was certain of receiving immediate attention. That the system was greatly extended during his Secretaryship is clear, from the summary of the public measures reported by Sir H. Pottinger as having been undertaken during his brief administration. This summary has already been given in full, but the part to which we now principally allude is the following : “ I have increased the annual grant for schools 500*l.*, with the sole view of establishing among the farmers of the country districts elementary schools, in which, in addition to the common branches, a knowledge of the English language, and with it, of English customs and habits, will be imparted. Arrangements on an extensive scale are now being made for carrying this important measure into effect ; so that we may expect, in a few years, to see the English language diffused in the remotest districts of the Colony, and among all classes.”

It should be added that the Government Schools are mixed schools for boys and girls ; but that in Cape Town, and the neighbouring places, there are separate schools for girls. These have been under the patronage and constant visitation of the ladies of successive Governors. The School at Wynberg was founded by the exemplary Lady D'Urban ; and the “ School of Instruction for Girls,” in Cape Town, has received the greatest advantages and support from its Lady Patronesses. The names of Lady



Frances Cole, Lady D'Urban, Lady Napier, Lady Sarah Maitland; and Lady Smith, have been in turns familiar and endeared to several successive classes of girls who have been instructed in that school; and the frequent presence and interest of those benefactresses has given to it a tone and character which cannot be too highly commended.

## CHAPTER XII.

## SIR H. SMITH'S GOVERNMENT.—ANTI-CONVICT AGITATION.

ARRIVAL OF SIR H. SMITH AS GOVERNOR.—HIS MEASURES ON THE FRONTIER.—MR. MONTAGU LEFT IN CHARGE OF THE CIVIL ADMINISTRATION.—INCREASE OF LABOR IN MR. MONTAGU'S DEPARTMENT.—SIR H. SMITH'S DESPATCH REFERRING TO THE ONEROUS DUTIES OF THE COLONIAL OFFICE.—INSURRECTION UNDER PRETORIUS.—SIR H. SMITH PROCEEDS TO THE ORANGE RIVER.—BATTLE OF BOEM-PLAATS.—CAUSES WHICH LED TO THE ANTI-CONVICT AGITATION.—REASONS WHY THE CAPE WAS UNFITTED FOR CONVICTS WITH "TICKETS OF LEAVE."—ALARM OF THE COLONY AT THE PROPOSITION TO SEND THEM.—GOOD INTENTIONS OF THE SECRETARY OF STATE FOR THE COLONIES.—EXTRACT FROM DESPATCH IN PROOF OF THIS.—ANTI-CONVICT ASSOCIATION.—THE PLEDGE.—THE "NEPTUNE" ENTERS SIMON'S BAY.—PROCEEDINGS OF THE COLONISTS ON THIS OCCASION.—CONDUCT OF MR. MONTAGU.—ALLEGATION THAT HE WAS INSTRUMENTAL IN THE PROPOSAL TO INTRODUCE CONVICTS INTO THE COLONY.—HIS SPEECH IN REPLY.—ACQUITTED BY THE SECRETARY OF STATE FOR THE COLONIES OF HAVING TAKEN ANY INITIATIVE STEPS IN THIS MATTER.

In December, 1847, Sir H. Smith arrived in the Colony as Governor; and eleven days after his landing proceeded to the frontier. In the January following, he held a meeting with the Kafir chiefs, and made a tour of investigation through that part of the country which is now comprised under the denomination of BRITISH KAFRARIA. For the more effectual exercise and success of his frontier policy, he likewise established in Kafraria four military villages—Juanasburg, Woburn, Auckland, and Ely; and added to

the Colony the extensive districts of Victoria and Albert.

During Sir H. Smith's absence on the frontier, where he was fully occupied in consolidating measures for the permanent defence of the future boundary of the Colony, the civil administration of the government devolved mainly on Mr. Montagu; in addition to which the ordinary duties of his office were at this time considerably multiplied, by the various preliminary steps necessary to be taken, consequent upon a large accession of territory, both for the establishment of its administration, and for the fiscal arrangements for its expenses. Such confidence, however, did the Governor place in Mr. Montagu's energies and resources, that he left fully to his judgment the working out of the several details for the organization of these districts, and also the making provision for the annual demand, amounting to upwards of 1,000*l.*, which the annexation of so large a territory would, for some time, cause to the Colonial Treasury.

How ably Mr. Montagu carried on all the business of the civil administration at this time, and how fully the Governor estimated his services, and reposed in him the most unhesitating reliance, may be gathered from the following extract from a despatch written by His Excellency immediately on his arrival at the seat of Government:—

“During my absence everything in the several public offices has progressed as I could desire; and the zealous and energetic services of Mr. Montagu, the Colonial Secretary, have been as apparent as beneficial; not only has this able functionary willingly obeyed my instructions, but endeavored to meet my wishes.”

At this period, owing to the increase of official

business in Mr. Montagu's department, consequent on the new accession of territory, acquired both by the formation of the four military villages, and also by the annexation of the Orange River Sovereignty to the British rule, it became absolutely necessary that a larger staff should be added to the Colonial Office, and the Governor wrote accordingly to the Secretary of State for the Colonies for additional corresponding clerks, to be employed in that department. This despatch will give some idea of the amount of labor and responsibility then devolving on Mr. Montagu, and the subordinates in his office:—

“Adverting to my despatch of the 1st March last, in which I had the honor to represent that the recent and great addition of territory, population, and I may safely add, revenue to the Colony, would entail a great increase of correspondence on the Colonial Office, and that the whole correspondence of the Eastern Districts, in all its details, has now merged into the Colonial Office, I have now the honor to submit that additional assistance in the establishment of clerks is evidently imperative. The previous duties performed by the clerks of this office were to the full extent of human exertion and capability, it is, therefore, evident that increased labor requires increase of hands. I regard the duties in the Colonial Office to have increased 25 per cent., the letters during the month of March last having exceeded 1,100 in number. The energetic and immediate despatch of business which, under the able superintendence of Mr. Montagu, has hitherto characterized his office, requires able and energetic men as subordinates.”

In July, 1848, Pretorius, a Dutch boer, who had been one of the chief leaders of the emigration from the Colony in 1836, entered the newly proclaimed “Orange River Sovereignty,” and gathering round him there a force of about 1,000 men, who

named him their Commandant General, vainly thought to overthrow the British rule in South Africa. With this intent Pretorius encamped within two miles of Bloem Fontein, the capital of the new Sovereignty, and invested the place with about four hundred men.

Sir H. Smith heard of these proceedings July 22, in Cape Town, and proclaimed Pretorius a rebel, and offered 1,000*l.* for his apprehension. With great alacrity, also, he gave orders for a military force to be at once dispatched from the Eastern Frontier to Colesberg, where Major Warden, who had retired on capitulation from Bloem Fontein, was waiting the Governor's orders. On 9th August, Sir H. Smith in person reached Colesberg, and at once proceeded to pass the Orange River with a military force, consisting of four companies of the Cape Corps, four companies of the regular troops, and two companies of the Rifle Brigade. The Orange River, where it was crossed by the ~~roops~~roops, was about 200 yards wide, and the current very rapid, but the troops, guns, horses, baggage and commissariat wagons were put across by a pontoon float with very great despatch. Pretorius, in the meantime, unwilling to hazard a contest at the Orange River, fell back on Winberg, and finally posted himself with about 1,000 resolute followers, on some wooded heights of the *Kroem Elboch* (Crooked Elbow) River. Here a considerable engagement took place, in which the insurgents fought bravely and desperately, their long *roers* making it impossible for the Cape Rifles to withstand their heavy fire, though that Corps also fought most gallantly. Three howitzers were then brought to play with a well continued fire on the strongest post of Pretorius: and the Rifle Brigade



with the 45th and 91st, made a simultaneous attack on the left, and the left and right centre. This movement the *boers* strove most obstinately to withstand, and with great difficulty could they be beaten from their post. So determined were they not to give ground, that they dismounted from their horses and made them a kind of wall defence, resting their long guns on their saddles, and thus firing on the troops. On the right they even descended to the plain, resolved to meet the troops hand to hand. Hereupon a sharp skirmish took place; but the Cape Rifles seemed fully bent on driving back their opponents, and advanced on them with great spirit and impetuosity. After some little resistance the *boers* fled in great confusion, but again rallied and endeavored to post themselves on the other side of the river; but from this position, too, they were quickly dislodged, and as they retreated, were hotly pursued by the regular troops. On this Pretorius also, seeing that a further struggle was vain, sought safety in flight. Such was the battle of *Boem Plaats*; by which the British rule was asserted in the Sovereignty. After this Pretorius and his followers took refuge across the Vaal River, and established what has since been known as the *Trans Vaal* Republic.

Sir H. Smith had not long returned from the Orange River Sovereignty, when the tranquillity of the Colony was seriously disturbed by a measure then projected of sending to the Cape a class of convicts who were under probation. These convicts were to have what were termed *tickets of leave*, the "characteristics of which tickets," as we learn from the despatch of the Secretary of State, 19th March, 1849, were, "that instead of keeping the convict at labor for Government, he was to be left free to work

on his own account, but must reside within such district as might be prescribed to him by the Governor; he was required also to muster before the local magistrate at any period which might be appointed for that purpose, and finally that he should remain liable, in case of misconduct, to be remanded to the condition of an ordinary convict, subject to all the powers of control and coercion which attach to that situation."

An Act of Parliament (5 Geo. IV.) empowered the sovereign, with the advice of the Privy Council, to appoint any Colony in Her Majesty's dominions a settlement for the transportation of convicts under sentence of banishment beyond the seas.

Arising out of an order in council, and probably influenced by an opinion expressed by two Governors—Sir P. Maitland\* and Sir H. Smith,\*—that convicts might be advantageously employed on a definite public work in the Colony, the then colonial minister sent a letter to Sir H. Smith,\* unfolding the plan of Her Majesty's Government with regard to convicts on probation; stating with what eagerness such a class of convicts had been engaged for service by resident proprietors at Port Philip, and concluding with the words:—"Considering the urgent representations which are constantly received at this office, of the want of an adequate supply of labor, it seems possible that if this system of convict discipline were well understood, the colonists might be desirous of receiving men upon the foregoing terms in their last stage of punishment, and after they had earned a favorable character from the authorities under whose control they had been placed.

\* See Appendix.

I should be glad, therefore, if you would ascertain, in the manner which may appear to you best suited to the purpose, how far this would be the prevalent opinion in the Colony under your government; and if I should learn from you that the measure would be wished for, I should be prepared to take the necessary steps for including the Cape in the places into which convicts holding tickets of leave may be introduced."

To the proposal of employing convicts under certain restrictions, for the construction of a break-water in Table Bay, both the Council and the inhabitants of the Colony\* had gladly consented; and when the despatch, above quoted, was made publicly known, the colonists supposed that their opinion was asked on this important question; and it met with all the consideration that it justly demanded.

It will readily be admitted by any one even partially acquainted with the Cape Colony, that the nature of the country, as well as the habits of the colonists, renders it most unfitted for the introduction of persons versed in, and convicted of, felonious practices. The homesteads are far separated from each other; the population is sparse and irregular; the primitive manners of the inhabitants have been such, and the instances of *house-opening*, not to say *house-breaking*, so few, that even at the present time, throughout many of the country districts, the inmates of the farm-houses pass the night with their doors unfastened, without any fear of molestation.† The

\* See Appendix.

† In p. 131 it is stated, on the authority of the Government statistics, that "house, store, mill, and cellar breaking, with theft or intent to steal," are amongst the prevalent crimes of the Colony. This will

families of the boers are simple and unsuspecting; and the liberated slaves being either heathens, or, if not, but imperfectly taught Christian duties, are therefore open to the designs and machinations of persons who might show them the ways of evil by practice or example. The Colony, considering the mixed, and, amongst the colored people, but half-civilized population, has hitherto been especially free from crime, and its inhabitants have justly deemed it a bright and favored spot, as yet unapproached by many of the ills and alarms of other lands, and a safe and secure dwelling where they might bring up their children and households, beyond the hearing of many of the heinous offences which are committed in older countries, and beyond the contact of much sinful contamination.

Under these circumstances, the very name of convict excited an instantaneous panic. The Colony, quiet and unruffled as its own Table Bay in a summer's calm, immediately on the spreading of the rumor that it was even thought of as a penal settlement under any restrictions or modifications, became like that same bay when a strong and sudden south-east wind has swept down upon it. Public meetings and assemblies of various sections of the community were called, and committees of vigilance and defence speedily formed and in operation. Petitions, memorials, public and private representations were

explained, that most of the instances of house and store breaking occur either in Cape Town and the vicinity, or on the frontier in times of public disturbance. The Cape Town attempts have been, in most cases, not made by residents in the Colony, but by runaway sailors and convicts returning from the penal settlements; and when such outrages have been most rife on the frontier, it has been when a spirit of lawlessness from Kafir outbreaks has tempted many to deeds of unusual daring.

framed and dispatched to the mother country ; and corresponding bodies organized in various districts to avert, in every legitimate way, what was deemed a threatening plague. Synods of almost every Christian body met, and opinions, expressed at meetings in almost every town in the Colony, were forwarded to the Governor and by him to the Home authorities, accompanied with a long and earnest despatch upon the subject.\*

Whilst these active measures were transpiring at the Cape, the Secretary of State for the Colonies was unconscious that his proposition would be met with so much alarm and resistance ; for it is manifestly unjust to suppose that he had any purpose of forcing convicts on the Cape settlement, in direct defiance of the colonists. The length of time then required for the transmission of letters and documents, and the urgency for immediate transportation of a number of persons at that period under sentence in England and Ireland, for political and other offences, caused it to happen that the strongest appeals of the Colony against the introduction of convicts, — and the dreaded “ Neptune ” with its ill-fated consignment — were at the same time on the high seas. This is clear, inasmuch as Sir H. Smith’s despatch, accompanied by numerous petitions, was dated May 24th, and on September 19th of the same year the “ Neptune ” entered Simon’s Bay. It is true the Secretary for the Colonies had received a former despatch \* from the Governor, in which he informed him “ that an erroneous impression had gone abroad relative to the class of the offenders it was proposed to introduce into the Colony ; ” and also two petitions, one from Cape Town, and one from the Muni-

\* See Appendix



cipality of Graham's Town ; and it also appears from the terms of his despatch to the Governor, dated March, 1849, that he was fully aware that considerable agitation was excited in the Colony on this question ; yet, till he received further despatches, he evidently thought that when the colonists fully understood the class of persons sent, and also took into consideration "the efforts and the sacrifices made by the people of Great Britain for the defence of the Colony" \* \* \* \* \* "they would no longer feel unwilling to take their share in a policy which placed it in their power without injury to the Cape, to render an important service to the mother country."

Any one who will now without prejudice calmly review (with the published documents before him) the history of the Convict question, and place beside this the great interest the Secretary for the Colonies in several ways manifested towards the Cape, must acknowledge that his impression was clearly this,—that while he was relieving the mother country, he was aiding the Colony ; and that solely under this impression he acted. The whole tone of the despatches\* from the Colonial Office at this time proves that the measure originated in the purest motives, and with the humane desire of giving those who were convicted of the commission of crime, and yet showed a desire of amendment, an opportunity of reformation. Its object was clearly one of utility as well as expediency ; for while it aimed to relieve the mother country, it also contemplated to supply a population,—convicted of offences it is true, yet limited in number and under certain restrictions for

\* These despatches were laid before Parliament and ordered to be printed.

their good behaviour—to a Colony which greatly needed an accession of labor.

The following extract from a despatch dated 19th March, 1849, fully warrants us in asserting, that it was anticipated that the introduction of convicts, far from resulting in evil, would prove a benefit to those Colonies, to which probationary convicts were to be sent. The following words certainly give us grounds for thinking so:—"There are obvious reasons for wishing to avoid introducing convicts into any one Colony in sufficient numbers to bear a large proportion to the population. It is precisely in order to avoid that evil, that Her Majesty's Government are anxious to disperse them, in comparatively small numbers, in several Colonies. But after such a preparatory course of discipline as is above described, and sent out only in moderate numbers, it hardly seems too much to hope that persons of the class above described may, with advantage to all parties, be introduced into the Colonies suffering from deficiency of laborers, for the purpose at once of supplying that deficiency, of relieving this country of persons who could not have the same chance here of persevering in a reformed life, and of giving the convicts themselves the best chance which existing circumstances will allow of being permanently established as useful members of society." \*

Be this as it may, the colonists almost unanimously thought otherwise: and, on the first hearing of the determination that convicts of any description were to be introduced into the settlement, formed themselves into an alliance known as the Anti-Convict Association, and prepared in every way to avert and eventually resist the dispersion of convicts

through the Colony, or even of their disembarkation at Cape Town. To such an extremity did this feeling and determination proceed, that the members of this Association bound themselves under a pledge to withhold all intercourse with persons of whatever description, concerned in "landing, supplying, or employing convicts."

On the 19th September the "Neptune" entered Simon's Bay; and the rumor of an invasion, or the fatal whisper that a pestilence had visited the shores, could not have spread greater agitation, or aroused a more general panic throughout the community. When the news was carried to Cape Town an alarm was instantly given. The bells of several of the churches tolled. A loud gong sent out its dismal sounds from the Town Hall. Assemblies were in an instant summoned. Knots of persons grouped themselves together at street corners; and a stranger, unacquainted with what was transpiring, might well have deemed that an invading army was in the transport vessel riding in Simon's Bay.

The following description of the proceedings of that day is from a history of the Colony recently published,\* and is in part gathered from an account given by one who was, at the outset, a popular leader of the Anti-Convict Association:—"At 11 o'clock a letter was sent from the Cape Town Municipal Board to the Governor, informing him that 'the people have determined that the convicts must not, cannot, and shall not be landed, or be kept in any of the ports of the Colony.' And in order to remove the cause of the anxiety now prevailing,

\* "Martin's British Colonies. Division, British Possessions in Africa," 1852, and "Notes on Cape Affairs." By J. Adamson, D.D. London, 1851.

and to obviate the evil consequences which may result therefrom, and for which His Excellency would be responsible, he was entreated to direct that the 'Neptune,' after revictualling, should immediately leave the Colony. The Governor had already refused to accept the consignment of the vessel, or to pass her through the Custom-house, directing or permitting that the charge of her should fall upon the naval authorities at Simon's Town.

"He now, for the first time since his accession to office, assembled the Executive Council, which approved of all the measures he had taken, but concurred in opinion with him, that to dismiss the vessel or change her destination to England, or to any other Colony, was contrary to law, and beyond the limits of his authority. His Excellency, however, offered a pledge, that he would resign his office rather than assist in carrying out any measure for landing the convicts; whereupon a considerable portion of the Anti-Convict Association, seeing no farther reason to oppose the local Government, desired that the interdict against supplying the navy should be withdrawn, and tranquillity restored. Hitherto the British and Dutch colonists had acted with perfect unanimity, but in the discussion of this question, there arose a diversity of feelings and purposes likely to have a great effect on the future history of the Colony. Being outvoted in their endeavors to secure peace, several of the leading members of the British population receded from all further interference with the matter, still, however, keeping aloof from Sir H. Smith on the plea of want of confidence. The opposing party extended their operations, and included the navy and the whole body of the executive and judicial agents of the Government under their interdict. The object of this movement, which

was to remove the vessel from her anchorage, failed ; and the discomfort and annoyance occasioned to individuals created alienation in a community hitherto full of friendly feeling. When Her Majesty's ministers became acquainted with the disturbed state of affairs at the Cape, orders were forwarded, changing the destination of the 'Neptune' to Van Diemen's Island ; and directing that any military convicts arriving from India should be dispatched to England."

I have intentionally given another's account of this crisis of agitation, that I may not express my own opinion on this unhappy struggle, for such in many respects it has truly been ; and also that I may confine myself, at this point, to the simple record of what I know to have been the opinions of Mr. Montagu on this occasion, and of the trying position in which he was placed ; a position which he maintained with judgment, integrity, and honor ; and for which he has not yet received the credit of the Colony to the extent it is due.

Mr. Montagu was, throughout the whole of the convict agitation, unchangeable in the opinion, that the Colony was not adapted—whether in consideration of its extent and the difficult supervision of it, or of the numerous races by which it is inhabited—for the reception of convicts, even of the description suggested. But he was equally decided in expressing it as his judgment, that the 300 convicts sent by the Home Government should have been landed, and placed in the Amsterdam Battery, or some other place of security, as was in the first instance proposed. He considered it an indefensible act so far to yield to the popular demand, as to keep them on board the "Neptune ;" \* and when it was talked of peti-

\* The writer of this Memoir feels bound to state clearly and boldly



tioning the Governor to send away the convicts, Mr. Montagu at once promptly said:—"If you so petition him, petition him also to return his commission of Governor at the same time." It cannot be too clearly laid down, in recording the opinion of Mr. Montagu, that he disapproved entirely of the course pursued by the Association, when it advanced from legitimate proceedings to threats and intimidation. He believed that the extreme tone of defiance then resorted to, would tend not only to lower the Government in the estimation of the Colonists, but also to give daring to the savage tribes beyond the border; and thus expose the inhabitants to future wars, as well as foster a strong opposition spirit, and so be the cause of innumerable evils to which the Colony might be exposed for many years. He strongly thought, at the time, that by abstaining from more decided

what were Mr. Montagu's opinions on this painful question, without obtruding his own. At the same time he is far from wishing to be supposed to offer any remark on the measures of the Governor, Sir H. Smith, of whom he cannot too strongly express his highest esteem. Whatever might be the diversity of opinion as to the line of proceeding to be observed at this difficult juncture, few, and certainly not the writer, will attribute to Sir H. Smith any but the highest motives, or suppose him capable of acting at such a crisis, except with the fullest persuasion that he was maintaining the integrity and the dignity of Her Majesty's Government. The reply of His Excellency on the delivery of an Address to him by a deputation from the Anti-Convict Association, asking him not to receive the convicts, is fully in character with his uniform kindness and fearless address:—"He expressed the pleasure he always experienced in receiving the representation of the people. He had already shown the interest he felt in the welfare of the Colony. On the opening of his administration he had called on the people of the Colony for their confidence and support, and he knew no reason why they should be withdrawn from him on this occasion. This," said His Excellency, "is the anniversary of the Battle of Waterloo,—for four and forty years have I served my sovereign—I say it with pride,—and I would rather that God Almighty should strike me dead, than disobey the orders of Her Majesty's Government, and thereby commit an act of open rebellion."

measures, and by keeping the convicts on shipboard, there was evinced too great a desire to bend to, rather than counteract and remove the popular excitement. He believed that had a more determined stand been taken by many leading persons in the Colony, who quite held back from aiding the Government, that the object of sending away the convicts might have been effected, and yet the intentions of Her Majesty's Council have been withdrawn with as little detraction from the authority of the Crown as the circumstances of the case would permit. To recapitulate what has been said, he altogether differed with the policy of sending convicts to the Colony, circumstanced as it was, as to its extent, its nature, and its population; but, as one holding office under British rule, he conceived that the convicts should have been landed, lodged, and rationed, and kept under a strict guard, and been left for the Colonists to accept them or not, as they might, on further determination, think fit; and that so, much less serious consequences in a political point of view would have been the result.

So little, however, did Mr. Montagu conceive that he was in any way involved in the policy pursued in the matter, or that his assistance would be at all required whatever turn proceedings might take, that in September, 1849 (the very month of the "Neptune's" arrival), he left Cane Town, not, as some at the time unjustly insinuated, to avoid the crisis; but for the purpose of inspecting new lines of roads, in connection with his office as chairman of the Central Road Board.

In few questions of great import did he exercise a less prominent part than he did in this question; not that he took little interest in it, but because he

felt, that under circumstances, he was powerless : nor did he venture to take any decided step one way or the other, until it was proposed to remove the paupers, lepers, and other afflicted persons from Robben Island, for the purpose of placing the 300 convicts there. To this step he vigorously objected, and that upon the ground of the inhumanity which such a course would inflict upon the unfortunate inmates of that asylum.

Notwithstanding Mr. Montagu's almost neutrality, in an official and public point of view, in the convict question, an opinion obtained some amount of belief, that he was mainly instrumental in the proposal of introducing convicts into the Colony. To this he made no reply nor disavowal until an opportunity offered itself in the Legislative Council, June 15th, 1849 ; when, on being called on for the despatches regarding convicts, he furnished a succinct account of the part he had taken in the contested measure. This he did in the following speech before the Legislative Council :—

“ I have been called upon—and I am very glad that I have been,—to explain what part I have taken, as it is stated that I have been instrumental in bringing convicts to this Colony. If there were no other ground for my desiring to do so,—if it were not in deference to an opinion which I believe did obtain after the assertion was made at the public meeting last month, though I believe it does not now obtain, I should desire to make it for this reason—that if I avoided a proper opportunity of stating that I have not acted the part imputed to me in this matter, I should be leading the public to suppose that I had been an adviser of the Secretary of State, and thereby place myself in a position which does not belong to me. It is always painful for a public man to have to protect his public character ; but the maxim that public men are public property, is a good one, and often requires it,

and it is a maxim which is not deteriorated either by time or by use. Now, if this property is worth anything, it is worth protecting; and I conceive the interests of the public are as deeply concerned in defending the character of a public man from unjust and unworthy insinuations, or bare-faced calumnies, as in bringing to light, and to punishment, the delinquencies of the unfaithful and the fraudulent. It will, therefore, be for the public who have heard or given currency to the charge, to deal with it, and its inventors and promoters,—after hearing my defence—as truth and justice demand. The insinuations and calumnies to which I refer, and to which I feel perfectly free to refer, were made at a public meeting lately held in this town to petition against the introduction of convicts into this Colony. I received, the day before the meeting, a printed invitation from the committee who were charged with the preliminary arrangements, to attend that meeting; but I was otherwise occupied in my office, and was not able. If, however, I had not been prevented by public business, I should not have attended. I was, in fact, prevented by business; but I do not wish to give that as a reason for my absence. It was not my intention to attend the meeting, and I did not. If I had attended that meeting, I should have been placed in the awkward position of hearing myself insulted and calumniated, without any means whatever of defence. The chairman at that meeting opened the proceedings by remarking, that the Secretary of State would not have conceived the project of sending convicts here, if he had not received some representations from the Cape, to lead him to believe that the Colony was a good field for trying the probation scheme of convict discipline, which had been tried in Van Diemen's Land, and had failed. It was said of me at that meeting, that when it was proposed to erect a breakwater in Table Bay, that I was mad about that gigantic work, and wished to introduce convicts to construct it. I trust the Council will not suppose, for an instant, that I desire to boast in any way whatever, by alluding to the part I took in the Governor's despatch to the Secretary of State, which initiated the proposal for the construction of the breakwater. • That despatch was written in 1845, and signed by the Governor Sir P. Maitland; and if



he were here, he would, I am quite certain, defend me from this charge by making the statement which I am now going to make, namely, that every word of that despatch was written by me, and that the whole of the proposals it contains, emanated from me alone,—and as he approved them, and cordially co-operated with me, he signed that despatch. Now, in that despatch there cannot be found one single allusion to convict labor, or the introduction of convicts, or the employment upon it, of either Colonial or British convicts. It is only necessary to read that despatch to be satisfied, that the employment upon the breakwater of convict labor never once crossed my mind. On the 19th of August, 1846, I laid upon the table of this Council, Sir Peregrine Maitland's Breakwater Despatch, and Mr. Gladstone's reply, in which he proposed the temporary introduction of convicts from Great Britain for that work. Upon that occasion, I stated, as you will find it recorded in our Colonial Hansard (the Cape Town Mail,) of the 29th August, 1846, that it was quite clear from Mr. Gladstone's proposition, that these convicts were not intended to remain in the Colony, nor that this country should in the slightest degree be used as a Penal Settlement of Great Britain. The convicts, I observed, would be removed upon the completion of the work, and, in this view, convict labor would be a boon to the Colony;—and I closed my speech on that occasion with these words, which, if I had composed them for the express purpose of rebutting this calumny, I could not have expressed myself better. The words were as follow: 'I quite agree that they should be kept perfectly isolated, and that they should afterwards be removed from the Colony. No advantage that could be derived from a breakwater, would compensate for the evil likely to arise from a mixture of convicts with the population.' Now, considering that it was stated, that I was mad for a breakwater, my madness did not prevent me from attending to the best interests of the Colony. And when I call to remembrance that the speaker was at the time in question, and has been ever since in the Colony,—that he then took a very lively interest in the affair of the breakwater, that the despatches to which I have referred, were published in the Government Gazette, and were otherwise widely circulated, nothing but the exercise of



an extensive charity can acquit him of ignorance of these facts, when he made his charge against me. In support of the charge against me, at that Meeting, a pamphlet was produced, published in Van Diemen's Land, in June, 1847, upon the transportation question, a copy of which I now hold in my hand, and from which, at the Meeting, was read the following paragraph:—'In 1840, transportation to New South Wales entirely terminated. The rapid accumulation of convicts at home, suggested the necessity of finally arranging their future destination. Capt. Montagu, late Colonial Secretary, on a visit to England, found Lord Stanley involved in these perplexities. By their united skill and experience they constructed the scheme of probation, and the criminals of the whole empire were soon collected on these shores.' It was then stated, that it was in consequence of the failure, as represented by that pamphlet, of that probation scheme in Van Diemen's Land, that I induced the Colonial Secretary to send convicts here, that I might, by my management of it, prove that it could be worked out in this Colony. Now, when this statement was made, it was known full well, from the pamphlet quoted, that the Van Diemen's Land Probation scheme applied to convicts in gangs, in their first stage of punishment after conviction; and it was known, too, equally well, that the convicts proposed to be sent to this Colony, are to be ticket-of-leave men exclusively, to be dispersed among the colonists. Thus, then, it is evident, that the speaker could not himself have believed his charge against me upon this ground; because the convicts to be sent here under the proposed system, could not by possibility be brought under the probation system, which, it was stated, I wanted to experimentalize upon for my own aggrandizement to the injury of the Colony. But I have to complain in another respect, in regard to the pamphlet read from. Another pamphlet was published in Van Diemen's Land, upon the same subject, at precisely the same time;—both arrived in this Colony together;—both were equally accessible and available to the speaker; but both would not suit his purpose. That other pamphlet I now hold in my hand; it is in defence of the probation scheme, and points out the success of it; and it has this advantage above the pamphlet

produced, namely, it is verified by the signature of a gentleman residing in the Colony, who, I believe, is a justice of the peace there, and who has a large stake in the question; whereas the pamphlet used at the meeting, is not verified by anybody, being an anonymous production. I will read you a few lines from the pamphlet in reference to the scheme:—

“ ‘ If I believed immorality or contamination was spreading among the free inhabitants of this island, I would be one of the very last to advocate a state of things supposed to lead to such sad results; but, on the contrary, it appears from all the information within my reach, that the Colony is advancing religiously, morally, and economically, and I think it would be dangerous at present, to disturb a state of things working well—unless we were certain we had something better to substitute in its placé. Theory and assumption can scarcely, with safety, be allowed to supplant known results. No man feels more than myself the importance of the subject now under discussion, and I trust it will be seen that my conclusions have not been arrived at hastily or presumptuously, and that I have taken pains to collect truths, upon which to found my conclusion.

“ ‘ I have been in this Island twenty-three years—the greater portion of which time has been passed by me in agriculture and sheep-farming. At this period there are under my management 40,000 acres of land, and some 17,000 sheep, which I merely allude to, that my opportunities of observation may be known. I have a considerable family connexion, all deeply interested in this Colony’s well-being. My statements are grounded upon information kindly furnished by gentlemen, proprietors in the cases named, from statistics readily furnished by the Government, and from my own knowledge. I have taken pains to avoid error, and I trust the facts collected may not be without some use. Claiming only, for myself, correct intentions, and an anxious desire to serve my country, I respectfully submit what I have written to the public.’

“ My sole object in producing this pamphlet is, to point out the unfairness of proceeding in bringing forward that one only which suited the purpose of prejudicing and calumniating me.. I desire to offer no opinion upon its accuracy or

otherwise, nor would it be proper for me in this place to state, to what extent Lord Stanley either adopted or rejected my suggestions for the probation scheme. It is enough for me to know, and which I have learnt from a Parliamentary Blue Book which accompanied the despatch to Sir H. Smith, announcing the intention of sending exiles to this Colony, and which was placed upon the table of this Council in November last, that the failure of that scheme has, in a very able despatch from Lieut.-Governor Latrobe to Earl Grey, in 1847, been accounted for by the imperfect manner and the imperfect machinery with which it was worked. He states, that it had not had a fair trial in that Colony, and he alludes more particularly to the inefficiency and unfitness of the subordinate agency employed in the working of the system, both as regards superintendence and discipline, the neglect of proper classification—and the state of listless idleness in which large bodies of convicts were frequently left, for want of proper employment—the latter vice of itself sufficient to account for and even generate all others. If I had been desirous of bringing my views, and the result of those views, in regard to convict management and discipline, under the Secretary of State's notice, for the purpose of my own aggrandizement, or to induce him to send British convicts here for me to try my experiment upon, I had only to call his Lordship's attention to the convict system which I have introduced into this Colony, and the results it has produced. To those I will now briefly refer. On my arrival here in 1843, I perceived that what was called convict discipline here, was destructive in every point of view. The amount of labor lost by mismanagement was immense—the expense enormous—with no results. Reformation was not thought of—instruction was not attempted—crime was rewarded by the sentences of the courts of law, and the demoralizing example in all the towns and villages of the Colony to the rising generation was alarming. I proposed an entirely new system, the principles of which were, the enforcement of the law by adequate punishment—the reformation of the criminal—and the mitigation of the period of punishment for good conduct only, with small pecuniary deposits in Savings' Banks. I established four road stations, at which the con-

victs were concentrated, with the necessary officers and religious instructors; and on the 31st December last, the system had been in full operation for five years, the road stations having been reduced to two, with from 240 to 280 convicts at each. During that time the aggregate number of men, without deducting the sick, cripples, or those in solitary confinement, had averaged 219 working days in each year, in addition to the time employed in instruction, whilst the annual average expense of the whole department, above the value of the labor performed on the public roads, was only 920*l.* a-year. The number of convicts under my system, during those five years, has been 1,560, of whom there remained 532 on the 31st December last, the remainder, 1,028, having been discharged, many of them with a mitigation of the original sentence, and of whom 537 had deposits in the Savings' Banks, for good conduct, which they received upon being discharged, amounting to 1,452*l.*, whilst 365 others were, at that date, at the stations, whose deposits in the Savings' Banks amounted at that time to 503*l.*; the maximum amount any convict had received, being 18*l.* 14*s.* 3*d.*, the minimum 6*s.* During the same period, but 69 convicts out of the whole number had been punished, by the visiting magistrate, with corporal punishment, or extension of sentence; and the re-conviction of those who had been discharged, for the whole period was under ten, most of whom, having been sentenced to periods under six months, had not been long enough under discipline and tuition to be benefited by them; whilst those who had deserted during the same period, and had not been recaptured, amounted to fourteen only, the greater part of whom were Kafirs, Fingoes, or other Native Foreigners, and all this had been effected without the aid of a military guard. The mortality amongst the convicts has been at a much smaller rate than in any other part of the Colony. In addition to the punishments I refer to, by the visiting magistrate, the superintendents of the stations have the power to inflict punishments for minor offences to an extent not exceeding three days solitary confinement, and these have been very trifling—not exceeding, upon the average, seventy or eighty cases during each year. These results have been obtained with no greater



inducements to good conduct, than an adequate allowance for a working man of the plainest food—no indulgences whatever having been allowed, except on the special authority of the Government, or the prescription of the medical officer. Above all, the principle I have been careful to instil into the minds of the convicts, is, that their personal, their individual reformation and welfare is cared for, and that no expediency is allowed to interfere therewith. That is the hinge of my system, and in no instance have I allowed any convict to be placed in charge of another convict. The results of my system are manifest, and are acknowledged by the whole Colony. I believe there is not a disapproving voice, for even those who were most sceptical at the commencement have admitted to me their perfect conversion, and the fact that the men who had been discharged have returned to society more industrious, more sober, and better workmen, has been fully established by the eagerness amongst the farmers and others to obtain their services, and for which these men are enabled to secure higher remuneration than others of their class, who have not, as convicts, been subjected to my road and convict system. Now, if the charge were true, that I have been trying to effect my own aggrandizement, or elevation, by parading my superior attainments, as it has been designated, in convict discipline, I had only to take the necessary steps to bring every year to the notice of the Secretary of State, through the Governor, the successful working of my system here. But you will find, upon perusing the bundle of despatches written since 1842, which I have just laid upon the table, that with the exception of the result of the first two years of that system, I have not written one word upon the subject. The Council will probably have remarked, when I just now read Lord Grey's despatch of March last, respecting the opening of the<sup>e</sup> Michell Pass, that his Lordship was anxiously awaiting the report Sir Harry Smith had promised him in December last, upon the five years working of my system, and which his Excellency had then called upon me to prepare. I have not, however, to this moment, completed that report, although it is in progress. If my desire for distinction has been such as has been imputed to me, no one will believe



that I would have allowed six months to elapse without making that report, particularly after it was known, at the time in question, that it was contemplated to send convicts to the Cape of Good Hope.

“ Thus much I have been compelled to say, to disprove the charges made against me; and to this I will merely add, that I have never written, directly or indirectly, to any Secretary of State, since I came to this Colony; for, excepting through the Governor of the Colony, to do so by an officer of my subordinate situation, would be subversive of the rules of the service, and destructive of that confidence which is essential for the public interests between a Governor and his Colonial Secretary. In the most unqualified and emphatic manner, I can therefore state, that neither to any Secretary of State, nor to any Under Secretary of State, nor to any person in the Secretary of State’s department, nor to any person from one end of the earth to the other, have I written, either publicly or privately, one single word regarding convicts being sent to this Colony, from Great Britain or any where else, until within the last three weeks, when I mentioned, in a private letter to a friend, that the expected arrival of the convicts was occasioning great excitement throughout the Colony. And here I will pledge myself, from my knowledge of the characters of the men, as well as from the unreserved confidence with which I have been treated by the whole of them, that neither of the Governors, under whom I have served in this Colony, namely—Sir George Napier, Sir Peregrine Maitland, Sir Henry Pottinger, and Sir Harry Smith, has written one word about convicts being sent from Great Britain to this Colony, beyond what you will find in their official despatches, which I have just now laid on the table, before the month of November last, when the proposal in question was first received. I again pledge myself to this Council, that they are all as innocent of being instrumental in the measure of causing convicts to be brought here, as I am, or any gentleman in this room. But, notwithstanding this full and unqualified denial of the charges against me, it is but right I should advert to a passage in the despatch of March last, which I have this day read to you, in which allusion is made to a communication

convict management, as it is possible, nay, even probable, that the success of my system here, has, although not communicated to the Secretary of State since 1846, by the Local Government, come under his knowledge in some other manner, and may have been one of his inducements for selecting the Cape for his experiment. But, surely no one will blame me for that, for that is no act of mine; and if I had not done that public duty which was intrusted to my sole control and direction, to the best of my ability, I should have been justly chargeable with a neglect of duty. If, however, that success has so attracted the Secretary of State's notice, as to have led to the present measure, I alone am the cause of it, from having proposed the principles,—and from having, with so much success, directed the working of the system through every stage of it;—and consequently I must confess—and I cannot better confess it than in the unequivocal words of Virgil's hero—'Me, me, adsum qui feci, in me convertite ferrum.' Upon perusing the despatches before the hon. members they will learn that several proposals have been made by Secretaries of State during the last four or five years to introduce convicts here, of which the public are not aware, and that every such proposal has been rejected by the Local Government." \*

The report of this speech, together with a letter written by Mr. Montagu to the Governor, explanatory of the same, was transmitted to the Secretary of State for the Colonies, and called forth from him the following just and plain avowal:—"I have received your despatch of the 25th of June last, forwarding a communication from Mr. Montagu, the Colonial Secretary, together with a speech made by him in the Legislative Council, respecting the part which he had been supposed by some to have taken in advising the introduction of convicts into the

\* The name of the member of the Legislative Council who moved for the despatches has been intentionally withheld; and such parts only of Mr. Montagu's speech are here given as serve for his explanation, as to how far he was involved in the projected introduction of convicts.

Cape of Good Hope. Mr. Montagu certainly never did tender such advice. But he adds that he is more especially solicitous to satisfy me that he had done nothing to lead the public to suppose that he was an adviser of the Secretary of State; or had influenced the course of Her Majesty's Government. You will assure Mr. Montagu, in answer, that I am perfectly satisfied that he would never, to himself any character which did not duly belong to his office, nor conduct himself otherwise than consistently with that strict propriety which has always distinguished his public service."

## CHAPTER XIII.

## REPRESENTATIVE INSTITUTIONS.

PROJECTED CHANGE IN THE CONSTITUTION OF THE COLONY.—VAST IMPORTANCE OF THE QUESTION TO THE COLONISTS.—MR. MONTAGU'S VIEW OF THIS QUESTION.—APPLICATION OF THE COLONISTS OF THE CAPE OF GOOD HOPE TO THE HOME GOVERNMENT FOR A REPRESENTATIVE FORM OF GOVERNMENT.—EXTRACT FROM A DESPATCH TO SIR H. POTTINGER FROM THE SECRETARY OF STATE FOR THE COLONIES WITH REFERENCE TO THIS APPLICATION.—SIR H. SMITH, ON HIS RETURN FROM THE KAFIR WAR, MARCH, 1848, TAKES STEPS TO FURTHER THE NEW CONSTITUTION.—HIS MINUTE TO THE JUDGES AND MEMBERS OF THE EXECUTIVE COUNCIL, ASKING FOR ANY REMARKS ON AN ACCOMPANYING MEMORANDUM AS TO THE FORM OF REPRESENTATIVE GOVERNMENT.—MR. MONTAGU'S MEMORANDUM ON THE SUBJECT.—DRAFT OF A CONSTITUTION PREPARED BY THE BOARD OF TRADE AND PLANTATIONS.—THE VACANCIES IN THE OLD LEGISLATIVE COUNCIL FILLED UP.—MEETING OF THE NEWLY FORMED COUNCIL.—RESIGNATION OF THE FOUR ELECTED MEMBERS.—REMAINING MEMBERS APPOINTED A COMMISSION BY THE GOVERNOR.—THEIR SCHEME FOR A NEW FORM OF CONSTITUTION.—DRAFT OF THE FOUR RETIRING MEMBERS.—CHIEF POINTS OF DIFFERENCE IN THE TWO SCHEMES.—ADDITIONAL INSTRUCTIONS.—ORDER FROM THE GOVERNOR.—ITS RESULT.—MR. MONTAGU'S CONDUCT ON THIS OCCASION.—ARRIVAL OF SIR G. CATHCART AS GOVERNOR, AND C. H. DARLING, ESQ., AS LIEUTENANT-GOVERNOR.—MR. MONTAGU ADVISED TO SEEK REST AND A RESTORATION OF HEALTH IN ENGLAND.—VINDICATION OF MR. MONTAGU'S PROCEEDINGS DURING THIS CRITICAL PERIOD.—HIS FIRMNESS AND HIGH SENSE OF DUTY.—PETITION FOR HIS REMOVAL FROM OFFICE.—SECRETARY OF STATE'S REPLY.—REVIEW OF THE PART TAKEN BY MR. MONTAGU ON THE CONSTITUTION QUESTION.—CONCLUDING REMARKS AND EXPRESSED WISHES ON THIS PERIOD OF THE POLITICAL HISTORY OF THE CAPE OF GOOD HOPE.

The *questio vexata*, which arose at this time at the Cape of Good Hope, regarding what would be the

most efficient scheme for the future Constitution of the Colony, like the contemplation of all great changes, served to throw the community into a discordant expression of opinion and popular agitation, which existed for full three years after the settlement of the Convict Question. The measure of an utter change of constitution, from a very close oligarchy with no voice of the popular element in it, to one of as open representation as could well be granted, was felt on every hand to be a measure of vast magnitude. Looking at it with the most sober and unbiassed view, it was a critical experiment, one that involved not only momentary fluctuations, and passing approval or disapproval of particular parties, but the whole future interests and most distant prospects of the Colony. It was a vital question,—its results would not be fully seen by the generation which witnessed its introduction, but would extend with accumulating importance on those who should come after, when the party feelings and party voice which contended in the struggle should be forgotten and still; and what was only experiment had become realization in its mighty issues.

Such a question allowed no one of any public spirit to be inactive. This particular juncture, in the Colony's history, was the very *cardo rerum*, the turning point of its position for future ages. All energetic minds felt this; and all applied themselves, however variously, to the struggle. Had Mr. Montagu consulted his own ease, or personal popular standing, he might have been carried on merely by the stream of events; but this he did not and could not do. He looked upon the vast consequences at stake; he discerned that on many points he must throw himself open to popular misapprehension; but he took his



position and maintained it resolutely, bracing up steadfastly all the firmness of his character, and the vigor of self-consciousness in his integrity, to enable him to stand the opposition to which he foresaw he should be exposed. He believed with many, the experiments to be tried at the Cape to be hazardous. From his extensive and matured knowledge of the Colony, he conceived that changes, more gradual than those proposed, were not only desirable, but expedient. The question with him was not whether the Cape should have its free constitution or not,—for, for Representative Institutions he was a steady advocate, and an early promoter;—the questions with him were to what extent the representative bodies should be elective? and when would be the fittest moment for their introduction? Duty was the leading point of his character; where this called he followed, and where it pointed thither he went readily, manfully, fearlessly. So long as the nature of the Constitution was an open question, and individual as well as public opinion was invited by the Home Authorities, so long he boldly expressed his convictions as regarded the meditated changes; and so long he fenced up his opinions and convictions by all the righteous means in his power; but, when the final decision of Her Majesty's Government was positively expressed, no functionary would have been more ready than he to accept the ratified will of his Sovereign, and to have exerted all his energies to give it the most strenuous effect. The constitution struggle is now passed; and at the close of it we can look at the prominent actors in the scene more generously, more dispassionately; and all reasonable and good men will be better prepared now, when the first act of the political contest is at end, to judge the

contending parties with greater fairness. As soon as this shall be done, Mr. Montagu will be reinstated by many, who for awhile and on certain points differed from him, in that high position of esteem, veneration, and honor, which before the late struggles he universally obtained.

To set this trying period in the history of the Colony fairly to view, it will be necessary to go back a little, and run over the leading heads of events connected with the measure of instituting a representative form of government at the Cape.

During the administration of Sir H. Pottinger and even previously, applications had been addressed to the Sovereign for admission into the Legislative Council of a certain number of members elected by and representing the community. To these applications, the Secretary for the Colonies replied in terms which evinced that he and Her Majesty's other advisers would give the question of a Representative form of Government for the Cape Colony all the support in their power; inasmuch as their line of policy, and "their strongest prepossessions" were in favor of that system of colonial polity." At the same time the tone of his despatches evidenced that he fully estimated that the question of the exact nature of the Constitution for the Colony was one beset with no slight difficulties. An extract from a despatch to Sir H. Pottinger, dated November 1846, will very clearly show what were the views entertained by the Secretary of State for the Colonies, on the subject at that time:—

"I turn to a totally different subject, on which I hope to receive the benefit of your advice and assistance so soon as the settlement of the affairs of Kafraria shall have left me leisure for the purpose. I advert to the applications

which have been addressed to Her Majesty for the establishment of a Representative Form of Government in the Colony of the Cape of Good Hope.

“ Her Majesty’s Government entertain the strongest prepossessions in favor of that system of colonial polity, and will be prompt to avail themselves of any opportunity of extending it to the British Settlements in Southern Africa. Among the papers printed by order of the House of Commons in the last session of Parliament, was a return of all applications from the colonists of the Cape of Good Hope for a Representative Government, and of the answers thereto. I enclose a copy of that paper. In it you will find a despatch from Lord Stanley on the subject, expressing a general concurrence in the opinions that the proposed change would be desirable, but pointing out such difficulties as had occurred to him on the subject, and proposing various questions to which he desired an answer. No such answer has ever been received at this office; and I should wish you, in your consideration of the question, and in your report on it, to advert attentively to the observations made by Lord Stanley in that despatch pointing out how far they may appear to you to admit of a satisfactory answer.

“ Since the date of Lord Stanley’s despatch, a difficulty which then existed in a comparatively slight degree has, I fear, been much enhanced. I refer to the exasperation of the hostile feelings towards each other, of the different races by which this part of Africa is inhabited, not only by the contest now in progress, but also by the emigration of the Boers, and their recent attacks on the Tribes to the north-eastward of the Colony.

“ Without anticipating the views which you may form in communication with the colonists best qualified to afford you their aid, I, for the present, confine myself to the statement that, on a question of this nature, some difficulties may be wisely encountered, and some apparent risks well incurred, in reliance on the resources which every civilized society, especially every society of British birth or origin, will always discover within themselves, for obviating the dangers incident to measures resting on any broad and solid principle of truth and justice.

“On such a basis, as I am convinced, rests the policy of intrusting the remote dependencies of a metropolitan state with the largest powers of self-government, in whatever relates to their internal or local affairs.

“I should, therefore, not be unwilling, or afraid, to act on that policy, even though I could not distinctly perceive how some conflicting interests could be adjusted under it, or how perfect arrangements could be made for the prevention of injustice to some members or classes of the colonial society.

“Of course, however, to whatever extent those inconveniences can be avoided by previous inquiry and foresight, it is our duty to avoid them; and I shall rely upon your aid in the discharge of that duty, in reference to any representative government which it may be found expedient to establish in the Colony of the Cape of Good Hope.”

When Sir H. Smith returned from the frontier in March 1848, he turned his fullest attention to the Colonial Secretary's despatch to his predecessor Sir H. Pottinger. The steps taken by him during his absence at the seat of war, and the views he liberally entertained at the time, in reference to representative institutions being granted to the Colony, may be ascertained from the following preamble of his letter to the Secretary of State for the Colonies.

“MY LORD,—The subject of a Representative Assembly in this Colony, to which my attention was drawn by your Lordship's despatch of the 2nd November, 1846, has engrossed my fullest consideration, as well during my recent long journey, the leisure moments of which induced thought to revert to subjects of great interest, as more especially, since my return.

“During my absence, I directed the Attorney-General, Mr. Porter, an able lawyer, and a well-educated and liberal and strong-minded man, to record his opinion upon the several points which I had previously discussed with him. This ably drawn document I enclose. It has afforded me, as I feel it will your Lordship, much local information; has



exposed some grounds of argument upon which I was previously sceptical; fully agrees in all the main points of this important subject — one involving the great question: — ‘Would a Representative Assembly benefit the Colony?’ and practically points out the means of obviating many trifling difficulties, which offer themselves to the minds of many. It has, therefore, confirmed me in my original idea, that the form of government which I shall hereafter propose, is the one best calculated to promote the interests of the people of the Colony, and of our country. I have ever been a convert to the opinion, that so soon as it is practicable, our Colonies should be placed upon a footing of equality with the parent country, as tending to render them far sooner, and to a much greater degree useful to Her Majesty’s dominions generally, by adding to their power and mutually cementing their union. There is a current, conducting to liberal measures, which is progressing quietly, but irresistibly, and can neither be stemmed, nor ultimately averted; and, as the Attorney-General remarks, ‘no privileges are so sure to be abused, as privileges wrung from reluctant hands.’

“All political systems, as they progress, and as the elements of improvement are at work with incessant vigor and increasing energy, require revision. The Legislative Council is regarded in the Colony as a failure; and I therefore propose a plan which I think a bolder and at the same time a wiser one; and as all Governments are instituted for the benefit of the people, I do not see, taking as our example the parent country, whose first House of Commons was as crudely composed as this will be, that this measure can be regarded as an experiment. It will certainly be one, from which, when once adopted, we cannot recede; but we have no right to suppose that we have lost every portion of the manly virtues by which our ancestors were characterized. If, therefore, the formation of a Representative Government is to be regarded as an experiment, it is one founded on the precedent of the British Constitution; and if we establish it, we have no resource but to give it full scope, taking care, however, so to frame the charter, that the evils may be avoided and the good retained. The effect, I trust, will be, to elevate the habits, tastes, and moral feelings of the people,



by giving them a voice in their own Legislative Representation; and by these means to render gradual improvement conducive to the happiness of society."

Nearly simultaneously with this despatch to the Secretary for the Colonies, Sir H. Smith addressed the following Minute, marked confidential, for the consideration of the members of the Executive Council, and the Judges of the Supreme Court:—

"By the following extract of a despatch from Earl Grey, of the 2nd November, 1846, to my predecessor, of which a copy was furnished to me, previously to my leaving London, in part of my instructions, you will observe that his Lordship is desirous to establish a Representative Form of Government in this Colony, a desire in which, I candidly admit, I am much disposed to agree. There are, without doubt, many difficulties. These, however, are, in my mind at least, far exceeded by the ultimate advantages which will be derived. I therefore send for your perusal a Memorandum, which I requested the Attorney-General to draw up as a record of his opinion for my consideration, and I also annex the preamble of my despatch to Earl Grey, in order that you may be in possession of my present views upon the subject, and I shall gladly avail myself of such remarks as you may desire to offer.

"Political measures are usually achieved by their course happening to coincide with the interests of the most powerful portion of society, as evinced by the resolutions passed at a public meeting of the inhabitants of Cape Town and its vicinity, held in the Commercial Hall on the 24th of August, 1841, for the purpose of petitioning for a Legislative Assembly, and which, with the correspondence thereon, and the course then, and subsequently, adopted, has drawn Earl Grey's attention to that form of Government in this Colony. Your local knowledge of men and things will enable you to form a practical opinion, as you will have observed how the morals and the minds of the people have been subjected to a succession of influences; some accidental, and caused by that curse and scourge—a local war; others regular and

arising from that progressive improvement in the world which a long peace has produced. Hence it becomes our duty to observe what sources of improvement have been neglected—what evils have been engendered—and so to recommend the adoption of that form of Government which is best calculated ‘*for the greatest happiness of the greatest number,*’—reasoning upon the data, and drawing out conclusions from the premises before us, all that may justly, and without bias or prejudice, being drawn from them, and nothing which may not.”

In consequence of this invitation from the Governor, the Attorney-General, the Colonial Secretary, the Auditor-General, and the three Judges, severally furnished his Excellency with a careful and well-digested Memorandum of their respective views on this important subject. That drawn up by Mr. Montagu alone claims our attention in this present work. This Memorandum, which Sir H. Smith designated at the time as “clear and comprehensive,” as “carrying conviction with it,” and being “conclusive,” will fully unfold what were, at that time, Mr. Montagu’s opinions; and also exhibit the belief he then entertained, that “no more favorable time could be chosen for the establishment of Representative Government.”

“In obedience to the instructions of his Excellency, the administrator of the Government, communicated to me in a letter from his private secretary, of the 21st ultimo, I have the honor to submit the following remarks on the important subject to which they refer, viz., the proposed establishment in this Colony of a Representative or Constitutional Form of Government.

“In the extract of a despatch from Earl Grey, dated the 2nd of November, 1846, which is annexed to his Excellency’s Minute, it is stated that Her Majesty’s Government entertain the strongest prepossessions in favor of a representative

system of Colonial polity, and will be prompt to avail themselves of any opportunity of extending it to the British settlements of Southern Africa.

“In the same extract Earl Grey alludes to a despatch from Lord Stanley on this subject, in reply to a petition for a Representative Assembly addressed to the Queen, by the inhabitants of Cape Town in 1841. In that document, the then Secretary of State, while expressing his concurrence in the desirableness of conferring on the colonists the benefit of a Representative Government, points to the difficulties, ‘both physical and moral,’ arising from the peculiar circumstances of the Colony, which appeared to his mind, at least for the present, as a bar to the introduction of free institutions, in respect both to Executive Government and Legislation. To the request for further information then made by Lord Stanley, with a view to obviate or modify the difficulties that had occurred to him, and which was transmitted to the petitioners by Sir George Napier, in the form of distinct queries, no answer was ever received.

“To these inquiries Earl Grey draws his Excellency’s attention, and requests, that, in his Report on the subject of a Representative Government for the Colony, he advert attentively to the observations contained in Lord Stanley’s despatch.

“It appears to me, therefore, that I shall best serve his Excellency by abstaining from all theoretic or abstract discussion on general principles, of the good or evil likely to result from the establishment of a Representative Form of Government, in this or any other dependency, and by endeavoring, to the best of my ability, to furnish him with such information on the points referred to, as will enable him to form some estimate of the extent and character of the difficulties which had occurred to Lord Stanley, and to which Earl Grey so pointedly refers.

“To facilitate reference, I shall observe the order in which the objections have been made and commented on in the despatch.

“In all extensive British Colonies, observes Lord Stanley, which possess Representative Assemblies, a problem of great difficulty has arisen, of which a complete solution has not

yet been found. It is this—By what means can the remote rural districts have preserved for them, and their interests, a due share of consideration in the proceedings of the Assembly? The capital town, remarks his Lordship, is necessarily the seat of the legislature, though the residence of a comparatively small proportion of the inhabitants. The interests of the metropolitan population are often in conflict with those of the more remote colonists, whilst, from the facility of attending the sessions of the legislature, the inhabitants of the capital constitute an undue proportion of the representative body, compared with their relative wealth and numbers.

“That the controlling legislative influence, here apprehended, is not likely to accrue to the constituency of Cape Town and its immediate vicinity, may be safely inferred from the following facts. The population of Cape Town and its environs exceeds 30,000 souls, and is, as nearly as may be, one-fifth of the permanently resident population of the whole Colony. The aggregate value of fixed property within the limits amounts to 1,740,592*l.* whilst that of the whole Colony, as assessed for road and municipal purposes, is 5,666,561*l.* If, therefore, any arbitrary number be assumed to express collectively the representative value of the franchises of the several electoral districts, into which the Colony may be divided, and the number indicating the proportionate value of the electoral franchise in any one district be determined on the principle that both wealth and numbers are to have their appropriate share in the representation of the Colony, whether they belong to rural districts or to towns, it may be confidently asserted, that no amount of representation which such a process would assign to the constituency of Cape Town and its environs, will ever be asked by it or conceded to it.

“To neutralize the metropolitan influence in the American Colonies, it has been customary, Lord Stanley observes, to bestow on a small number of people, residing on a large area, an equal share in the representation of the country with a much larger number of people, residing on a comparatively contracted space. Considering the capability of the Colonies in North America of maintaining, ultimately,



a dense rural population, subsisting more on agriculture than pastoral pursuits, and composed, in consequence, to a large extent, of mechanics and mere laborers of the soil, I am not prepared, in theory, to dispute the wisdom of the maxim, though I am ignorant of its practical effect. In such a community, both wealth and intelligence as well as population will steadily progress, and hence the combined ratio of population and territorial area, spoken of by Lord Stanley, is not likely to disturb, seriously, the balance between rural and metropolitan influence. But to apply it to this Colony would, in my opinion, be subversive of every principle of a just and well balanced representation of its several interests. It would, in effect, be to claim consideration for uninhabited Karroos — barren wastes — and the extensive mountain ranges which characterize vast tracts of territory included within the bounds of this Colony. In corroboration of this I would draw attention to the following return of population, fixed property, land occupied, &c., in the district of Clanwilliam, which may now be considered as fully occupied, being comparatively an old district. The population amounts to 9,916 souls; the extent of land cultivated is 4,600 acres; depastured 4,595,400 — Karroo and mountain wastes, unfit for cultivation or pastures, 6,680,000. The aggregate value of fixed property is 192,828*l.*, and the average annual produce is 21,741*l.* The proportion of population to every 1,000 acres of the area of the division is .85, and of fixed property, 1.67.

“To this division, occupied by a sparse and all but nomadic population,—generally unacquainted with the first rudiments of education, and purely pastoral in their habits and pursuits,—there would be assigned a larger share of representation than to that of Stellenbosch, which contains a population of 17,450 souls,—has fixed property to the amount of 627,641*l.*,—yields an annual average produce in wine, corn, and fruit of 121,250*l.*, and in which the proportion of population and fixed property, to every 1,000 acres of area is 10.15, and 788*l.*, respectively. These two divisions are taken at hazard; the same remarks are equally applicable in contrasting all the pastoral with the agricul-



evident, that to base the representation of the Colony on this principle, adopted, no doubt with great propriety, in the Canadas, would be to inflict evils, on any form of Representative Government, far more formidable and baneful than any that could possibly arise from the preponderating influence which wealth, intelligence, and proximity to the seat of legislature, might confer on the Metropolitan District.

“On this head, Lord Stanley further remarks, that as Cape Town is barely accessible to the Eastern and Northern Districts, unless at an amount of fatigue and expense to which few could be expected to subject themselves, merely from a regard to the interest of the public service; whilst their absence from their homes might not only be a great personal sacrifice, but, at the same time, expose their families and properties to the predatory incursions of the bordering tribes, it would, as a general rule, be irrational to expect the attendance of any members at a House of Assembly, except those resident in Cape Town, and its immediate vicinity. This would, ultimately, lead to the selection of members being chiefly limited to that locality, who would be found rather consulting the interests of the capital, than expressing the opinions, and advocating the claims, of the Country Districts.

“On the views entertained by his Lordship on this head, I would remark generally that men of integrity, wealth, and intelligence, whether resident in the constituency they are elected to represent or not, are those best calculated and the most likely to maintain a just balance between conflicting interests, because they cannot fail to exercise a salutary control over the proceedings of such an assembly, whilst their opinions at the same time will not fail to have weight with the other branch of legislature, which, I presume, is contemplated, as also with the Executive Government. In a country such as this, having neither nobility nor gentry,—whose landed proprietors are, at the same time, its peasantry,—it is natural to expect that such men will most abound where capital, industry, and enterprise are most concentrated,—that is, the metropolis. But it is by no means the case that they are exclusively to be found there. And that such

men will not be unwilling to undertake this important public duty, even from the remotest districts, is, I think, more than presumable, when it is remembered, that of seven gentlemen residing in the country districts, who were lately invited to a seat, as un-official members, in the Legislative Council, none of them who declined the invitation did so on any of the grounds here referred to by his Lordship. Of the gentlemen thus invited, four belong to the Eastern Districts, and reside at distances from the metropolis, varying from five to six hundred miles.

“ But it may be deemed necessary to explain more precisely, in respect to the difficulties here alluded to, and the extent to which they are likely to affect the constitution of the assembly, and consequently its usefulness. I will, therefore, take leave to remark briefly on the distance from the metropolis of the several Fiscal Divisions (whose boundaries I assume would be those of the electoral districts), and the facility they possess for postal communications or personal conveyance.

“ Irrespective of the two new divisions of Albert and Victoria, formed of the territory which was annexed by his Excellency's Proclamation of the 23rd December, 1847, the Colony consists of eighteen Fiscal Divisions, each of which is subdivided into Wards or Field-cornetcies, varying in number according to its extent. Of these eighteen divisions we may safely enumerate ten as the number to which ‘ distance from the seat of legislature, the impervious nature of the intervening country,’ and other obstacles, referred to in Lord Stanley's despatch, properly apply. And in some of them, at least, it must be acknowledged, that these difficulties are by no means to be disregarded, when viewing in all its bearings the important question of a constitutional Government in this Colony. They cannot fail to exact no small degree of personal inconvenience and individual sacrifice on any member proceeding from his own district to represent its interests in the House of Assembly. But it is to be observed, that of the ten divisions to which these remarks refer, four lie along the sea-coast, and are in constant communication with Cape Town by means of steam, and three are at no inconvenient distance from sea-ports,

to which members could resort in order to avail themselves of the same conveyance. In regard to the remaining three, it must be acknowledged, that whatever route is taken, and whatever improvements may be effected in the internal communications of the Colony, no member can take his seat in the assembly without incurring great personal sacrifice and inconvenience.

“ But that such sacrifice and inconvenience will be cheerfully submitted to, provided a Representative Government eventually create such interest in the minds of the colonists as other institutions have done with which they have been long familiar, may be at once inferred from the fact that tedious and fatiguing journeys are annually undertaken by the Ministers and Lay-Elders of the Dutch Reformed Church, to attend the meetings of their respective Presbyteries,—whilst once in five years they assemble at Cape Town, from every part of the Colony, to hold a meeting of Synod, or General Assembly of the whole Church, from which, it is somewhat remarkable, there are seldom, if ever, a sixth part of the members absent at any one time.

“ In regard to the means of communication between representatives and remote constituencies, post-office establishments have been formed in every town and village in the Colony, and the mail which is now dispatched twice a week from Cape Town to the Eastern Frontier, will next year, on the completion of the main line of road between Cape Town and Graham’s Town, cease to be carried on horseback, and will be conveyed in carriages, effecting the distance in about sixty hours. On this head, therefore, there is no formidable difficulty to be encountered; the more so, should the Assembly adopt the rule now observed in the Legislative Council, of publishing every Draft of Ordinance, or Bill, in the ‘Government Gazette,’ for some given time previous to the second reading, which decides on the principle.

“ With these remarks on the physical difficulties to be encountered in forming a Representative Government with the seat of legislature in Cape Town, I proceed to consider those of a moral kind, which Lord Stanley apprehends so likely to arise, in the exercise of free institutions, out of the

diversity of race, origin, and language so characteristic of this Colony.

“As it regards the difficulties here referred to, diversity of race in this Colony is synonymous with that of color, and it is not to be denied, that though this distinction has ceased to be the badge of civil disabilities and moral wrongs, yet it must be owned that it still forms a bar to social intercourse and intimate relations, far more formidable than any arising either from diversity of origin, language, or religion. But I am not prepared to say, that other evils would arise out of, or that these would be aggravated by, the exercise of free institutions, provided, as the Attorney-General very properly remarks, the elective franchise be based on such a moderate qualification, as will enable the intelligent and industrious man of color to share with his fellow-colonists of European descent, in the privilege of voting for the representatives of the people. It is true, the colored race form, to a large extent, the operative class in this Colony, but I do not apprehend that, under the plea of determining the relation between master and servant, or of regulating by law the relations between capital and labor in this Colony, any attempt would now be made to indulge in antipathies, or gratify prejudices, arising out of this obnoxious distinction.

“But on this head the practical result of the exercise of Municipal Government will best enable his Excellency to form a sound and intelligent opinion. By the Ordinance No. 1, of 1840, which creates Cape Town a Municipality, and appoints Commissioners and Wardmasters, to be elected by the resident householders, for its future government, the Board of Commissioners is invested with large powers both to direct and control. With the concurrence of the Executive Government, by-laws may be passed for every purpose of general utility, which shall appear to require such regulations within the Municipality. Yet it is well known, that though in the time of slavery there were stringent regulations, which had exclusive reference to the colored class of inhabitants, no attempt has ever been made, or even the faintest wish expressed by this popularly elected board, to revive the obnoxious regulations of former times, or to pay

“ I would also bring to notice another fact illustrative of the social position of the colored class, at least in the metropolis. Under the Ordinance referred to, the municipal franchise is conferred on all resident householders, who are either proprietors or occupiers of premises yielding an annual rent of ten pounds and upwards. This qualification embraces a very considerable number of colored persons, both as occupiers and proprietors. Nor is the privilege disregarded. In the election both of Commissioners and Wardmasters, they exhibit an interest equal, I should say, to that of their fellow electors of European descent, and though none of the wards are exclusively occupied by this class of men, there has been an instance in which a Malay, a man of color, was elected Wardmaster, an office somewhat analogous to that of Town Councillor in English boroughs; and though he finally declined to serve, yet there was no expression of surprise or displeasure manifested on the occasion. In fact, so little notice did it excite, that it was by mere accident I gained the information.

“ In regard to diversity of origin, referred to in Lord Stanley’s despatch, it alludes, I presume, to the inhabitants of European birth or origin. These, though in fact belonging to various nations, are generally known by the distinctive titles of English and Dutch, under either of which will be found, however, a very considerable number of Germans, who, of all others, resemble the English most in persevering industry, intelligence, and enterprize. That, in point of numbers, the English form a minority under this distinction, is most true; and it is equally true, with the exception of Albany (the greater part of which is exclusively occupied by English settlers), that the English reside chiefly in the towns, villages, and sea-ports. It is conceded, on all hands, that in the management of public affairs, as well as in their individual pursuits, they exhibit as a body, a more independent bearing, are more intelligent, expert, and persevering. But, as a body, they are by no means the more wealthy of the two. Among the Dutch are to be found the largest capitalists in the Colony, and the most extensive owners of landed property and stock. “

“ But the object of referring to this classification of the



European colonists, on the part of his Lordship, is to obtain a reply to the following inquiry:—Will the English minority, which he assumes to be the more wealthy, intelligent, and enterprising, be content to find themselves overborne by a Dutch majority, inferior in all respects except in numerical strength,—or, should the minority, by any cause, come to have a preponderating influence in the Assembly, will there not be serious risk of extensive popular discontent? Here, again, I am of opinion, that, with the exception of the law of inheritance and succession in this Colony, to which the Dutch are exceedingly attached, and the English equally averse, there is not a single subject, within the legitimate province of legislative interference, on which national prejudices, or the conflicting interests of race, are likely to be engendered. In Lower Canada, where this distinction has led to the most calamitous results, there are elements of discord and national antipathy of a far more extensive and deep-rooted character than any that are to be found in operation here. Among these may be enumerated the system of Seigniorage, as it existed in France in the seventeenth century, the occupation of land on feudal tenure, and the dissociating effect of cultivating *apart* two distinct languages in their schools, where the presence of the one is an insuperable bar to the introduction of the other.

“ In this Colony the system of land tenure is as congenial to the habits and feelings of the Englishman as to the African-born colonist of Dutch extraction. All lands are held directly from the Crown, either in freehold or perpetual quitrent; they can be sold, transferred, and registered with the greatest facility and promptitude, while mortgages, liens, and other obligatory instruments, either on fixed or personal property, are duly registered, and the registry accessible to any one for the trifling fee of one shilling. And as to community of language, which, of all instruments and means, is the most powerful in amalgamating races of men and inducing a community of thought, habit, and sentiment, there exists no prejudice against the English—the universal language of the empire—but the contrary;—whilst *both* languages, when it is necessary, are taught, simultaneously, both in private schools and in those supported at the public expense

“ It does not appear to me necessary to add to the remarks I have now made on the ‘physical and moral difficulties,’ in regard to the institution of a Representative Government in this Colony, which are so judiciously and ably discussed in the despatch of the noble Lord to which his Excellency’s attention has been called. I, therefore, take leave, previous to offering any suggestion as to the principles on which such a system of Government should be introduced, to express my opinion in regard to the necessity or propriety of such a measure, and the grounds upon which that opinion is formed.

“ I have long held the opinion, that there are two forms, and only two, in which good Government can be exercised in our Colonial Communities, whether heterogeneous in their constituent elements, or existing under the closest ties and strongest sympathies that sameness in origin and similarity of birth, language, and customs can produce. The one is, that of Absolute Government, conducted by a Governor and Council composed of responsible public functionaries;—the other is, that of a Representative Government, as closely assimilated to the free institutions of the parent state as the relations and the condition of a dependency, in regard to that state, is capable of sustaining. As there is no safe halting between two opinions, so, to my mind, there is none, either permanent or satisfactory, between these two forms of the Government of a dependency,—no *juste milieu*, that does not, on the one hand, create disappointment and dissatisfaction in the mind of the public, or, on the other hand, grant to an unchecked and irresponsible popular power an ascendancy dangerous to the interests of society,—a power to which the executive becomes a mere passive instrument for the carrying out of its decisions, which are more frequently the result of transient feelings than of calm and dispassionate deliberation.

“ It has been the practice in later times to adopt, as it were, intermediate systems in passing from the Absolute to the Representative Form. The first step in this transition process is the appointment of a Legislative Council composed, in part, of unofficial members, nominated by the Crown. The

which consists, to a certain extent, of the representatives of the people mixed up with others holding their seats either during life or the tenure of some official situation,—all seated at the same council table, but, obviously, under very different auspices and directly conflicting influences.

“With regard to the first of these modified forms, it has, undoubtedly, proved a failure, in this Colony as well as others, in so far as public opinion and confidence are concerned, and the loss of moral influence on the part of the Government which it has necessarily occasioned. In respect to the other, it has seldom failed, unless seasonably abandoned, to produce the evils to which I have referred. In New South Wales it has, according to Earl Grey, proved as barren of good fruit as in former times it was productive of anarchy, discord, and civil dissension, when the celebrated Locke framed for the Carolinas a constitution and body of laws based on this anomalous principle.

“Regarding, therefore, as I do, the Legislative Council constituted on either of these principles as an undesirable and unsatisfactory form of Colonial polity, it may be expected of me to state which of the two, the Absolute form to which I have referred, or the Representative, is, to my mind, the best suited to the present state of the Colony. For this, however, there is no occasion.—The choice between these two no longer exists. One step has already been made towards free institutions, in creating corporate bodies for local government, and in granting a Legislative Council to which men have been invited, from among the people, to take a share in the legislature of the Colony, unincumbered by official responsibility and restraint. To recede from this position and fall back upon a Governor and Council, can never be done with safety or wisdom, unless compelled by a course of events which I never contemplate. And to remain stationary, heedless of public opinion, so widely expressed in both provinces of this Colony, would be equally impolitic and unwise. My opinion, therefore, is, that whatever are the drawbacks to the beneficial working of a Constitutional Government, from the moral and physical difficulties alluded to by Lord Stanley, or from others which refer more especially to a large portion of the rural population, a Representative

Government should be conceded, and in a spirit showing that it has not been conferred by a reluctant hand.

“ I now proceed to offer such suggestions as occur to me, in regard to the scheme so ably drawn up by Her Majesty’s Attorney-General, by command of his Excellency.—And first as to the question, whether there is to be within this Colony one Representative Assembly, or whether it is to be divided into two provinces, each having its own provincial assembly, controlled, in regard to certain matters, by a general assembly, as detailed in the act of 1846, granting a Constitutional Government to New Zealand? On this point I entirely concur with the opinion expressed by the Attorney-General, namely that there should be but one Representative Assembly and one Executive Government. It is unnecessary for me to state here the grounds upon which I rest this opinion, as they have already been submitted to the head of the Government, in the Minute of the Executive Council, drawn up by desire of the Right Honorable Sir Henry Pottinger, and dated 5th June, 1847.

“ That the Legislature should consist of two Chambers, one composed wholly of the representatives of the people, I also concur in the opinion expressed in Mr. Porter’s Memorandum. In regard to the other house, usually designated the Legislative Council, it must, according to the opinion I hold, be either entirely elective, or consist of members nominated exclusively by the Crown. The first of these forms, I am of opinion, is incompatible with the condition of a dependency, and the constitutional influence of the Crown. In the government of many of the states of the American Union, the elective principle has failed, in their senate, to check the evils of democratic preponderance, and hence the executive has become the mere tool, or passive agent, of the popular assembly, an evil which the founders of the Union were careful to avoid in framing their system of Federal Government. The members therefore of the Legislative Council should, in my opinion, be nominated by the Crown and retain their seats for life.

“ Next in point of importance to the form and constitution of the legislature, is the qualification for exercising the elec-



tive franchise. 'A high proprietary qualification,' observes Lord Stanley, 'is a virtual exclusion, not merely of the poor, as such, but almost of the whole body of African birth or descent (that is 'people of color,') because they happen to constitute the poorer classes; a low proprietary embracing a considerable number of that class would, on the other hand, be the gift, to persons of African race and descent, of an authority which those who derive their birth or descent from Europe would regard with the utmost apprehension.'

"On this head I do not apprehend any serious difficulty, or any necessity for departing from the principles enunciated, in a former part of this Memorandum, as those on which a Representative Form of Government could best be applied to this Colony. I have already referred to the fact, that, in the municipality of Cape Town,—where, by their industry, sobriety and economy, the colored classes have acquired considerable property, which might be equally acquired in other districts by the same means,—not only has the municipal franchise, based on a qualification as high as that in the boroughs of England, been exercised by men of color, but also representatives have been elected from that class to share in administering the affairs of the municipality. I would, therefore, propose, without any reference to diversity of origin or race:—1st.—That the qualification to vote for the return of a member to the House of Assembly, for any electoral district exercising municipal government, shall be such as is prescribed in respect to municipal franchise in the Ordinances under which municipal boards have been created in the several towns and villages. 2nd.—And that the qualification to vote for the return of a member for any electoral district not so constituted, be conferred on all who, under the Road Ordinance of 1843, have their fixed property assessed for the construction and maintenance of the main and branch roads in their respective divisions.

"By Ordinance No. 1 of 1840, which constitutes the resident householders of Cape Town a corporate body, the municipal franchise is conferred on every occupier of a house, warehouse, counting-house, shop, or office, either as proprietor



pounds sterling. By Ordinance No. 9, 1836, which provides for the establishment of municipal boards in all other towns and villages of the Colony, the municipal franchise is exercised by any resident householder paying taxes, annually, amounting to the sum of six shillings sterling and upwards. I would here remark, however, that, with the exception of rates for municipal purposes, which are local, and the road rate, which is levied indiscriminately on all fixed property throughout the Colony, there are now no direct taxes of any description, either on persons or property in this settlement. It may, therefore, become necessary to assimilate the qualification for the other corporate towns of the Colony to that of Cape Town. By the Road Ordinance of 1843, all owners or occupiers of fixed property of the amount of fifty pounds value and upwards are chargeable with a rate, not exceeding one penny in the pound, for the construction and maintenance of roads within their respective divisions.

“Assuming the proprietary qualification to be that I have now proposed, it becomes of interest to know to what extent it will embrace or exclude that class of people, whose advancement in wealth and intelligence so deeply affects the interests of this community;—I mean the people of color. It is not in my power, at this moment, to supply his Excellency with any precise information on this head generally, but I can state with certainty, that in Cape Town the number of qualified voters, being persons of color, would be considerable, and that in the Kat River Settlement, now called Stockenström, the number would be close on 400, say 390.

“The question that next occurs to the mind is, under what qualification can a seat be held in the assembly when a member is returned. In this country the qualification ought not to be too high; but, at the same time, I am of opinion, that it ought to be either a proprietary qualification, or one based on a certain amount of annual income, during the time the seat is held. This latter qualification I propose in preference to the professional one recommended in the Memorandum of the Attorney-General. It appears to me, that a professional qualification, which necessarily implies fitness from superior education, would be an obnoxious distinction. Many men of equal intelligence, and perhaps superior general

education, who have preferred other pursuits in life to that either of the lawyer or the medical man, would thereby, I think, be unfairly excluded. And if it be argued, that such men are likely to possess a proprietary qualification, my reply is, so also is the successful lawyer or the medical practitioner. The proprietary qualification I would fix at 500*l.*, as in the Canadas, and the annual income at not less than 200*l.* It is, however, with me, doubtful, whether any but the proprietary qualification should be adopted.

“Having submitted my opinion on the subject of qualification, both as it regards electors and elected, I proceed to another qualification, one of greater importance, and of still more difficult consideration. It is this:—What amount of wealth and numbers shall entitle any portion of the community to send a representative to the House of Assembly, or, in other words, on what definite principle shall the Colony be divided into electoral districts, both as regards the corporate communities in towns and the residents of the agricultural and pastoral districts? I confess, I have had difficulty in forming anything like a confident opinion on this most important subject. It appears to me, however, that the framers of the Constitution ought to have strong reasons for departing from the broad and well defined principles I have already alluded to, on the plea that an undue preponderance would otherwise be given to some class of interests, or particular race of men; and I am strongly of opinion, that no reason which they can adduce for such a departure will prove satisfactory.

“The plan, therefore, which I am about to suggest is strictly based on the following principles: 1st.—That corporate communities should have their own representatives, distinct and separate from those of the agricultural and pastoral districts of the Colony. 2nd.—That the same rule, with regard to wealth and population, should be applied to both,—that is, the share to be assigned in the representation of the country to any one district, whether municipal or rural, shall depend upon its comparative amount of population, and of wealth indicated by the value of its fixed property. This principle I consider of such importance in preventing future discontent and the creation of party on mere factious grounds, that I would propose a power to be given to the

Assembly to revise the representation of the several districts, at stated periods, say, every ten or twenty years.

“Acting on these principles, I would fix the minimum of property and population, entitled to be represented, at that which the smallest of the fiscal divisions now contains, and to no district would I assign more than one member, so that, should the district contain an amount of population and property, which, on some gradually increasing scale previously determined on, would entitle it to more than one member, it should be divided into a corresponding number of electoral districts, each consisting of a complete set of unbroken wards or field-cornetcies. In regard to the corporate communities, the same rule should be observed, and in order to secure the smaller towns a voice in the assembly, and at the same time to avoid an infringement of the rule, I propose that such a number of towns should constitute an electoral district as may be requisite, in point of population and property, to secure its strict observance. As it regards the large towns that would be entitled to more than one member, they ought to be formed into electoral districts on the same principle as the large fiscal divisions. Under such a system of representation, based on an intelligible and, at the same time, equitable principle, I do not apprehend that any undue preponderance will be given to any class of interests or of men.

“And now as to the composition of the Legislative Council. Against this body there will, naturally, prevail much popular jealousy, and no little prejudice. This, I am of opinion, can only be countervailed by nominating men whose wealth, and intelligence, and social standing, give weight to their opinions and proceedings among the more intelligent and influential ranks of the people. I should, therefore, propose that, irrespective of other qualifications essential to the maintenance of the constitutional influence which belongs to such a body, no member should be nominated who is not possessed of unincumbered fixed property to the amount of 2,000*l.*, or who is not in receipt of a fixed income of 500*l.* per annum and upwards. Here, again, I would exclude professional qualification; but to exclude that of fixed income of some determinate amount, would be to deprive the Crown of

the privilege of sending to this chamber such of its confidential advisers as are absolutely requisite for the right and efficient administration of the Government.

“There remains still a question to be considered, of no small importance, viz.:—In what manner shall the measures originating with the Executive, or the duties necessarily devolving upon it, be conducted in the House of Assembly? To send men who have no seat in the house to speak and conduct business in it, in their official capacity, is wholly opposed to the spirit of Constitutional Government in the mother country;—to grant them, *ex officio*, a seat in the house is equally at variance with its free institutions, and the popular character of such an Assembly. I therefore, propose that here, as in England, those members of the Executive necessary for conducting its business in the Lower House, and for explaining, when fit and required, any of its measures, obtain their seats by the suffrages of some one of the constituencies. To limit to the Upper House the seats to be occupied by Government functionaries, on the plea that it would be derogatory to the confidential advisers of the Governor to be found elsewhere, or that their services would be more available there than among the representatives of the people, is, in my opinion, a departure from the usages of Constitutional Government in the mother country, to which there is no counterpart but this, viz., that they be called to office by the voice of the people, and hold it only during their good pleasure.

“On this head I would further suggest, that the Executive Council should not consist exclusively of men holding public office: I would propose to invite such members of both houses, as the Governor might consider qualified to advise him, in originating legislative measures, to become members of the Executive Council, with this understanding, that none but official members would attend the meetings unless specially summoned for that purpose. All matters of a purely administrative kind would, as a matter of course, be reserved exclusively for the consideration of the official members of the Executive. By this means, officers of the Government would receive valuable support in conducting its business in both houses whilst those unseemly collisions between the



House of Assembly and the Executive would, in a great measure, be prevented, which are not of unfrequent occurrence in the history of Constitutional Government in our Colonies.

“ Having, to the best of my ability, submitted my views on the more important matters connected with a full consideration of this momentous question, I proceed to offer a few cursory remarks on some points mooted both in his Excellency’s Minute and Preamble of Despatch, and in the Memorandum drawn up by the Attorney-General. With regard to the process of electing members, it appears to me that the method adopted in the mother country is not suited to the country districts in this Colony, though in the towns it is perfectly applicable. I would therefore propose, with regard to the electoral districts in the country, all of which are divided into wards and field-cornetcies, that the returning officer proceed to some central residence in each ward, prepared with returning rolls for the several candidates for election, and there receive from each qualified inhabitant of the ward personally, his vote in presence of the agents or representatives of the several candidates and of such others as choose to attend, recording the vote by writing the name of the voter on the roll of the candidate—for whom it has been given; after which he shall declare the candidate having the greatest number of votes to be the member returned, provided the aggregate of the votes on the several rolls shall exceed a certain minimum, say one-fifteenth or one-twentieth, of the number of qualified voters in the electoral district, short of which the election shall be void. On the return being made, the rolls, with the affidavit of the returning officer affixed, shall be deposited in some fit office, and be declared evidence in all cases of dispute.

“ Both his Excellency and the Attorney-General are of opinion, that an allowance for personal expenses should be made to members of both houses. In this opinion I fully concur. I do not, however, agree in the proposal, that it should be withheld from members residing within twenty-five miles’ distance from the seat of legislature. I think a better rule is to grant the allowance to all members who are obliged, during the session, to take lodgings, and be absent from their



homes on account of the distance. The payment of expenses should be made to those members only who are entitled to and demand it.

“ In the Memorandum of the Attorney-General, it is proposed to limit the duration of the Assembly to five years. Here we have to make choice between two evils. On the one hand frequent returns to the House of Assembly expose its efficiency, in some degree, from the numerous changes it is likely to undergo in its members; but, on the other, it is obvious, that fit and efficient men may be deterred, in this Colony especially, from offering themselves as candidates, should their return subject them for a long period to the sacrifice of their personal interests and convenience, which must more or less attach to the efficient discharge of their duties. In the North American Colonies, the duration of the House of Assembly is limited to four years, which, I think, for this Colony is sufficiently long, if considered to be so in America.

“ As may be inferred from the remarks I have already made, I entirely concur with the Attorney-General, that no member should be returned for any Municipality by the votes of its Municipal Commissioners and Wardmasters. In this Colony the duties of the Municipal Boards have not the most distant connection either with judicial or political interests. The whole of the Wardmasters are elected annually, and the Commissioners every two years; they are chosen solely from their fitness for managing the fiscal and police arrangements of the townships. To add to this the exclusive privilege of voting for members of the House of Assembly, would be to inflict a serious injury on institutions, which, in many instances, are yet far from having reached their maturity.

“ I also hold the same opinion with the Attorney-General as to the institution of boards for the management of the local affairs of the country districts in this Colony, and the conferring on such boards the same privilege of voting for the country members. Whatever be the disadvantages and difficulties of collecting the votes of the rural population, I am strongly of opinion, that no other method of voting will give the same satisfaction, or be a greater check to bribery

or any other improper interference with the right discharge of the elective franchise.

“As to the nature and degree of responsibility which attaches to the Executive Government of a dependency in its relations to the representatives of the people, it is unnecessary for me to make any remarks. The able despatch of Lord John Russell to the late Lord Sydenham, then Governor General of the Canadas, has fully and finally disposed of that question. It is clear, therefore, that every public functionary receives his appointment directly from the Crown, and holds office only during its pleasure, irrespective of any expression on the part of the House of Assembly as to its confidence in the officer or otherwise. Still the Assembly, constitutionally, will become the great inquest of the Colony, and, as such, no measure affecting the public interests can be placed beyond the reach of its inquiry. It will, therefore, be entitled to call every officer to account for the discharge of his public duties, and to address the Crown for his removal, should it decide that there are just grounds for such a course. Here, I think, its duty stops; and no adviser of the Crown can safely disregard such a petition from the representatives of the people, when good cause has been shown.

“I have already remarked on the subject of language, and referred to the encouraging fact of the absence of all prejudice, on the part of the Dutch portion of the community, to the general diffusion of the English language;—in proof of which I would here simply refer to the proceedings of the Cape Town Municipality, in which the Dutch population greatly preponderates. When this body was constituted in 1841, they resolved that their minutes and other records should be kept in both languages. This, however, experience proved to be cumbrous and inconvenient, and they at once resolved to record their proceedings in English only, though, as I am informed, seventy-five per cent. of the constituency are either of Dutch origin, or in daily use of the Dutch language. Favorable, however, as circumstances undoubtedly are to the entire adoption of the English language, as well in the debates as in the records of the legislature, and convinced as I am that, in

practice, this will be the case, still I hesitate to advise His Excellency to propose any clause to that effect, in the Charter or Act providing a Constitutional Form of Government for the Colony, further than is necessary to secure the records of the two houses, of whatever kind, being framed and kept in the English language. To this there will be no objection whatever on the part of the Dutch, as is evident from the proceedings of the Municipality of Cape Town;—beyond this there may be danger of exciting discontent and awakening national distinctions, and, it may be, antipathies, as is equally evident from the known delight and satisfaction manifested by the Dutch Colonists, when it was officially intimated, in reply to their petition to the King, that His late Majesty, William the Fourth, in granting a Charter of Justice to this Colony, never intended that any one of his Dutch subjects should be disqualified from acting as a juror in consequence of his ignorance of the English language.

“On the subject of a Civil List it seems unnecessary to occupy his Excellency’s time with any lengthened remarks. In the Act uniting the two Canadas, the Civil List is provided for under two distinct heads. For the Governor and Lieutenant Governor, and for the Judicial Establishments of the two provinces, a permanent charge is made on their consolidated revenue; for the chief departments of the civil service, and for pensions to retired officers, a charge is made on the same fund, but for a limited period only, viz.,—until the expiration of the fifth year after the demise of Her Majesty the Queen. That a similar provision should be made in this Colony for its Civil and Judicial Establishments is obvious, but I can form no opinion on the necessity of the distinction, as to permanency of charge, for which this Act provides.

“Connected with permanent or fixed charges on the revenue of this Colony, is the endowment of Churches and Schools. Hitherto provision has been made for both by annual votes of the Legislative Council. That this practice should continue in respect to the ecclesiastical establishments appears to me very questionable, and on this ground, viz.: that no other subject is more likely to originate party movements and discussions, or differences of opinion, as to the

national descent. Whether, therefore, it be deemed desirable or not, to leave education to be provided for by the annual vote of the Assembly, I am strongly disposed to think, that the support hitherto afforded to the Dutch and English Churches should be put on some permanent footing.

“In concluding this Memorandum, I cannot refrain from expressing my doubts as to the likelihood of eliciting good government, for some time, at least, from the exercise of representative institutions. To a greatly preponderating majority of the Colonial population such institutions are entirely unknown, and, probably, will be regarded as an innovation. Like the jury system they will, if efficiently worked, impose on many, from the character of the country and scattered state of its rural population, duties which cannot fail to be attended with considerable personal sacrifice and inconvenience, and from which, until better able to estimate their value and advantages, they may seek to be relieved as in the case of jury service. Moreover I cannot conceal from myself the fact, that few communities, from the isolated conditions, and the habits and employments of a large amount of its members, are less qualified to act beneficially upon the Government and Legislature, by the influence of an enlightened public opinion. In rural districts, where weeks and sometimes months transpire before a single newspaper is seen, where social intercourse is confined to the visits of the immediate neighborhood, where the same routine of employment has existed without change or improvement, generation after generation, viz.: the rearing of herds of black cattle or flocks of sheep, and where the occasional visit of their pastor is the only means of leading the mind beyond the commonplace thoughts of a pastoral life,—nothing but apathy can prevail in regard to interests not purely personal, until education has reached their scattered abodes, and raised them from this state of listless ignorance, and mental lethargy—hitherto inseparable from their condition, and in some measure prepared them to share in the management of the affairs of their country. I do not, however, think that this should be made a bar to the introduction of Constitutional Government, nor a reason for halting in our present position. On the contrary, the sooner free institutions are established,



both municipal and legislative, the sooner will the rural population, by the mere exercise of their privileges, be trained to a willing and intelligent discharge of the duties which are thereby imposed upon them. The Dutch population have cheerfully incurred the expense and inconvenience of sharing in the management of the affairs of their Church, and, I doubt not, that time will create a similar interest in the Constitutional Government of their country. The English regard it as their birthright."

This with the other Memoranda drawn up by the several officials, having been forwarded to the Secretary of State for the Colonies, a draft in general terms was prepared by the Board of Trade and Plantations, as the basis or outline of a scheme for a Constitution, and was sent out to the Colony that the details might be filled up by the Local Legislature, and, as far as could be ascertained, in such wise as should meet the general approval of the colonists at large. Letters Patent were also forwarded, bearing date the 23rd day of May, 1850, establishing certain points in the Constitution, and leaving other points open for discussion.

Since the breaking up of the Council in September, 1849, the Legislative Body had remained incomplete, and continued so until September of the following year, when the four vacancies were filled up by a popular election.

For a few sittings the newly formed Council passed its resolutions almost unanimously; but on proceeding to the details of the future Constitution, and especially to the question of the qualification of members for the Upper House or Legislative Council, there was an irreconcilable division of opinion, and the four elected members resigned their seats. Thus the Council was again incomplete for any legislative enactment, but the Governor appointed the seven remaining members



to sit as a Commission, to discuss and fill up, and report to him such a scheme for the Constitution, as might first be brought under the notice of the colonists, and then be forwarded to the Secretary of State, for his decision and the Royal sanction. At the same time the four retiring members drew up their views of a Constitution, in a draft afterwards known by the appellation of the "Sixteen Articles," which they submitted to a meeting held in the Town Hall, and which that meeting approved and subsequently forwarded by two delegates to the Parliament in England.

From the reports of these two bodies, viz., the Commission appointed by the Governor, and the Committee of the four retiring members and their adherents (which reports will be found in the Appendix), it will be seen that both parties to a considerable degree confined themselves to the Draft Constitution of the Committee of the "Board of Trade and Plantations," and to the "Letters Patent;" and hence both, on several points, coincided in their opinion. The great point of difference, as above stated, was in the qualification of members for the Upper House. On this head the Commission reported it as their opinion:—"That no person should be competent to be elected a member of the Legislative Council, who should not be owner of fixed property, within the Colony, to the value of 2,000*l.* above all registered incumbrances thereon; or the owner of fixed property to the value of 2,000*l.*, who should be worth 4,000*l.* above all debts." Whereas the four retiring members published it as their opinion, that "every male inhabitant of the age of thirty years, who shall have resided in the Colony during three years preceding the registration and

time of voting, and who shall be the proprietor of landed property, situate within the Colony, of the value of not less than 1,000*l.*, shall be eligible for election to a seat in the Legislative Council.”

After the Report of the Commission appointed by the Governor had been forwarded to the Secretary of State, and whilst the delegates were pursuing the intentions of their mission as a deputation in England, “Additional Instructions” were sent out from the Home Government, authorizing the Governor to fill up the Legislative Council ; and, if this could not be done, directing the incomplete Council to proceed to business, and prepare the way for the introduction of the New Constitution. In consequence of these Instructions, Sir H. Smith, then prosecuting the war in Kafir Land, wrote from King William’s Town to the following effect :—

“As I conceive that it is on many accounts undesirable to postpone any longer the meeting of the Legislative Council for the transaction of business, I have to request the Executive Council will, in my absence on the frontier, take the necessary steps for completing the number of unofficial members to the full establishment authorized by the Royal Instructions.

“There are now five unofficial vacancies ; four of these I wish to have filled up by gentlemen residing in the Western Districts, and the fifth from the Eastern. I have therefore to request the members of the Executive Council to select the names of twelve gentlemen of the Western Districts, and to offer four of the seats to four of them ; and should any of these four decline, to the other eight in succession, if necessary, until the list is exhausted. If all or any of these four seats cannot by this means be filled up from the Western Districts, members must in like manner be sought from the Eastern Districts to complete the number required. Should the four members be obtained from the Western Districts, the Council is to be summoned to assemble in Cape Town on or

about the 10th of October next, and I will appoint the fifth member from the Eastern Districts; but should it be otherwise, the Council must be summoned to assemble in Graham's Town at the earliest day possible, and which the Executive Council will fix after all the vacant seats have been filled up from the Eastern Districts. Cause it to be explained to the gentlemen to whom seats are offered, that the business to be brought before the Council upon its re-assembling will consist of the annual estimates, and any other matters of an administrative nature which cannot be postponed without prejudice to the public service; but that the important Ordinances directed by Her Majesty to be matured and passed for introducing Representative Institutions into the Colony, will not be entered upon until after the termination of hostilities with the Kafir tribes."

On this order from the Governor, several gentlemen were invited to take seats in the Legislative Council, but, from the former proceedings in the breaking up of that body during the Anti-Convict agitation, many were reluctant to accept the appointment. Ultimately, however, four gentlemen, desirous that the business of the Colony should not be interrupted, accepted seats, and proceeded with the public administration.

It had been stated in the House of Commons that the Constitution would be sent out with "as little delay as possible:" but at this time the Governor was in the midst of war and rebellion on the frontier; and the feeling and desire very strongly prevailed that the introduction of the Constitution should be deferred until peace and tranquillity were restored. One of the strongest advocates for this measure was Mr. Montagu, who believed he was quite justified in seeking this, as it would not contravene the intentions of Her Majesty's advisers, and yet would afford further opportunity for deliberation, which could only tend to the future welfare of the Colony, inasmuch

as it would receive what must be henceforth its fixed Constitution after the very fullest and most mature consultation. He considered that his course was clear in looking for the conclusion of the war, before the Constitution Question was quite settled, and the new system of Government brought into operation, because the despatches from the Home Authorities clearly anticipated a speedy return of peace. And although a despatch from the Secretary of State for the Colonies, dated 30th June, expressed the "desire of Her Majesty's Government, that the intended change in the Constitution should come into effect at the earliest possible period;" it expressed, at the same time, a hope that tranquillity would be restored during the necessary delay of procuring Her Majesty's confirmation to the Ordinances to be passed. Moreover, the Governor's letter plainly stated, as will be seen above, "that the important Ordinances, directed by Her Majesty to be matured and passed, for introducing Representative Institutions into the Colony, will not be entered upon until after the determination of hostilities with the Kafir tribes "

How the question of postponement was received by the members of the Legislative Council, and what transpired at their meetings, may be gathered from a published official letter of the Clerk of the Councils to the Secretary of Government :—

"The Legislative Council having met this same day (28th January) the order of the day was adjourned to the 6th February, and subsequently, to the 11th of the same month.

"On the 11th February, as will be seen by the Minute of the Legislative Council, the second reading of the first Draft Constitutional Ordinance was moved by the Secretary to Government, and seconded by the Treasurer-General; Mr. Godlonton thereupon moved, as an amendment, seconded by



Mr. Arkcole, 'That the further consideration of the Constitutional Ordinance be deferred till the close of the war.'

"Subsequently, the Secretary to Government moved, seconded by Mr. Moodie, 'That the discussion of the question be adjourned till reference can be made on the subject to his Excellency the Governor, at King William's Town;' which motion was carried by a majority of six.

"For—Messrs. Christian, Moodie, Arkcole, Hawkins, Godlonton, Collector of Customs, Treasurer-General, Secretary to Government.

"Against—Attorney-General, Auditor.

"Reference having been accordingly made to his Excellency on the 1st of March, the Secretary to Government called together the members of the Executive Council, the Auditor-General also attending by desire of the members.

"The Secretary to Government then laid before them a letter to his Excellency Sir H. Smith, of 12th February, 1852, together with his Excellency's answer to it, and a Minute on the same subject, both dated King William's Town, 18th February, 1852, the propriety of making these public was discussed, the Secretary to Government leaning to the opinion, that if these three documents were to be all communicated to the members of the Legislative Council, it should be with closed doors, that is, previous to the admission of the public, as had been formerly done with regard to his Excellency's letter of the 11th January.

"The members of the Executive Council, with the Auditor General, were of a contrary opinion, and were for the whole being made public.

"The Legislative Council met at one, this same day, when, previous to the admission of the public, the Secretary to Government stated to the members present the nature of the papers now before them, and called for their opinion as to the propriety of their being made public, stating that, as regarded himself, he had not the slightest objection to their being read with open doors, although, on public grounds, he was not so confident of its being a right course of proceeding.

"I do not recollect exactly, with the exception of Mr. Hawkins, who the unofficial members were, who, at first,



stated their opinion to be that these papers ought not to be made public. Such, however, was the case, at first, though it was afterwards agreed that they should be laid on the table, and read by the Clerk of the Councils, as any other paper before the Council.

“The public were then admitted, and his Excellency’s Minute was read; and further, at the request to that effect of the members, the Secretary to Government, complying therewith, laid his letter to the Governor, with his reply to the same, on the table, and they were read likewise.

“The amendment, moved by Mr. Godlonton, seconded by Mr. Arkcole, at the previous sitting of the Council, was then put, ‘That the further consideration of the Constitutional Ordinance be deferred till the close of the war,’ which was lost by one.

“For—Messrs. Christian, Arkcole, Hawkins, Godlonton.

“Against—Collector of Customs, Attorney-General, Auditor-General, Treasurer, Secretary to Government.

“The original motion for the second reading of the first Constitutional Ordinance being then put, was carried by one, and the Clerk of the Council proceeded to read it, to the end of clause 1, when the Council adjourned to the 4th March.”

We need not further pursue the investigation of the proceedings connected with the Constitution Question, or the part taken by Mr. Montagu at this juncture, unless it be to state, that in the month of January, 1852, Sir George Cathcart was appointed Governor, in the room of Sir H. Smith, and Charles Henry Darling, Esq., Lieutenant-Governor. After the arrival of his Honor the Lieutenant-Governor, an opportunity presented itself of Mr. Montagu’s release from the duties of his office for a season; when, yielding with much hesitation to the earnest solicitations of his friends, and influenced by the decision of his medical advisers that his choice was between rest and paralysis, he applied for

leave of absence, and made preparations for a speedy departure to England.

During the agitation of the Constitution Question, Mr. Montagu incurred the disfavor and hostility of several persons who strenuously opposed him till he left the Colony, and also petitioned for his removal from his office as Secretary to Government. The two main points which drew on him their opposition and subsequent proceedings were:—

- i. The supposed alteration in his views with reference to the nature of the Constitution; and
- ii. His wish to delay its introduction until the termination of the war.

For the alteration of his opinions Mr. Montagu has given the best explanation in the following extract from his "Minute on Representative Institutions for the Cape," dated Jan. 14, 1851.

"In recording his own opinion, the Secretary to Government states that his views on the general question of the introduction of Representative Institutions into this Colony are fully stated in a Memorandum dated the 10th April, 1848, furnished by him at the Governor's desire, and enclosed, together with other Memoranda on the same subject by other members of the Council and by the Judges of the Supreme Court, in his Excellency's despatch to Earl Grey, No. 109, of the 29th July, 1848; and observes that in the concluding (48th) paragraph of that Memorandum he has expressed doubts, which he still entertains, 'as to the likelihood of eliciting good government, for some time at least, from the exercise of Representative Institutions;' and that without altogether retracting the advice which he then offered—that such institutions should be conceded—he is constrained to admit that events which have transpired since the date of his said Memorandum have greatly increased the doubts which he then felt, and have shown the necessity of acquiring fuller and better information of the wishes of the community on this important question; and further, that no

such concession can with safety be made until peace, harmony, and mutual confidence have been restored, and are permanently established throughout the Colony.

“ At the period in question, when the Governor desired the opinions of the Judges and the members of the Executive Council on the question referred to him by Earl Grey, of introducing Representative Government into this Colony, no subjects of contention had recently arisen; the state of the Colony was generally prosperous; the population, of all classes and colors, was generally tranquil and contented; and it certainly appeared that no more favorable time could have been chosen for the establishment of Representative Government here, so as to avoid, as far as possible, the risks and inconveniences which must at any time be encountered in effecting a vital change in the Constitution.

“ Shortly after the date referred to, the proposal to send convicts to this Colony created general alarm. All classes of the colonists protested against it; and the opposition to the proposed measure was carried to extremes which were considered by all loyal men to be wholly unjustifiable. After his Excellency had promised not to land the convicts, this excitement continued and increased; and after the ‘Neptune’ had left Simon’s Bay, and the Order in Council constituting the Cape a penal settlement had been cancelled and withdrawn, the previous excitement was by the same ultra party fostered and kept alive in connexion with the question of Representative Government; and thus the leaders of the violent section of the Anti-Convict Association became the leaders of a movement connected with the Representative question, in the course of which they have, for no sufficient assignable reason, been active in placing difficulties, too notorious to need recapitulation, in the way of the Government, and kept alive national prejudices which might otherwise have subsided.

“ On this subject the Secretary to Government, in the Memorandum above quoted, wrote as follows:—‘I am of opinion that, with the exception of the law of inheritance and succession in this Colony, to which the Dutch are exceedingly attached, and the English equally averse, there is not a single subject within the legitimate province of legis-

lative interference on which national prejudices, or the conflicting interests of race, are likely to be engendered;’ and further, set forth reasons for believing that ‘a community of thought, habit, and sentiment,’ was arising between the Dutch and English colonists.

“The circumstances above adverted to have made these remarks, which were appropriate and applicable in 1848, directly the reverse in 1851; and the Secretary to Government is now of opinion that sound policy requires that, in the present state of the Colony, due caution should be observed in establishing such a check as will afford fair consideration to the British Government, and effectual protection to the English colonists.

“Whenever it shall be decided that this Colony is fitted for Representative Institutions, and they are to be granted, such a check can, in his opinion, be only effectually established through the medium of the Upper House. The portion of the Memorandum above quoted bearing upon this point is as follows:—‘In regard to the other House, usually designated the Legislative Council, it must, according to the opinion I hold, be either entirely elective, or consist of members nominated exclusively by the Crown. The first of these forms, I am of opinion, is incompatible with the condition of a dependency, and the constitutional influence of the Crown. In the Government of many of the states of the American Union the elective principle has failed in their senate to check the evils of democratic preponderance; and hence the Executive has become the mere tool or passive agent of the popular assembly, an evil which the founders of the Union were careful to avoid in framing their system of Federal Government. The members therefore of the Legislative Council, should, in my opinion, be nominated by the Crown, and retain their seats for life.’

“Similar opinions were expressed by the writers of all the other Memoranda sent to the Home Government, with the exception of his Honor the Chief Justice, who recommended that the Legislative Council should be in part elective.

“The Committee of Privy Council for Plantations and Trade, however, having these documents under their consideration, recommended that the members of the Upper House



should be elected, and this provision was introduced in the Letters Patent of the 22rd May, 1850, against which the late Legislative Council had no power to legislate. The same provision was accordingly admitted by that Council, though the Secretary to Government, in his place in Council, openly expressed his regret that so hazardous an experiment should be first tried in the excited Colony, and gave his unqualified opinion that the Colony was wholly and entirely unfitted for such an Institution.

“ But in again offering an opinion on the whole question to be again brought before Her Majesty’s Government for reconsideration, the Secretary to Government feels it necessary to reiterate that from which he has never himself departed, and to advise, more earnestly even than on the former occasion, in consequence of events which have intervened, that the members of the Legislative Council be nominated by the Crown.”

With reference to his wish for delaying the introduction of the new Constitution until the termination of the war, Mr. Montagu believed, as stated above, that the more deliberation could be given to the question, the more likelihood there was that the amended form of the Constitution would be for the permanent stability and prosperity of the Colony, inasmuch as calm discussion and the mature balancing of remote consequences would tend to neutralize many evils to be anticipated from too rapid and fundamental a change; and the new mode of legislation, and the qualifications both of members and constituency being debated again and again by practical men, and these men ascertaining, by every means in their power, the general opinion of the community on these points, the proposed changes would be best adapted to the wants and peculiar circumstances of the Settlement, doing justice alike to all classes and colors, to property and to labor, and contemplating equally the diverse interests of



the East and of the West, of the merchant and the agriculturist. It was acknowledged by the Home authorities at the time, that the opportunity then offered of considering carefully, and point by point, the amendments to the Draft Constitution, would be the last afforded to the Council. These amendments formed the very pivot on which the whole weight of the question of Representative Government turned; and therefore needed the most prudent as well as the fullest consultation. But when Mr. Montagu advocated delay, it was in the uncertainty whether the Eastern Members could even attend the Council; whether they could venture to leave their homes and families in the state of danger and alarm into which all on the frontier were then thrown. If they could not, it was a question, if the Council would be competent to decide without them. And if they could, would they under the circumstances represent the opinions of the Eastern Division on many of the important points then at issue? It is clear they had no means, in such an hour of danger, of ascertaining the judgment and wishes of many of their fellow-settlers who were out on the nightly patrol, or living in the temporary *laager*. It seemed cruel to talk to a population—sorely put-to to keep bloodshed and havoc from their homesteads, nay, in many cases, to those whose former houses were one mass of ruins—on points of detail for their future government. Many of them were homeless wanderers, uncertain when or where a roof should next cover them; ruined of all, from affluence reduced to poverty, and even living on the Church's alms; so disfranchised by war, rapine, and conflagration, that they had no tenement of the low value of 25*l.* to qualify them for a vote in future representation. All this

Mr. Montagu distinctly saw and keenly felt, and with a high sense of justice, he advocated that the final determination as to what should be the exact nature and provisions of the Constitution should be deferred, until the harassed and suffering farmers of the Eastern province, who had borne the brunt of the frontier dangers, and rolled back the tide of savage war, should have a cessation from hostilities, and an opportunity of again settling on the scorched and scathed spots where their homes once were,—when they might consult in tranquillity, and with due deliberation, what change in the Institutions of the Colony would best enable the inhabitants to secure such measures as should oppose the strongest barrier and most lasting safeguard against future wars and inroads from a subtle foe, who threaten fresh outbreaks on every occasion of difficulty into which, from whatever cause, the Colony is thrown.

In the successive struggles which arose out of the questions regarding the introduction of convicts, and the New Constitution, few public men could be more narrowly watched or more closely tried than the Secretary to Government. To be at the same time firm to his duty, and wholly popular was impossible; and Mr. Montagu was highminded enough to incur the unjust suspicions, displeasure, and animosity of some rather than hazard what he believed to be of the most vital interest to all. The following quotation from one of the Colonial Journals, published at this time gives, as we conceive, a true relation of his difficult position, and of the unflinching honesty with which he maintained it:—

“It may be averred, without fear of contradiction, that up to the convict agitation this Colony never made such rapid progress towards substantial pros-

perity in an equal period of time, as under Mr. Montagu's administration. We say his administration, inasmuch as he not only originated, but was the directing head of those great improvements which have given an impetus to the industry of the country, the value of which cannot be estimated. Unfortunately the anti-convict agitation brought into antagonism the Government and the people; and the result was, the revivification of that anti-British feeling which had lain dormant for want of occasion to excite it, and was fast expiring from inanition, arising from a conviction of the utter hopelessness of any relaxation of British power in South Africa. Mr. Montagu, as a high officer of the Crown, took his position; maintained it without wavering; steadily upheld the authority of the Government; kept together and brought into exercise the elements of order; peremptorily refused to succumb to popular intimidation; and, as the natural result, brought upon himself the odium and uncompromising hostility of those from whose hands he withheld the power at which they grasped, and which could not have been conceded without discredit to the British name, and great detriment to the public interests.\*

We will not refer further to the petitions for Mr. Montagu's removal from his office, than to state our belief, that many who signed those petitions did so in a perfect misapprehension both of his motives and designs, and also of his character. To clear the former we may truly say that his one motive and design was to ameliorate and advance the position of the Colony—physically, commercially, morally, and religiously—without favor or prejudice to class or color; and in vindication of the latter, we need only record, that

\* Graham's Town Journal, April, 1852.

after a careful consideration of the complaints put forward in the petitions, and of Mr. Montagu's elaborate explanation and justification of his conduct, Sir J. Pakington, then Secretary of State for the Colonies, transmitted the following letter and despatch as an official reply to those petitions. The letter was to Mr. Montagu, from the Earl of Desart; and the despatch from the Colonial Secretary to the Governor, Sir George Cathcart:—

“ Downing Street,  
 “ 3rd August, 1852.

“ Sir,—I have received and laid before Secretary Sir John Pakington your two letters of the 26th ultimo, one forwarding an address, which you had received from a large number of the most influential inhabitants of Graham's Town, and several other documents from various persons residing at the Cape of Good Hope, in public and private capacities, bearing testimony to your conduct in the transaction of the business of the Colony, both in the Council and out of it; the other letter explaining the difficult position in which you had been placed as chairman of the Council, and enclosing letters from the unofficial members on the subject.

“ Sir John Pakington desires me to state in reply, that he has read these letters and testimonials with much pleasure, though they were quite unnecessary to convince him of the high estimation in which you are deservedly held in the Colony.

“ I have, &c.,  
 “ (Signed) DESART.”

“ Downing Street,  
 “ 3rd August, 1852.

“ Sir,—I have received Lieutenant-Governor Darling's despatch No. 10, of the 30th April, transmitting a copy of a letter from Mr. Montagu, Colonial Secretary at the Cape of Good Hope, containing his observations on the several petitions forwarded in the Lieutenant-Governor's despatch .

of that date, praying for his removal from office, principally upon grounds connected with the course he had pursued in Council during the recent discussion of the Ordinances for establishing a Parliament; and I have to request that you will cause the several petitioners to be informed that, in laying their petitions before the Queen, I did not advise Her Majesty to comply with their prayer, as Her Majesty's Government have seen no reason to suppose that the continuance of Mr. Montagu in the office, which he has so long filled with advantage to the Colony, will be in any way prejudicial to its interests.

“ I have, &c.,

“ (Signed) JOHN S. PAKINGTON.”

In closing the review of this difficult period, it may truly be said in justice to Mr. Montagu, that all that public opinion believed him to be before the Anti-Convict and Constitution struggles, he was during them and throughout them. He was then, as before, the true friend, the master-spirit, of the Colony. He was in all points the man needed for the time, and he nobly armed himself to meet the need. Many then saw him under a different aspect to what they did before; but had they more dispassionately beheld him, they would have seen him the same impersonation of public duty, devoting itself to the public weal—

“ Accident may modify, circumstance may be vile, externals seem to change it ;

But still the primitive crystal is latent in its many variations.”

Mr. Montagu, if lately he differed widely from some with whom he was once in high esteem, differed only in political views; his opposition was but the opposition of the statesman, or of public council: and he is unworthy to be called a public man, nay, he deserves not the name of a man, who can see nothing great nor good nor beautiful



disinterested, in his political opponent. Opinions may be various, and resolutely held, and warmly defended, but they need not generate animosity; different parties may see matters in a far different light, and yet perhaps a mere accident, a slight shifting of a glass, and they may very nearly approximate in opinion—

“A little explained, a little endured, a little passed over as a foible,  
And lo! the jagged atoms fit like smooth mosaic.”

Viewed in this light, as a political opponent only, the memory of Mr. Montagu, now dead, may be revered by many who were most strenuously his antagonists whilst he was living. And those who admired in him the manly firmness, the grandeur of self-reliance, and the serene and resolute self-possession, which were so strongly his characteristics, may well recall the Roman poet's description, so applicable to his truly Roman and inflexible honesty of purpose, and stanchness in defending his position—

“Virtus repulsæ nescia sordidæ  
Intaminatis fulget honoribus,  
Nec sumit aut ponit secures  
Arbitrio popularis auræ.”

In concluding this chapter, we may express an ardent wish, that all parties will now combine, with one heart and one mind, to render the constitution conferred by Her Most Gracious Majesty, so happy and harmonious in its operation and its results, that it may be all which the Governor, whose great hope it was to see its introduction during his administration, generously wished it—“for the greatest happiness of the greatest number.” A great philosophic writer has affirmed, that “passion and party blind our eyes, and the light which experience gives is a

lantern on the stern, which shines only on the waves behind us." We trust the experience of the Colony will be otherwise, and that having known the inquietude and jarring animosities, both public and private, which passion and party generate, it may so seek the fair and equitable adjustment of all its differences, that the discordant din of passion may be lulled into concordant peace, and the enfeebling strife of party may issue in one common and irresistible energy for the common good. The concession of free institutions by Great Britain to her colonists, and the strenuous endeavors of Britain's dependencies to add to the strength, wisdom, wealth, stability, aggrandizement, and pre-eminence of the mother state, will mutually re-act to the permanent power, the increasing greatness, and the temporal and spiritual blessings of all. In the olden time, the colonies of Greece vied with each other in veneration and love for the state from which they originated. They deemed it their duty and their greatness, as well as their privilege and pride, to help the parent land, if invaded or distressed, or any way in need. The same tutelary deities they believed still watched over them, as shielded them on their native soil. And, that they might never forget that they were still one people and from one source, they carried with them, and preserved alive in all their voyages and journeyings by land or by sea, a portion of the sacred fire, which the Greeks kept perpetually burning in the council halls of the great cities where their magistrates met; and this fire they used in their new country, in their public assemblies, and sacred places of concourse. So may Britain's many, and far-separated dependencies pre-

patriotic feeling for the mother state! As her colonists, though not integrally of the same parent kingdom, are yet of the same old indomitable Saxon race, may they labor together to maintain their position, and their manifold blessings transmitted from Saxon times, kept indestructible by a firm Saxon spirit, and matured by Saxon wisdom; and then shall Britain and her possessions—great not only in arms and on the seas, and by God's blessing for religion's sake, but also great by united interests—become a still mightier power, under whose shadow all the nations of the earth may find shelter, prosperity, and peace; the centre of the whole civilized world; a refuge and a blessing to the wide families of mankind; a protecting power whose ægis shall be cast over the downfallen and the oppressed; Heaven's herald for the establishing of Christ's kingdom from shore to shore, and to proclaim, wide as the seas and over the whole compass of the globe, the honor, excellence, and mercy, of His name "Whose is the greatness, and the power, and the glory, and the victory, and the majesty."

## CHAPTER XIV.

## KAFIR WAR OF 1850-51.

APPARENT PEACE IN KAFRARIA AT THE COMMENCEMENT OF THE YEAR 1850.—STATE OF THE KAFIRS.—DROUGHT.—UMLANJENI THE WIZARD DOCTOR.—POLICE SENT TO TAKE HIM.—SECRET MEETINGS OF THE KAFIR CHIEFS.—APPREHENSIONS ON THE FRONTIER.—SIR H. SMITH EMBARKS FOR KAFIR LAND.—MEETS THE KAFIR CHIEFS.—RETURNS TO CAPE TOWN.—AFTER FIFTEEN DAYS HASTENS TO KAFIR LAND.—ISSUES A PROCLAMATION.—DECISIVE MOVEMENTS AMONGST THE KAFIRS.—SIR H. SMITH MOVES FORWARD TO FORT COX.—CONFLICT WITH THE KAFIRS.—COLONEL MACKINNON'S ACCOUNT OF THIS.—DESERTION OF KAFIR POLICE.—SIR H. SMITH HEMMED IN BY THE ENEMY AT FORT COX.—DESCRIPTION OF THE FORT AND KAFIR SCENERY.—COLONEL SOMERSET SENDS RELIEF TO THE GOVERNOR.—THE SUPPLY AND ESCORT INTERCEPTED.—DESCRIPTION OF THE ENCOUNTER.—SIR H. SMITH SALLIES FORTH FROM THE FORT AND PROCEEDS TO KING WILLIAM'S TOWN.—HOTTENTOT REBELLION.—MR. MONTAGU'S EXERTIONS IN RAISING AND EQUIPPING LEVIES.—SIR H. SMITH'S ACKNOWLEDGMENT OF HIS SERVICES.—LETTER SHOWING THE ACTIVE DUTIES WHICH DEVOLVED ON MR. MONTAGU AT THIS TIME.—TESTIMONY OF COLONEL EYRE TO THE GREAT AID RENDERED BY HIS EXERTIONS TO THE TROOPS.

IN the early part of 1850 there appeared every prospect of a continued peace in Kafraria. The frontier colonists, generally, felt confidence in what was known as Sir H. Smith's frontier policy; and the condition of the Kafirs themselves seemed promising. By the appointment of British Commissioners over the tribes, the Kafirs were secure from an absolute

tyranny on the part of their chiefs, or "great men;" and it was rendered almost impossible that a Kafir, because he had excited the enmity or cupidity of a chief, could, to speak in Kafir phraseology, "be eaten up." The artifices and pretensions by which such acts had been heretofore mysteriously carried out, were by British authority forbidden; and *wizard-craft*, *rain-making*, and *scenting-out* victims who had incurred the chief's displeasure, were strictly prohibited.

Throughout the greater part of 1850 a continued drought prevailed in Kafraria. This was followed by the plague of locusts; and these two scourges spread on every side not only scarcity, but an apprehension of absolute famine. The Kafirs, whose first thought is their cattle—upon the milk of which, curdled and mixed with millet or maize, they customarily feed—beheld this state of their country with restlessness and alarm; and their fears soon laid them open to the tricks and impostures of a crafty *wizard-doctor* or *rain-maker*, known by the name of Umlanjeni. By various acts of self-torturing and emaciation, and the usual arts of fanatics and impostors, Umlanjeni acquired considerable influence over the superstitious feelings of several of the Kafirs, and was visited by the chiefs of the Gaikas, H'lambies, and Tambookies. Whatever else may have been working secretly upon the minds of the Kafirs, there can be no denying that this rain-maker, by his wild prophesyings and assumed supernatural power, served to arouse them to that state of excitement and disaffection which finally rendered them eager to break out into hostilities and rapine.

In August the Commissioner of the H'lambie tribes, hearing that the forbidden cheats of *rain-*



*making*, and the prediction of coming events were being practised, sent to order Umlanjeni to appear forthwith, before him, to answer to these charges; but the police who were sent, finding the pretended prophet in the most extreme appearance of inanition, and with all the signs of abject and utter prostration, if not at the very point of death, forbore to lead him back with them; and the chief Umkye, to whose people Umlanjeni belonged, asserted that Umlanjeni, far from exciting the tribe, had been doing good by preaching against witchcraft and murder. A few days after, on further reports, the Commissioner again sent for the "prophet," but he could no where be found, and his hut, which had been the oracular spot where he had held consultations with his dupes, amongst whom were even some of the Kafir chiefs, was destroyed.

Previous to this, illicit meetings had been secretly held amongst the Kafirs. From this time forth they became more frequent and less secret; and the Governor is said to have directed Colonel Mackinnon to get possession of Umlanjeni; who, he feared, by his fierce and exciting eloquence would exasperate the Kafirs, although, up to this time, notwithstanding they were sorely tried by famine and destitution, had not proceeded to marauding.

During the months of September and October, several cattle-thefts were committed; the state of the Kafir mind became, by reason of the continued drought, more and more desperate; and several of the more far-sighted of the frontier farmers discerned, as they believed, too evidently, the threatenings of the coming storm; and that another Kafir outbreak, followed by a desolating war, was inevitable: with many of these their apprehensions were rendered

certainties by their Kafir servants warning them plainly "to flee as fast and as far as they could," for that there would be war.

Sir Harry Smith receiving at this time the rumor of apprehensions, and also several representations that war was certainly at hand, started with the most ready despatch for Kafraria. On the 17th October, he embarked on board the "Hermes," in Simon's Bay; in seventy-two and a half hours he was at the Buffalo Mouth; and in little more than three days after receiving the tidings which determined his movement, was in the heart of Kafirland.

These rapid steps of the Governor seemed for the time to startle the Kafirs into every appearance of tranquillity and submission; and when, on the 26th October, Sir H. Smith summoned a meeting of the chiefs, those of the H'lambies attended, and the Governor conceived he had reason to be satisfied with their acknowledgment of loyalty. This meeting Sandilli, from whatever reason, could not be prevailed on to attend; and the Governor receiving this as a token of disaffection, and the more so as he had authoritatively summoned Sandilli to appear, issued a notice on the 30th October, that Sandilli was deposed from authority over his tribe, and that Mr. Brownlee, the British Commissioner was appointed in his stead.

On the 9th November, Sir H. Smith arrived at Graham's Town, and there sought to assure the colonists, from his own convictions and observations, that war need not be apprehended:—"Rely upon me," he said, "my plans in Kafirland are such, that I cannot fail in arriving at the knowledge of an intended outbreak in sufficient time to give the colonists warning." Fully convinced, by the hypo-

critical disguise and subtlety used by the Chiefs, at his meeting with them, that peace and tranquillity would be preserved, the Governor left the frontier for Cape Town on the 18th November; but he was only in Cape Town fifteen days when he was recalled to Kafirland. On the 9th December he again landed at the Buffalo mouth, and proceeded with all haste to King William's Town. On the 10th he issued a proclamation, calling upon all the loyal inhabitants of the frontier to enrol themselves as volunteers; and so readily and manfully did the colonists at Graham's Town second this proclamation, that at a public meeting, held in consequence, the following resolution was passed:— "That in order to place every available soldier of the line at the disposal of the Governor, the inhabitants do make an offer to his Excellency to do those duties of the garrison that are usually discharged by the military."

The issuing of the Governor's proclamation, and the promptness on the part of the colonists to put themselves under arms, were at that juncture more absolutely necessary than was generally supposed; for just at that time the impostor Umlanjeni, elated by the influence he had gained over the Kafir spirit, assayed his powers yet further, and commanded them "to slay and eat." This told the Kafir, in no mistakeable words, that an outbreak was at hand; and, maddened at the prospect, they began to show themselves ready for any deed of desperation. They broke open dwellings in the impetuous search for guns and ammunition; prepared *assegais* and other means for their wild warfare; and in every way displayed all the acts of a savage people under the exciting fermentation of plunder and the thirst for devastation.

On the 14th December, Sir H. Smith moved

forward to Fort Cox. The British forces were divided into three columns, and disposed in such directions as appeared most judicious in case of an outbreak. The right wing, under Colonel Eyre, occupied the Kabousie Neck, at the rear of the Amatola range of mountains, to check any combined movement between the Gaikas and Kreili. The centre under Colonel Mackinnon held Fort Cox; and the left under Colonel Somerset was posted at Fort Hare. As a last resource to preserve peace, if possible, Sir Harry again on the 19th assembled a meeting of the Chiefs, at which all were present, with the exception of Anta, and the outlawed Sandilli.

On the 24th December, the war actually commenced. The cause of the first conflict was as follows. The Governor had received tidings that Sandilli and several of his followers had taken up a position in the Keiskamma Hoek; from thence it was determined to dislodge them, and Colonel Mackinnon was ordered at the head of a patrol of 600 men to march in the direction of the Keiskamma. As he was moving forward up a narrow and bushy gorge, he was hemmed in and attacked. Colonel Mackinnon's own account of this affray will furnish the clearest information:—"Having marched from Fort Cox, according to your Excellency's orders, at daybreak this morning, with the following force,—6th Regt. : 8 officers, 236 rank and file; 73rd Regt. : 2 officers, 75 rank and file; Cape Mounted Rifles : 7 officers, 167 rank and file; Kafir Police : 2 officers, 90 rank and file; I proceeded up the valley of the Keiskamma, meeting with the most friendly conduct on the part of the Kafirs, until about three miles from this place. I had particularly cautioned officers and men to molest no one on the march, and not to fire



unless attacked. Whilst passing through a narrow rocky gorge of the Keiskamma, where the men could only proceed in single file, a fire was opened on the column of infantry, the Kafir Police and Cape Mounted Rifles, having already passed the spot. The fire was most resolutely maintained for a considerable period, and the nature of the ground was such, that the troops could not dislodge the Kafirs, until they had suffered a serious loss, and the Cape Mounted Rifles and Kafir Police could not be used in any way to turn the flanks of the attacking party. Asst.-Surgeon Stuart, C.M.R., 1 corporal and 9 privates of the 6th Regt., and 1 corporal of the 73rd were killed; Brigade-Major Bisset, C.M.R. and Lieutenant Catty, 6th Regt. were wounded severely; 5 privates, 6th Regt. and 2 privates, 73rd Regt. were also wounded. The troops at last succeeded in clearing the bush and rocks of Kafirs, and in killing a considerable number." Thus were not only hostilities, but actual conflict and bloodshed, commenced. Immediately upon this, martial law was proclaimed, and all the male inhabitants of the frontier districts again called upon to enrol themselves; the warning being now authoritatively given that danger was closely at hand.

On Christmas Day, the military villages of Juanasberg, Woburn, and Auckland, were pillaged and burnt by the Kafirs, and many of the male inhabitants massacred.

On the 28th December, it was intimated to the officer of the Kafir Police, that desertion was plotted by several of that corps, and that they designed to proceed under the cover of the coming night to Sandilli. Acting on this information the Commandant ordered the suspected to be prohibited from the use



of their arms, when seventeen rushed to their muskets, seized them, and fled to the mountains, followed by eighteen others who failed to secure their weapons. Eventually from different posts, three hundred and sixty-five out of four hundred of this Native Police Force deserted to their tribes; re-inforcing them not only with their own desperate daring, but also with arms and equipments.

On New Year's Day, 1851, the tidings reached Cape Town, that the Governor was pent up in Fort Cox. To understand his critical extremity at this time, it will be necessary to say a few words with regard to the position and nature of this important post.

A principal feature in the outline of Kafir scenery is a long and bold range of mountains, with here and there some more overtowering *kop* or summit rising above all; and beneath the great chain, numerous hills of lesser elevation, resembling gigantic barrows, with their gentle undulations and rounded tops smoothing down the ruggedness of the general picture. Fort Cox is situated on one of these lesser hills, which, however, differs in this particular from others—instead of sloping gently down to the plain country beneath, on three sides the steep is very rugged and precipitous. The eminence on which the Fort is built is in the very centre of what is called the Amatola Basin, above which towers the magnificent Amatola, like a chief looking down on its tribe-like hills. The Keiskamma flows through the valley beneath; and its winding silvery waters and wooded banks and bold scarped *krantzes* add at once beauty and grandeur to the landscape. The banks of the river are covered with dense bush, impervious to all but the gliding Kafir who thrids through it like a snake; and, on the bold heights which overhang portions

of the stream, stand bristling against the sky gigantic euphorbias, aloes, cacti and crassulas ; while, nearer down to the stream, dwarf palms (*Phoenix reclinata*) and zamias level their spearlike shoots as if guarding the rugged ascent. On the gentler swells and grassy undulations which on one side the fort extend far beyond the sight, the *Erythrina corallo-dendron*, *mimosa*, and thickets of spinous trees, with their bright green foliage, exhibit a pleasing diversity to the more scrubby and sombre vegetation of the wooded precipices. Over many of the trees and straggling shrubs a perfect network of parasitic plants, epiphytes, and papilionaceous creepers twine themselves in an inextricable maze ; and the bright flowers of the tecoma and ipomoea afford a dazzling brilliancy to the softer features of the glades, in striking contrast with a singular drapery of gray pendulous lichen (*Usnea barbata*?) which droops in graceful hangings from the large trees of the kloofs, and gives to the chasms and ravines over which it falls an air of hoary and undisturbed tranquillity. Such is this lovely and almost entrancing scenery, when viewed under the influence of a rich sun and a cloudless sky. The rise of land, however, on which the fort itself stands is parched and barren ; difficult to be furnished with provisions, and, if invested by an enemy, threatening nothing less than speedy starvation. From its position it is exposed to strong winds, and when these prevail, from its burnt arid surface clouds of dust and sand are driven in whirling gusts across it.

In this trap,—for this it may well be considered by one pent up in it and cut off from all supplies and communication,—was Sir H. Smith shut up, with hordes of wild Kafirs filling the bush and heights on every side around it.

Colonel Somerset, on receiving through a Kafir spy the news of the Governor's position, at once sent a supply of slaughter oxen to Fort Cox, under an escort of Cape Mounted Rifles, commanded by his son, Major Somerset. This party was forced to return as soon as they reached the wooded country, whose defiles they found to be, as it was described, red with Kafirs. On this, Colonel Somerset determined to effect a passage with a more considerable force; but his gallant attempt failed, and after a sharp and severe conflict of more than four hours he was compelled to retire. The following account, written by one who was present in the engagement, fully describes this desperate encounter.

“SUNDAY, 29th December.—This morning our force left Fort Hare, under the command of Colonel Somerset, to escort a few slaughter cattle to Fort Cox; all communication between these two places having been cut off, and provisions being scarce at the latter place, where the commander-in-chief was. Marched at 7 A.M. Scarcely had we left the fort when the adjacent hills resounded with the war-cry of the enemy. Halted for a short time near the Yellow Woods, during which a number of the enemy were seen assembling on a hill to our right. A party of the Cape Corps were detached to dislodge them, which they did in a few minutes. The retire now sounded for them to rejoin the division; the whole were then ordered to advance, and on nearing the Yellow Woods, one company of the 91st, under the command of Lieutenant Melvin, was extended to the right of the road, and another to the left—the third company being reserved as a covering party for the gun (a light 3-pounder). Large bodies of Kafirs were now seen approaching from

the direction of the Keiskamma River, and on our reaching the base of the hill on the road to Fort Cox, we found that the enemy had taken up a strong position behind some large rocks in our front, but were soon compelled to retreat by Lieutenant Melvin's company. That officer was here wounded in the leg, yet, though bleeding profusely, he continued to command his men. The whole were now ordered to lie down while the 3-pounder opened its fire on a portion of the enemy; and after a few rounds we were ordered to retire, which was done in good order. On reaching the foot of the hill before mentioned, the horses in the gun became restive, which occasioned some delay, and thus afforded the enemy time to come up. A heavy fire was now opened upon us, but only one man was wounded.

“The foe, seeing us retire, approached sufficiently near to admit of their using their assegais, and before we reached the Yellow Woods, they were perceived advancing on us in every direction. Just before reaching the drift, we had one man killed and another mortally wounded; but the latter was not left behind, as has been, alas! too often the case in Kafir warfare. The drift was now gained by our men, and here a corporal, while in the act of ascending the bank, was severely wounded in the shoulder with an assegai; a second passed through his body, and a third Kafir was in the act of stabbing him, when Colonel Somerset, with ten men of the 91st, most gallantly rushed up and succeeded in carrying him off, thus saving him from a fate too horrible to contemplate. We were ordered to hasten on a distance of 300 yards from the drift, where there were some huts, and at which point the Cape Corps

were extended so to cover our retreat. We reached this position, and continued in tolerably good order for some time. Our prospects were now rendered gloomy indeed, considering the smallness of our force and the immense numbers opposed to us—for at this juncture the trail of the gun broke short at the elevation screw. It was, however, speedily strapped up to the limber and brought on a short distance, when it again broke in crossing a drift, and we were then obliged to abandon it. This second delay gave time to the enemy to receive large accessions to his numbers from the Amatolas. Large bodies both of horse and foot succeeded in getting between us and the fort, as we perceived when near the base of 'Sandilli's Kopje,' where several ravines branch off—their object being to cut off our retreat. Now commenced the work of death, for in less than fifteen minutes our adjutant and Lieutenant Melvin, together with twenty men, were killed, and Ensign Bothwick and seventeen men wounded. It was a hand to hand contest, the Kafirs rushing upon us, assegai in hand, as they might well do with their immense superiority of numbers."

Colonel Somerset thus having failed to open a communication with the Governor, and knowing well the state of the country round,—that it was perfectly *alive* with Kafirs,—sent to entreat Sir Harry not to attempt to move with a column of troops; that if he did, they must inevitably be cut to pieces. At the same time, he counselled him to sally out, attended only by the Cape Mounted Rifles (to the number of 250), who were with him. This Sir Harry, in the daring, dashing way so characteristic of him, gallantly did, wearing the forage cap and uniform of one of the Cape Rifles: and by this timely sacrifice



he rode twelve hazardous miles, through the desultory fire of the Kafirs, on the road to King William's Town. On reaching the Debe Neck, about half way to that town, a strong attempt was made to intercept the corps; but Sir Harry and his escort vigorously spurred through their opponents, and, after a smart ride, reached the town, having eluded several bodies of Kafirs, who little suspected how great a prize, had they known their opportunity, was then fully in their power.

Almost simultaneous with these desperate attempts of the Kafirs was the outbreak of the Kat River Rebellion; and thus was the Colony not only deprived of the aid which the Frontier Hottentots had, in former wars against the Kafirs, so daringly and efficiently afforded, but it found them, in the very onset of hostilities, treacherously adding to its difficulties.

We have given this summary of the opening of the Kafir war of 1850-51 up to this period, that the services rendered at this critical juncture by Mr. Montagu, both to the colonists and the British troops, may be more fully understood.\*

Immediately the tidings of Sir Harry's position reached Cape Town, Mr. Montagu perceived that not a moment was to be lost; that the few troops then in Kafirland must be reinforced by native levies and burgher forces; and that the surest way to check a repetition of such disastrous engagements as had already taken place, was to pour into the Kafirs' territory, with the greatest despatch, such numbers as might be able to contend with them in

\* Those who require further information on the circumstances of the Kafir war of 1850-51-52 will find it in "Godlonton's Narrative of the Kafir War," an authority on which several statements in this chapter are founded.

different quarters. To this work he immediately set himself. The Civil Commissioners, and other agents for the purpose of raising recruiting parties, were sent in every direction. Clothing and accoutrements, in an incredibly short space of time, were provided. Bands of levies, by fifties and hundreds, were assembled in the military barracks of Cape Town. Communications were held daily with Her Majesty's officers at the naval station at Simon's Bay, that vessels for transport might be in readiness. Arrangements were set on foot for the support of the wives and children of those who enrolled themselves for the war: and with such promptitude and earnestness did all these matters proceed, that within seventeen days from the intelligence of the breaking out of the war, 1,260 men were enlisted, brought to Cape Town, armed, clothed, partially drilled, and embarked for King William's Town as volunteers. As quickly as the transport steamers could convey them, (and the alacrity and despatch of those who commanded these were beyond all praise,) levies were ready to be embarked. Week by week the motley but gallant volunteer bands, of all shades of color, and in every variety of costume,—some singing catches of songs to animate each other,—others leaving parting messages to wives and children,—were seen marching to the ships; and this was continued with uninterrupted ardor until upwards of 3000 levies had been equipped and sent to the scene of hostilities. Nor did Mr. Montagu's active spirit, and the ready co-operation of many who aided him, succeed in raising simply Hottentot and Fingo levies; the spirit to defend the Colony spread itself through others; so that 150 mounted burghers,

100 working men, principally English, known as "Lakeman's Volunteers," (raised by the bounty and exertions of a noble-spirited young Englishman,\* who sailed to the Cape for the purpose of furnishing and commanding such a band,) from time to time followed to the scenes of action, and took their parts in the wearying patrols, and skirmishing encounters with the enemy. The whole body of volunteers raised during the war amounted to—

Mixed levies . . . . .	3,900
Mounted burghers . . . . .	150
	4,050
• Total . . . . .	4,050

But it was not the number raised so much as the promptitude with which they were mustered and transported to the scene of war, which so materially aided the Governor and the troops at this trying juncture. The general's letters to Mr. Montagu at the time were full of acknowledgments, and expressive of his deep and generous sense of the aid so timely and expeditiously sent to him. These sentences are among them: "Your exertions are incredible, and they will by the arrival of the levies enable me to take the field!" "Your exertions are beyond all praise, and the service you have rendered me in the despatch of these Hottentots is of an importance I cannot describe." "The devotion shown by you and all the members of the Council in this awful outbreak smooths many of my accumulated difficulties!" "When I once get your 2,000 levies up I shall be in high feather. Once more many grateful thanks for all your exertions!"

\* For this patriotic undertaking he has since received a well merited mark of Her Majesty's favor, being knighted as Sir Stephen Lakeman.

The two following letters need only to be added to what has been already said to show what spirit actuated Mr. Montagu in this hour of danger; and in what light one of the bravest and most discerning officers (Colonel Eyre), engaged in the posts of greatest difficulty throughout well nigh the whole of the war, viewed his exertions and alacrity. The former letter was written by Mr. Montagu about a year before his death in reply to a letter of inquiry from the War Office (printed as introductory to it). This reply is interesting and valuable, as containing his own graphic account of his services, drawn up by him when laboring under seriously impaired health, from the indefatigable labor which those very services demanded.

“ War Office,

“ *9th November, 1852.*

“ Sir,—Numerous charges of an extraordinary nature, but which appear to have arisen out of the peculiar circumstances and exigencies of the Kafir war, having been made in the accounts of the Paymaster-General of Local Levies, at the Cape of Good Hope, for the period to the 31st March, 1851, to which objections were made in the examination of those accounts in this office, and as it appears by the answers of Mr. Rivers as well as by various documents transmitted in support or in explanation of these charges, that the same were generally sanctioned by the Colonial authorities, either by yourself or by the Commander-in-Chief, I am directed to inclose an abstract of such charges, and to request that you will furnish me with whatever information it may be in your power to give, as to the circumstances under which you gave your sanction thereto, and whether any communication was had with the Secretary of State upon the subject,

“ I have, &c.,

“ (Signed) B. HAWES.”

“ 20, Chester Street, Belgrave Square,

“ 4th December, 1852.

“ Sir,—I have the honor to acknowledge your letter  $\frac{150499}{288}$  of the 9th ultimo, and I will with much pleasure furnish you to the best of my ability in the absence of many official documents I ought to refer to, with the information you have requested for the Right Honorable the Secretary at War.

“When the Kafir war broke out, on the 24th of December, 1850, the Governor and Commander-in-Chief, Sir. H. Smith, was on that day suddenly surrounded by large bodies of the enemy, and he and all the troops with him were immediately shut up in Fort Cox. In like manner the troops in Fort Hare and Fort White were surrounded and shut up, and King William's Town, with the troops therein, was in like manner surrounded though not quite shut up, communication by letters between that town and East London, at the mouth of the Buffalo river, a distance of thirty-six miles, having been preserved through the Kafir chief Pato, whose territory lies between those two places.

“In this dilemma, Sir H. Smith succeeded, by means of a Kafir spy, in communicating to me his own alarming situation, and that of the troops under his command in Kafraria. This letter reached me on the 1st of January, 1851.

“In all his letters he instructed me, he urged me in the strongest terms that could be employed, to raise and send to his relief to the Buffalo, as many Hottentot and other levies from the Western Districts, as I possibly could obtain, with the utmost expedition, and he informed me upon what principle he wished the services of the levies to be procured.

“Upon occasions of such extreme urgency as Sir H. Smith's it is, of course, the duty of public servants called upon to co-operate, not to permit pecuniary considerations, or standing regulations to interfere with the most speedy performance of the service required of them.

“In my case, on that occasion, that course was beyond a moment's delay.

“I had ascertained, through reliable channels, that the friendly chief Pato had been so hard pressed by the hostile chiefs to join them in the war against us, that he had been



unable, entirely, to resist the pressure, and had at last, reluctantly consented to rise and join them on an early day agreed upon between them, provided no relief arrived at the Buffalo by that day.

“I knew that if by that day reinforcements were not landed at the Buffalo to support Pato in his friendly dispositions, the whole of his Kafirs, as one man, would have risen, and would with the men of the hostile tribes have shut up King William’s Town as they had the forts I have enumerated.

“As the troops could not furnish escorts, the enemy intended, upon Pato’s numerous people joining them, to intercept all supplies.

“In that event, the several garrisons must in a very short time have been starved to death, or have attempted to cut their way, for several days in succession, through those savages who, in all human probability, would easily have overpowered them by their vast numbers, and a second Affghanistan would have resulted.

“My position in Cape Town was one of peculiar responsibility. My duty as a civil servant did not require me to execute instructions for the military service, or to raise, arm, equip, and transport levies to the Buffalo for the relief of the Commander-in-Chief. But the Commander-in-Chief having deemed me the most competent officer for the work, and having sent his instructions to me direct, and having, moreover, at the same time, instructed the several military departments at Cape Town to comply in every way with my requisitions upon them, I did not for one instant hesitate to act upon his instructions, and at once devoted my time, day and night, my talents and my energies to accomplish the important duty.

“I need not enter into details, beyond stating that I received zealous and hearty co-operation from the public functionaries in Cape Town, and the adjoining country districts. I employed many persons unconnected with the Government whose knowledge and abilities could be usefully associated. I sent a large number of intelligent agents to every available place within 300 miles of Cape Town to enlist serviceable men. I formed these men as they arrived in Cape Town into corps, had them examined and approved

by a Medical Board, and then clothed, armed, and completely equipped them. I obtained and appointed the necessary complement of officers. I procured from the Admiral on the station, and by hire, all the steam-vessels on the coast. I dispatched, with a rapidity previously unknown, on the 17th, I may say, (in seventeen days from the time of my receiving the first intelligence of the war,) 1,260 men, who were landed on the 21st at the Buffalo, 900 miles from Cape Town. In two or three days afterwards these men were followed by 500 more men; and by the first week in February 3,000 of the men I had raised were in the field in Kafraria, doing good service against the enemy. This timely relief destroyed the hopes and confounded the well-devised plan of the enemy, confirmed the fidelity of Pato and his wavering people,—who were under agreement to have risen before the end of January,—and, I need not hesitate to say saved the troops in Kafraria, humanly speaking, from destruction; enabled the forts to be provisioned (an operation which required an escort of 2,000 men), and permitted the Commander-in-Chief to act on the offensive.

“ The following extract of a letter (and I have many letters of a similar character), describes the Commander-in-Chief’s feelings upon the arrival of the levies I had raised, and evidences how warmly he appreciated my services.

“ ‘ King William’s Town,  
“ ‘ 21st Jan. 1851.

“ ‘ My dear Montagu,—Thanks be to God, through your exertions I have just got report of arrival, first of ‘Hermes,’ next ‘Dee,’—4 o’clock,—bringing me 1,260 men. I am on my legs again, and no longer doubt victualling Forts Cox and White. These levies arrived in the very nick of time. I write in great haste, as I do not desire to detain ‘Hermes’ longer, whose levy has landed. I assure you I thank, with a grateful heart, you and the Council, and all who have worked. \* \* \* \* \* Colonel Mackinnon says you ought to be the forager of the world. \* \* \* \* \*

“ ‘ Ever yours gratefully,  
“ ‘ (Signed) H. G. SMITH.’

“Having as required by you furnished information as to the circumstances under which I gave my sanction to the charges in question (and I trust to the satisfaction of the Secretary at War and my own justification), I will now proceed to explanations upon the items of charge detailed in the abstract you have transmitted to me for that purpose.

“I have, &c.,

“(Signed) JOHN MONTAGU.”

The subjoined letter is from Colonel Eyre written to the Bishop of Cape Town, who had requested to be informed of the colonel's opinion relative to the extent of Mr. Montagu's services to the troops in the war :—

“Newbrough, Hexham,

“November 8th, 1853.

“My dear Bishop,—I received your letter of the 3rd instant only last night. I lose not a moment in replying to it. Most assuredly the services of Mr. Montagu to the army in British Kafraria, especially at the outbreak of the last war, were of no ordinary character. No one I am convinced who was on the frontier at the time, and reflects on the position in which we, a handful of British troops, were placed at that most dismal period of the war, can do otherwise than acknowledge those services. The war, as is well known, had taken everybody by surprise. Sir Harry Smith had been obliged to retreat without his baggage, from Fort Cox to King William's Town. We were all hemmed in and confined to our several posts; our communications with the Colony were cut off. What we should have been obliged to do had we received no assistance from the Colony I am not prepared to say, but undoubtedly we were saved from this dilemma by the timely arrival of ‘the levies’ which were raised, equipped, and armed, and sent to our support with extraordinary promptitude. We were immediately relieved from our defensive position, and we commenced *then* the active operations of the war. There was not a soul in the army at that time, who did not believe that to Mr. Montagu alone, acting under the instructions of the

Governor Sir Harry Smith, we were indebted for the great assistance we received. We all felt at the time, I assure you, most grateful to him. We felt certain that to his personal exertions alone was due the merit of rescuing us from a most difficult position.

“ I trust these, and his other eminent civil services, will not be forgotten now that death seems about, and prematurely, to terminate his most useful and distinguished career. It is not for me to expatiate on these services. They will be appreciated when they are known, for undoubtedly they were of no ordinary character. Indeed, to the zealous and unwearied performance of the services in the laborious office he held at the Cape, may be ascribed, I am convinced, the loss of health, now about fatally to terminate to the loss of his country, and to the grief of his family and many friends. Pray make any use of this letter you think proper, and

“ Believe me always, &c.,

“ (Signed) WILLIAM EYRE.

“ Lieut.-Col. 73rd Regiment and Colonel.”

## CHAPTER XV.

## LAST ILLNESS AND DEATH.

ONEROUS DUTIES OF MR. MONTAGU DURING THE YEARS 1851-52.—HIS DILIGENCE AND APPLICATION TO THE VARIOUS REQUIREMENTS PRESSING UPON HIM.—HIS HIGH SENSE OF DUTY.—CONSENTS TO SEEK REST IN ENGLAND.—SAILS FROM THE CAPE MAY 2.—LANDS IN ENGLAND IN JUNE.—STATE OF HIS HEALTH ON LANDING, AND FOR SOME MONTHS AFTER HIS CESSATION FROM BUSINESS.—HIS OWN DESCRIPTION OF HIS STATE OF HEALTH AND MENTAL DEPRESSION.—LETTER ON HIS BEHALF FROM SIR G. NAPIER.—SERIOUS ATTACK.—SYMPTOMS THAT HIS ILLNESS WAS MORE ALARMING THAN HE HAD ANTICIPATED.—HIS FIRMNESS OF MIND ON HEARING THIS.—REMOVES TO BRIGHTON.—HIS SICKNESS CAUSES FURTHER APPREHENSION.—HIS FRAME OF MIND DURING HIS ILLNESS.—HIS DISPOSAL OF HIS TIME AND THOUGHTS.—CLOSE OF SELF-EXAMINATION.—REV. MR. MAITLAND'S ACCOUNT OF HIS STATE OF MIND IN HIS SICKNESS.—TESTIMONY OF THE BISHOP OF CAPE TOWN.—NEARER APPROACH OF DEATH.—HE SOLEMNLY NERVES HIMSELF TO MEET IT.—GREAT BODILY EXHAUSTION.—TRANQUIL DEATH.—HIS END PREMATURE.—THE FUNERAL.—THE NEWS OF HIS DECEASE RECEIVED WITH EVERY MARK OF REGRET AT THE COLONIAL OFFICE.—GENEROUS CONDUCT OF THE DUKE OF NEWCASTLE.—HIS DESPATCH TO GOVERNOR SIR G. CATHCART.—REGRET AND SYMPATHY MANIFESTED AT HIS DEATH, AND FOR HIS WIDOW AND CHILDREN.—TESTIMONY OF SIR GEORGE ARTHUR.—MEMORIAL FROM CAPE MERCHANTS RESIDENT IN LONDON, ON BEHALF OF THE BEREAVED FAMILY.—NEWS OF HIS DEATH HOW RECEIVED AT THE CAPE.—SERMON PREACHED IN CAPE TOWN, REFERRING TO HIS CHARACTER AND DECEASE.—CLOSING REMARKS.

It is scarcely possible for one unacquainted with the amount and diversity of business, which during the years 1851 and 1852 passed through the Colonial Office at the Cape, to estimate the demand upon the



time, and the strain upon the anxieties, of Mr. Montagu during the last two years of his secretaryship. Each monthly mail brought fresh instructions from the Home Government connected with the constitutional changes; every post from the frontier was laden with new apprehensions from the movements of the Kafirs, or the progress of the rebellion at the Kat River and other Hottentot localities; and an alarm was spreading through the West, that the colored races were in conspiracy to make an outbreak against their masters and employers. It now appears that this alarm was unnecessary, or had little ground for its existence, but, at the time, the current rumors were considered of sufficient moment to cause a commission of inquiry to be instituted, in order to investigate the extent and reason of them.

Probably at no moment during his service in the Colony was Mr. Montagu's position so difficult, or so trying, as it was during the whole of the year 1851; and throughout that year he manifested how well-sustained was the grandeur of his self-reliance, how masterly was his adroitness, and how capacious his fund of resources for every emergency which then arose out of the external or internal struggles of the Colony. At this hour, more than all others of his career, he believed duty called him to stand in the gap, and most heroically and devotedly he stood there. Calm, vigilant, ready, he was ever at his post. The duties of his office were not relaxed; all the lesser wheels which moved the vast machinery for carrying on the Kafir war went steadily and systematically on; every minor detail of his department was attended to as beforetime, — yet, as despatch followed despatch, giving orders to proceed

with the Constitution,—as debate succeeded to debate, arising out of these orders, — self-possessed, deliberate, and prompt, his great mind was always prepared for the exigencies of each movement and each change. All he asked, all he labored for, was that the new constitution might be delayed until the close of the war; and in this desire he had but one object, that already stated,—to save the Colony from the consequences of what he believed disastrous haste, and to bring in, after mature consideration, such a Constitution as should secure the peace, and maintain the just rights of every class of the community. And to effect this, which to him was a paramount duty, he was, as we have seen, high-minded enough to be, for the moment, unpopular with the many; he was well contented to stand as a break-water on which every wave might dash, and to be the buffet of the very wildest, if by so devoting himself, the future position of the Colony, whose interests were his only care, could be secured unimpaired. But all this time the stress and strain of the overwhelming business devolving on him—the pressure upon his mental and physical powers, arising from the anxiety, importance, and experiment of changes so utter and so vast as were contemplated—his sensitiveness of being coldly seconded by some, and being misunderstood by others—the knowledge that on himself singly was breaking all the tide of the popular impatience,—all this pressure and much besides was secretly over-taxing his strength; hourly anxiety, unremitted by night or by day, was silently undermining the natural energy of his constitution; and it was clear to those who best knew him, that if timely rest were not taken, his health would not only be injured, but hopelessly

destroyed. Yet he refused at this time to seek rest. As long as work was to be done, as long as another effort was to be made, as long as another exercise of self-devotion might avert the danger which he believed threatened,—so long he stood in the defence, and never yielded and never faltered, nor even contemplated rest, till, overwhelmed with more than mere ordinary human powers could sustain, his strength of mind and body was so over-wrought, that he was compelled by threatening symptoms to yield to the urgent entreaties both of his medical advisers and his friends, and seek that relaxation which he ought to have sought at least a year before. For now, alas ! it was too late. The mischief was already too deeply done ; over-work, the lively consciousness of the vast responsibility which was weighing upon him, keen anxiety for the interests of the Colony, and the feeling of which no good and sensitive mind can be heedless, that he was spending himself and sacrificing health and life for the public good, and yet that his good was evil spoken of,—all these causes had effected their consequences more insidiously and seriously than was suspected ; and Mr. Montagu retired on leave from the Colony only to die at home, and to find his body's resting-place far from the scene where his heart still lingered, and whose well-being claimed his almost dying thoughts.

On the 2nd of May, he embarked with his family for England. That day being Sunday, and the time for the vessel's departure being within the hours of divine service, comparatively few persons conducted him to the ship. But conflicting were the feelings of those who did ! Feelings of pain that he should leave at such a juncture, and for such a cause ; feelings of misgiving as to whether or not he would ever

again set his foot on the shores he was then leaving. And by many of those who did not witness his embarkation, earnest prayer was offered in the services of that hour; and while in the beautiful litany the petition rose to heaven for "all that travel by land or by water," he and his family were not forgotten.

Early in June, Mr. Montagu arrived in England, much recruited in strength and spirits by his voyage, but still very much shattered. The following letter, written at this time, explains that he was then aware to how great an extent he had been over-taxing his powers, both mental and physical.

" London,

" 1st July, 1852.

" My dear ———, I have been three weeks in London without writing to inform you of my departure from the Cape; and if I were called upon to say how this has happened, I must reply by saying, that it is an instance of that kind of procrastination which arises from deferring day by day what ought not to be deferred a single day, till the mind begins to find excuses, and gets in a manner reconciled to its negligence. \* \* \* \* \*

" My departure from the Cape was at last very sudden: my health broke down so rapidly, and my mind, from over-tension, gave way so much more rapidly, that my medical adviser told me he could do no more for me, and that I must take my choice between rest and paralysis. To hesitate under such a state was impossible, and as a Lieutenant-Governor was appointed and had already arrived, and, inasmuch as he was to reside permanently at Cape Town, and take over those duties of the Government which, in the absence on the frontier of the Governor, had devolved on me to perform, there was no great difficulty in my way, and so I made the most of circumstances and came away. We came home in the steam-packet in thirty-five days very pleasantly, and during the voyage, I improved greatly; but

few days, could not move out of the house. Dr. Squibb is attending me, and thinks the congestion of my brain not chronic; but he will not speak decidedly for two or three months. My plans are all unsettled. England appears to me a great blank! How many changes have taken place in the last ten years! What with the removal of many friends, and the death of others, I seem truly most desolate! In my weakness and painful state of mind, I feel without a *point d'appui*, without a centre to draw to,—poor ——'s death, and the death of —— and ——, now make themselves sorely felt, and all around me seems vacant.

“ Ever sincerely yours,

“

“ J. MONTAGU.”

A letter written by him at a later date, Christmas Day, 1852, makes further mention of his state of health :—

“In the last few weeks I have been improving in bodily health, but very little in mind. Dr. Bright has lately examined me, and says, that from the rest I have had, I ought to have improved in mind very much more. His opinion now is that my complaint is not organic, and that I shall in time be quite restored, but always be liable, upon any unusual pressure upon the brain to a return of it. He says I am quite unfit for the duties of my Cape office, and that I can never resume them without much risk. He has advised me on no account to return to the Cape. He says, it would be folly to attempt that work again! My mind is in consequence made up not to return, and if I can obtain any employment here I will take it.”

From the time of his landing in England, until April 1853, very nearly a year from his leaving the Cape, he complained continually of his head; and, as his letters show, was weak in body and in a most unhinged and nervous state of mind—nervous rather from a recollection of its powers having been overtaxed, and from a sensitive dread of recurrence to what



could again so overstrain it, than from any degree of irritability, or disturbance from what was passing about him. Here is his own account:—"I find no alteration in the powers of my mind. Any attempt at thought or application upsets me as much as ever; yet I can bear noises, conversation, and the laugh and play of the children pretty well, and am very much less nervous in many ways. So you see there is some amendment; and time and patience and trust will, I hope, do the rest."

From his own expressions, and casual allusions to his impaired powers of strength, thought and application, as well as from the testimony of his medical men, it is now clear that, at this time, he was breaking up, day by day,—a slow sacrifice to those pressing exertions which the stimulus of duty enabled him temporarily to bear, but whose subsequent reaction and effects were too manifest when the excitement of public activity was gone.\* He still tried, however, by quiet and change of residence, and social conversation, to recruit his spirits, and mind, and body, all of which exhibited a strange contrast to that elasticity, collectedness, control, and energy, which were formerly their peculiar and marked characteristics.

At this time, Sir George Napier (under whom as Governor, Mr. Montagu had served during his first years of office at the Cape, and from whom he received, to his very last hour, every sincere token of kindness,) wrote the following letter on his behalf to his Grace the Duke of Newcastle; with the view of pressing his claim for some office of emolument in England. Sir George took this kind step, from the opinion

\* See Appendix—Letters from Drs. Bright, Bickersteth, and Squibb.

expressed by Dr. Bright, that Mr. Montagu would not recover to a sufficient degree to undertake anew the onerous duties of "Colonial Secretary at the Cape of Good Hope."

"Nice, Piedmont,

"January 15th, 1853.

"My Lord Duke,—I trust your Grace will not consider me either officious, or presumptuous, in intruding on your time, in order to promote as far as in my power, the interests of an old and deserving public officer, Mr. John Montagu, the Secretary to Government at the Cape of Good Hope, but at present in England, in consequence of illness brought on by over work in the performance of the important duties of his office at the Cape.

"When I had the honor of being Governor and Commander-in-Chief of that Colony, Mr. Montagu served in his present capacity under me, and I can truly state that a more active, independent, and able public servant I never met with—his honor and integrity are unimpeachable, and his character and conduct as a gentleman perfect.

"Understanding that his medical advisers tell him he must on no account return to his official duties at the Cape, I consider myself called upon as an act of public duty, to address your Grace in favor of Mr. Montagu's claims, as a public servant, and to state my conviction that should you think proper to appoint him to some suitable situation at home, you will find him equal to the duties of any place, however important, which your Grace may bestow upon him.

"I took the liberty of writing to Lord Derby officially, as I now do to your Grace, when his Lordship was in office, and I had reason to believe, from his answer, that Mr. Montagu's claims would be taken into the most favorable consideration, had his Lordship remained in office.

"As I have no motive but the wish to be of service to an old and able civil servant whose claims are great, and who also fought as an officer at the *Battle of Waterloo*, I trust, I may hope for your Grace's favorable consideration of Mr. Montagu's case, and of what is due in your Grace's

records of the Cape Colony, for the last ten years, will, I am fully convinced, satisfy your Grace. I again request your Grace's pardon for this intrusion, as I beg to assure you, nothing but what I consider my duty to Mr. Montagu, as a *public servant* of great merit, would have made me take the liberty of addressing you.

“I have the honor to be, with much respect,

“Your Grace's obedient humble servant,

“GEORGE NAPIER, Lieut.-General.

“His Grace the Duke of Newcastle.”

To resume our narrative. On the 7th April, after a severe attack of influenza, Mr. Montagu unadvisedly ventured out of doors: the day was cold, and on returning home he complained of a chill which he had felt on getting into an omnibus in London. The serious illness which terminated in his death commenced that day, and continued until the 4th November. Of the progress of this illness the interesting letter of Dr. Squibb\* furnishes the fullest particulars.

Dr. Bright was at this time called in for consultation, and in his several visits to the patient's sick room was greatly struck with the calmness and clearness of mind with which he analyzed his complaint, detailing every symptom and the danger he rightly anticipated from each. In August, he was removed to Brighton; Dr. Bickersteth, then on a short visit to England, and who at the Cape had been his long tried friend and occasional medical attendant, accompanied him. Up to this time Mr. Montagu did not apprehend any serious termination to his sickness, but Dr. Bickersteth, being well acquainted with his constitution, readily conjectured that it was completely broken, and that his life was in

considerable danger. A close and minute examination confirmed his opinion, and he then communicated to Mr. Montagu, freely and frankly, what he believed the state of his health to be. This was the first clear intimation he received that his life would, in all probability, not be of long continuance, and he received this intimation with the firmness which might be expected from him.

During his stay at Brighton, his health again seemed for a short time to improve; but all his medical advisers strongly urged on him not to pass the winter in England, and it was then decided that he should return to the Cape without delay. In order to make the necessary preparations for his voyage he went to London in October; and there it soon became apparent that his state of health was becoming every day more alarming; but he was still sanguine that he should return to the Cape and ultimately recover.

On 21st October, water on the chest began to manifest itself; and a few days after he was seized with convulsions, and suffered from extreme pressure on the brain. This attack convinced him that his recovery was hopeless. He survived it but a fortnight, during which period his mind was as calm and composed as it had ever been at any time of his life;

“ And like rich hangings in a homely house,  
So was his will in his poor feeble body.”

When he was aware he could not recover, he put in order all his private papers and accounts; wrote to the Duke of Newcastle the unfinished letter already mentioned; made arrangements respecting his funeral, which he requested might be conducted with the least possible expense; and gave directions concerning all he wished with regard to those who

survived him, with the tenderest feeling, and yet in the same quiet and systematic manner in which he had ever conducted matters in the soundest moments of his health.

It must not, however, be imagined that his serious thoughts, at this time, were given only to the trying work of "putting his house in order;" he was also earnestly seeking to be "prepared to meet his God." During his illness his mind and conscience were soberly passing under very strict self-examination. A lady who took a lively interest in his religious impressions at this time, furnishes the following account of the changes she perceived to have passed over him in a few months.

"When he first visited us in London, he appeared broken in health; his manly frame much shattered by the cares and anxieties of a long career of official labor; but there remained that vivacity of manner, that brilliancy in conversation, that vigor of intellect, graced with a simplicity of address, guileless mind, and child-like humility, which at once stamped him the very personification of an innate gentleman; while much added to this led to the belief that he was a Christian living in the fear of God. And yet, at times, I could perceive a dejected look, which was afterwards accounted for. His moments of sadness arose from the consciousness of his declining health, and inability to secure—what had ever been, next to his duty to his sovereign, his uppermost earthly aim,—an independence for his family. It was the intensity of feeling as a husband and a father that preyed upon his sensitive heart.

"The next time we met nearly a year had elapsed, and it was within a few weeks of his death. The change was great and decided. What an elo-



which is the 'secret of the Lord.' The careworn and anxious look was exchanged for the utmost placidity and composure; he seemed as one who had already escaped from the trammels of this world, and was tasting of that peace which truly 'passeth understanding.' His great delight now was a desire to impart to others the way and the means of obtaining that peace which had taught him what is the true meaning of happiness.

"Almost the last time I saw him was at Brighton; he spoke with veneration of Mr. Maitland, and said he was a 'heavenly minded' man. It was his great pleasure to send us books from which he derived spiritual comfort and help. His countenance was now emaciated and worn, but the expression was something heavenly, which spoke eloquently of peace and joy in the heart. One felt in looking at his face that he was freed from the conflicts of this difficult life, and was near his home. All the benevolence and tenderness of his nature seemed as if full blown,—the love of God, the spirit of Christ Jesus filled his heart,—and he earnestly desired that others should have the same happiness and know the same Saviour in whom he trusted, and to whom he carried all his cares and pains, and to whose guardian care he could leave those beloved ones who watched and tended him with trembling anxiety and affection."

He spoke at this time of having read the Psalms of David with calm admiration; and remarked on the great difference with which he now regarded prayer. "Feeling," he said "my own sinfulness I have prayed all my life;—since my illness I have fully felt and known the necessity and privilege of

prayer. In times past my lips expressed my feelings, now my soul prays !”

“ Truth is deposited with life’s last hour ;”

And Mr. Montagu was too much a lover of truth and sincerity not to listen to the strictness of the one and the secrets of the other on his dying bed. Nor was he in that scene and hour of self-searching a self-deceiver, or one who uninquiringly rested on a vague hope. “ Of his own heart he made diligent search ;” and his conviction of his state as a sinner, and of his unworthiness of all that Christ has promised to those who live and die in His faith and fear, for a time pressed so heavily on him, that he likened it “ to a canopy of lead ” intercepting his prayers to heaven. He expressed repeatedly the most earnest satisfaction in hearing the Bible read to him ; some of the Psalms of David he especially requested to have repeated several times in the day, according as he had strength to listen ; and after a close conversation with the Rev. C. D. Maitland, of Brighton, mainly with regard to his confidence in Christ Jesus for his eternal salvation, his daily reading was a portion of the first eight chapters of St. Paul’s Epistle to the Romans. Mr. Maitland, in a letter written subsequent to Mr. Montagu’s death, thus describes his state of mind during his last illness :—

“ I found him, in his daily meditations, reading portions out of the Psalms ; these seemed to speak to his feelings, but he lacked that justifying faith which David had, on the ground of which he conversed in those Psalms with his God ; and therefore was not in a state of mind to read them with profit ; the foundation required laying in his soul on which

he might build up a hope towards God. In this light his case appeared to me on first visiting him, I therefore led him to the Epistle to the Romans, and hastily (as he could bear it, for the poor wasted body soon got exhausted) sketched out to him the matter contained in a portion of that Epistle, from the third to the eighth chapter inclusive, and to the elucidation of these chapters I most confined myself in my after visits, that I might possess his mind with the wondrous scheme of grace and mercy as there unfolded, that so he might clearly see what God had wrought for man, and what ground there was for faith and hope in Him: and rejoiced was I to see how his mind kindled at the prospect afforded him, and how, as one truth after another presented itself to his now eager gaze, he was filled with admiring thoughts of that wisdom and goodness which had devised a plan of salvation, so glorious in itself, and so, in every way, suited to the necessities of a poor sinner of mankind such as he increasingly discerned himself to be. He now only complained to me of the hardness of his heart; that he could not feel, as he should, towards God in the view of His great mercies, and that the sins which he now detected on reviewing his past life did not give him the pain and shame they ought; his cry was for a broken and contrite spirit, and his frequent inquiry was how this might be obtained. But this crying sense of his need of this brokenness of heart encouraged the belief that the thing was there, and that God had given him repentance unto life. I directed him to seek of God what he felt the need of, and to approach Him as God in Christ, who had given, in him, such an encouraging manifestation of His name

proach to Him. At this period he was hastily called away, and I saw him no more, but I humbly trust that his end was blessed."

This hope expressed by the Rev. C. D. Maitland is fully confirmed by the testimony of the Bishop of Cape Town, who, while he was in London, was almost in daily attendance at his dying friend's bedside, and was admitted to the very closest confidence of his heart and soul, the Bishop, giving an account of his visits to him, thus writes:—

"There can be no doubt that his long illness was a great blessing to him; and he felt it so to be. It brought him nearer to God; led him to think and to read far more on religious subjects than he had ever done before. Under his affliction he seemed to me to grow daily in all Christian graces. He saw himself to be a sinner, and that there was one only name through which he could be saved; and he had a calm and enduring conviction that his sins were forgiven, and his soul saved through the merits of his Redeemer. He told me that he was not afraid of death; that he was contented to die, and that he trusted he was not deceiving himself about his spiritual condition, or building his hopes upon a wrong foundation. I saw him as often as I could amidst my many pressing engagements, and prayed with him daily. This was a great comfort to him, and he would send for me if he was depressed or worse than usual; I administered the blessed Sacrament to him and Mrs. Montagu shortly before his death. One thing only seemed, at times, to disturb him;—the thought of his widow and his orphan children destitute and unprovided for, but even this he dismissed from his mind, content to leave them in God's hands; and knowing that he had deserved well of his

country, and that his friends would not suffer the memory of his deeds to be forgotten. I loved and admired Mr. Montagu much in the days of his health and vigor, not so much for his great abilities as for his uprightness, his truthfulness, courage, firmness, determination to do what was right, let who would gainsay it, his entire freedom from all selfish considerations, and the cheerful readiness with which he sacrificed popularity to the performance of what he deemed to be his duty. But I can safely say I never admired or loved him so much as on his sick and dying bed: I think I never saw a more beautiful or affecting spectacle than he presented as he lay, propped up, worn, exhausted, gasping for breath, day after day, and yet in mind just the same that I remember him in the days that are past. He analyzed his own case with the same calmness and precision that he would have examined into some ordinary matter of old. He was ever thinking of others, attending to every little thing which could save his wife trouble after he was gone. There were none of those little infirmities that so often pain us in a sick-room to be seen in his case; no one saw even an impatient look or heard a hasty word during his whole illness; I have never seen so much cheerful patience and resignation on a sick-bed. He was great in his death as he was in his life."

As the time of his soul's departure drew nearer and nearer, his wish seemed to be that no earthly or distracting matters should be intruded upon him; as if he desired that he might

"Walk thoughtful on the solemn, silent shore  
Of that vast ocean he must sail so soon;"

and the day before his death he said that he had



then arranged his worldly matters, as far as he could, and expressed an inclination to be left quite alone.

From the testimony of those who watched him through his last days, and from the tenor of his whole conduct at this time, there can be little doubt that this solitude, which he desired, was to him both sacred and serene; and that his sick chamber was to him, in his last hours, a scene of wrestlings and prayers with his Divine Chastener; a solemn Peniel,—holy ground,—whereon he talked with God “face to face;” there he calmly reviewed God’s many mercies for the Past, there he hopefully aspired to the realization of the glorious promises for the Future, while faith and communion with his Saviour

“The world excluded, ev’ry passion hush’d  
And opened a calm intercourse with heaven.”

On the morning of his death, it occurred to him that the Will he had made at the Cape would not hold good in England, and this his opinion being confirmed, a fresh Will was drawn up; and he gave every direction about it with the greatest precision and tranquillity of mind, although at the time his bodily strength was so exhausted that the slightest conversation wearied him; yet within two hours of his death he attentively and collectedly listened to the reading of the whole Will, and with quiet deliberation confirmed it with his signature. This was his last visible act. He then gradually became more exhausted, and at twenty minutes past one o’clock expired without pain or a struggle. So calm was his dissolution, that Mrs. Montagu, who was watching beside him, was obliged to put her ear to his heart to ascertain if he was really dead. Such was his soul’s tranquil departure!

“ Death laid his hand  
Upon his heart gently, not smiting it,  
But as a harper lays his open palm  
Upon his harp to deaden its vibrations : ”

Or, to adopt the more beautiful imagery of Divine Inspiration, to describe his peaceful “ falling asleep,” —the “ silver cord was loosed,” but affection’s watching eye could not discern when the shadowy hand unwound it,—“ the golden bowl was broken,” but attention’s listening ear could not catch the feeblest sound to tell when its brittle mechanism was snapt, or when the “ wheel ” stopped revolving “ at the fountain.”

During his last illness Mr. Montagu suffered greatly from extreme exhaustion. His bodily frame had been in his health robust and athletic, his gait firm and decided, and his countenance fresh and indicative of a sound constitution as well as evenness of mind. His habits were regular and abstemious, and few men in their appearance gave greater promise of a “ green old age ” than he did a few years before his death. Yet during his closing sickness, his weakness was almost that of a child’s; he sat propped in his bed, with his head bowed and sunk upon his breast, and it was with difficulty he could breathe without being fanned. Few who had known him in his best days could have recognized in that feeble form the man of energy, and the promoter of so much active usefulness that he once was,—but the mind, the forethought, the coolness, the greatness of John Montagu were the same; according to the testimony above given,—“ *He was great in his death as he was in his life!* ”

Of Mr. Montagu, whose peaceful departure was a striking contrast to his toilsome life, it may be truthfully said that “ he did not waste out, but was worn

out"! His unwearied exertions and overtasked anxieties in the trying discharge of his duties, especially for the latter period of his career, made his life though long in labors short in the days of his age; and opened for him a premature passage to the grave. He enjoyed not a single day's perfect health after his return to England; and sunk "bowed with cares, but not with years,"—for he had numbered but fifty-six at the time of his decease. Yet his life was a striking example that "honorable age is not that which standeth in length of time, nor that is measured by number of years. But wisdom is the grey hair unto men, and an unspotted life is old age."—Wisdom iv. 8, 9.

The removal of his body to its last rest was without unnecessary pomp or expense, as the deceased requested it should be. This very act was characteristic of him: shortly before his death he called the undertaker to his bedside, and with the greatest composure gave orders how his funeral should be conducted, which he strictly charged should be "in a manner becoming his circumstances." He died as many a patriotic and public spirited man has died—*poor*. Nor did he desire that it should be thought otherwise: unostentatious in his mode of life, it would have been a contradiction to his character, to have exhibited aught but what was necessary and respectful at his death. The expense of his obsequies was the costly love and deep sorrow of the many illustrious friends who mourned his loss and sympathized with the widow and orphan children he left behind him.\* He himself named the few friends

\* Mention has been made in a former page of the signal kindness and commiseration exhibited by the late Sir P. Maitland towards Mr. Montagu in his seasons of difficulty, and to his widow and orphan

whom he wished, to use his own expression, "to lay him in his grave." His pall was borne by Sir P. Maitland, Major Bower, Mr. W. Hawkins (ex-member of the Legislative Council), and Mr. Pinney (Resident Magistrate, Simon's Town), Cape of Good Hope. His little son Arthur was chief mourner; and a relation of Mrs. Montagu's, Major Arthur, who met the funeral train at the burial ground, was also present. Charles Bayley, Esq., who was specially named by the deceased to be one of his pall-bearers, was unavoidably absent from illness. Thus those "who laid him in the grave" were few, but they were those who had loved and esteemed him for years. All of them had known him in distant lands; yet there they stood round "the narrow house" which was to be his body's last resting-place, and witnessed all that was mortal of him committed to the ground in the land of his early days, and in a spot, over which probably, in all the elasticity of hope and joy, his opening boyhood had sported. He was buried on the 8th November, 1853. The Bishop of Cape Town officiated at the funeral, and most solemnly and with deep feeling read the burial service. The last remains of the deceased are deposited, as regards the world to come, "in the sure and certain hope of the resurrection to eternal life," but as regards their consignment from the sight of the present world, in

children in their bereavement. It is an act of justice to mention here, that in Mrs. Montagu's affliction, Lady Sarah Maitland's kindness, attention, and consolation were those of a friend, a sister and a Christian. Those who witnessed, as well as those who experienced, her innumerable and considerate acts of tenderness on that occasion never will forget them. Lady Sarah is herself now a widow, and those who know her amiable and pious character have this sure consolation, that the spiritual comfort and trustful hope which she administered to Mrs. Montagu in the hour of suffering, have been bestowed manifold on her own heart and soul in *her* bereavement, from a gracious and merciful God.

the cemetery at Brompton; and over them has been erected a plain stone, with the following inscription:—

SACRED  
TO THE MEMORY  
OF  
JOHN MONTAGU,  
SECRETARY TO GOVERNMENT, CAPE OF GOOD HOPE,  
BORN AUG. 21, 1797.  
DIED NOV. 4, 1853.  
CURA ET AMORE  
ROBERTI EPISCOPI CAPETONIENSIS.

The tidings of Mr. Montagu's death were received at the Colonial Office, Downing Street, with every mark of regret and esteem. Those who had held the office of Colonial Secretary gave their ready testimony to the public loss;\* and the Duke of Newcastle, then at the head of the Colonial Department, ordered an official despatch to be forwarded to the Cape, announcing the death of its Secretary to the Colony which he had so faithfully served, and which would have most reason to lament his decease. This was a mark of distinction and appreciation seldom shown in such cases; and reflects no less honor on the illustrious duke who so generously bestowed it, than value for the deceased, whose memory and services it was duly intended to record and honor. Yet his Grace did not let the matter rest here, but sent the following considerate despatch to the Governor Sir G. Cathcart.

“ Downing Street,  
“ 11th December, 1853.

“ Sir,—I greatly regret to learn that the decease of Mr. Montagu, late Secretary to Government for the Cape Colony, has left his widow and a portion of his family very

\* See Appendix—Letters of Earl Derby and Sir J. Packington.



scantily provided for. Mrs. Montagu leaves England by the present packet, and will, I have no doubt, be received with the regard due to her misfortunes by the many, whose friendship had been acquired by her deceased husband, in the course of his public and private career.

“ 2. Mr. Montagu’s claims on this department, arising out of peculiar services rendered before his connexion with the Colony under your Government, and out of the serious loss of fortune occasioned by his removal from Van Diemen’s Land, have justified me in taking the unusual step of making application to the Lords Commissioners of the Treasury, for such slight assistance, by way of gratuity, as they can furnish, consistently with their rules, towards the necessities of her family, and you will perceive by the annexed letter that they have awarded her a sum of 300*l*.

“ 3. But the more important portion of his public life was spent in the service of the Cape, and its particulars are so much better known to the community there than they are to myself, that it would be idle on my part to recapitulate them in detail. When I have merely stated, that for several years, in consequence of the prolonged absence of the Governor on the frontier, it was on him that the care of the Civil Government chiefly devolved,—that his first performance is understood to have been the re-instatement of the finances of the Colony from a condition of great depression and confusion,—that to his exertions and superintendence are mainly owing the admirable roads, and the excellent convict and other public institutions, which have rendered the Colony in those respects a model for imitation,—that almost in the last year of his secretaryship, his forethought and diligence in collecting, arming, and despatching to the field of action the levies of the Western districts, have been acknowledged by the military authorities as one of the chief causes which checked the further spread of the Kafir rebellion,—I have mentioned services such as it very rarely falls to the lot of a public officer in his station to render; and yet there is no one familiar with the affairs of the Colony who cannot probably make many special additions to the slight catalogue here given.

“ 4. There can, I fear, be little doubt that the severity

of these labors, and still more his acute sense of the responsibility latterly thrown on him, over-tasked his physical strength, and produced the disease which inflicted on his family this irreparable loss, by removing him while yet in the middle of life, and in full mental vigor and fitness for duty.

“ 5. It has appeared to me that no fitter case could be pointed out for the exercise of a liberality which, I am bound to admit, can only be shown with caution, and on rare occasions, by a legislative body, and that the commencement of operations by the representatives of the people in the Colony under your Government could not better be inaugurated than by the grant of some pension to Mrs. Montagu, as a tribute to the memory of one whose life has been so intimately and usefully connected with one of the most critical periods of its history.

“ 6. And I must here touch, however briefly, on one circumstance respecting him, which may deserve explanation. Mr. Montagu, as is well known, was opposed to the introduction of the Constitution at the Cape Colony, at the particular time when it took effect; as well as to certain disputed provisions contained in it. Of the mode of his conducting that opposition in the Colony, I say nothing; it was public and direct, and all are able to judge of it. Nor do I for a moment suppose that the remembrance of his hostility on this point, however mistaken they may think it, would affect the deliberations of the legislature on the subject of any testimonial, which they might otherwise deem befitting the occasion. That Her Majesty's Government did not agree in his opinion is sufficiently proved by the course which they adopted in overruling it. Nevertheless, I am led to believe, that a not unnatural suspicion has been entertained that, although the counsels of Mr. Montagu did not prevail, yet his influence, while absent on leave in this country, was exercised in behalf of his own views, and that it made itself felt in respect of minor details of the administration of the Colony.

“ It is due to the memory of Mr. Montagu that I should place it on record, that those suspicions had no foundation whatever. Since I have held the seals of this office, I hav

not only myself had no communication with Mr. Montagu respecting the conduct of affairs at the Cape of Good Hope, but I have the fullest reason to believe that he purposely and scrupulously abstained from any endeavor to influence the counsels of this department, or even to make his sentiments known here respecting the many important questions which have been in agitation.

“ 7. I have, therefore, to authorize you, subject wholly to your own discretion as to time and manner, to bring before the House of Assembly, when in session, the proposal of the grant of such pension as you may deem proper to the widow of Mr. Montagu.

“ But I should much prefer your not initiating this proposal, if it is at all probable that it may be made by others, and may proceed by way of address or resolution from the House itself, being satisfied that such an act of grace would be much enhanced in the estimation of this afflicted lady and her friends if it came spontaneously from the representatives of the people.

“ I have, &c.,

“ (Signed) • NEWCASTLE.” \*

When it was known that Mr. Montagu's losses in former years had hindered him making any provision for his family, the sympathy and regret expressed for them were universal amongst all who were acquainted with the public acts and domestic and social

\* Notwithstanding this just tribute to the memory of the late Secretary for the Cape Colony, and the kindness and feeling regard evinced by His Grace in his despatch for his widow and orphan children in their affliction ; and notwithstanding a hope intimated by the Cape merchants resident in London, that a pension might be authorized by the local legislature, the House of Assembly at the Cape, on the above despatch of the Duke being laid before it, rejected the recommendation of a grant of 2,000*l.* on behalf of the widow and family. How strikingly does this act stand in contrast with the honorable and gracious manner in which the Duke of Newcastle advocated the widow's claim, and to which the Earl of Aberdeen has with equal considerateness responded, on the part of the Home Government, by placing Mrs. Montagu on the Civil List with a pension of 300*l.* per annum, in consideration of her husband's services.

virtues of the deceased. Numerous friends at once came forward to interest themselves in obtaining a competent provision for those so suddenly and undeservedly left thus painfully circumstanced. The Bishop of Cape Town drew up a full statement of Mr. Montagu's services, and from *data* gathered from the last feeble efforts of the husband when dying, pointed out the grounds and just claims of his widow for a pension from the Government. This statement was forwarded to the Duke of Newcastle and was received by his Grace with the promptest interest and kindest expressions of condolence. Each Governor, under whom Mr. Montagu had served, represented also in the strongest terms the deserving case of the widow and children, and none more touchingly and earnestly than Sir George Arthur (whom Mr. Montagu at the outset of his official career accompanied to Van Diemen's Land). Sir George was himself on the brink of the grave at the time of Mr. Montagu's death; yet when apprized of the circumstances in which he had left his family, he could not forbear adding his testimony to that of others. He forgot the feebleness of his frame in the strength of his sympathy, and with firm feeling though with trembling hand, wrote a moving appeal on their behalf. In this appeal he made allusion to the painful anticipation with which Mr. Montagu's last hours were at intervals clouded:—"I have watched with the utmost gratification his career of services at the Cape of Good Hope. I have been delighted from time to time to learn his conduct had elicited the high eulogy of more than one Secretary of State, and I entertained the expectation that the close of so useful a life would be attended by consolations of every kind; but I am grieved to know that although

he looked on the approach of death with the firmness of a Christian, his mind was painfully affected by the fear that owing to the failure of persons to whom he had intrusted his property, his widow and children might suffer great privation when he was taken from them."—*Letter to the Duke of Newcastle.*

In England Mr. Montagu was not so widely known as in the Colonies where he labored; yet the English journals were not slow to give publicity to the fact, that a great man and a faithful public servant had fallen a sacrifice to the zealous discharge of his public functions. The London merchants connected with the Cape, to whom, therefore, the deceased was well known, at once opened a subscription for the immediate aid of Mrs. Montagu and her younger children; and also memorialized the Duke of Newcastle on their behalf—"that such provision might be made, either by royal bounty or grant from Parliament, as should, conjointly with any pension that might be authorized by the Colonial Legislature of the Cape, place the family in such a position as is befitting the station of the widow and children of so distinguished a man, and faithful a servant of his Sovereign and his country, and so prominent an example of real worth as the late Mr. Montagu.\*" The Cape papers† were also unanimous, and even vied in expressions of acknowledgment, that the Colony had indeed lost its greatest man. The news of his death, when many were looking for his arrival, as it spread from home to home throughout the Cape, cast a gloom

\* See Appendix—London Merchants' Memorial.

† See Appendix—Extracts from Cape papers.



over every face, and drew an utterance of regret from every heart.

On the Sunday after the information of the death of the deceased reached the Colony, reference to it was publicly made in a sermon preached by the Dean of Cape Town in the Cathedral Church. It was New-Year's day, and the text selected was from St. James iv. 13, 14: "Go to now, ye that say to-day or to-morrow we will go into such a city, and continue there, and buy and sell, and get gain: whereas ye know not what shall be on the morrow. For what is your life? It is even a vapour, that appeareth for a little time, and then vanisheth away." In the course of the sermon,\* 'the subjoined remarks on the death and character of Mr. Montagu were uttered: "An event which has in the last week pressed itself upon us all, most strikingly illustrates how little we can imagine 'what may be on the morrow,' and which also serves to urge with its full weight on our souls the solemn question—'What is your life? It is even a vapour, that appeareth for a little time, and then vanisheth away.' If physical and mental energy, if steady diligence, if apparent powers to combat in emergencies, if sober habit, if system, if regularity, if firmness of disposition to throw off what others suffer to undermine both mind and body are qualities and acquirements which, meeting in one character, would cause us to believe that his life would not hastily have been cut off,—then, *he* who for years knelt and worshipped, and communicated with us in this place,

\* This extract is introduced on account of a request made by several of Mr. Montagu's friends that the Sermon might be published. The above extract is the whole of that portion of it which bears on the deceased.

but whose unexpected death has drawn from all mouths an acknowledgment of our common loss, and from many hearts the deepest expressions of regret, was one whose years of usefulness, and whose vigor of intellect and enterprize we might have expected long and efficiently to have done public service. Who thought a year since, much less a month since, that the just ending year, before it closed, would have enrolled *his* name in its obituary? Yet we now miss him from his place, where we shall see him again no more. The toils of office and the activities of public life will claim his interests no more. Undertakings, and an invincible determination to carry them through, which seemed almost peculiarly his, must now engage others' thoughts, and demand of others skill and management which he so ably displayed; but him they can engage no more, and the very reflection should arouse us all to meet the question—'What is your life? It is even as a vapour.'

"You will bear with me, I feel assured, if, according to my wont, I dwell upon the loss of a public character, and give my feeble tribute of acknowledgment to the dead. The grave should close in upon all differences; on its hushed and silent shore no disturbing wave should break; there, animosities and bitter remembrances, party strife and angry feud, public antagonism and personal conflicts, should be buried with the buried. I shall not, then, I trust, be misjudged if I speak, as a personal friend I must speak, feelingly, deplorably, and, as I believe faithfully, of him whom we shall behold on earth no more. The career of the deceased, had he followed the course of arms to which he was first called, might have been an illustrious one. He was in all points fitted for a soldier; a disciplinarian, of firmness of

purpose, of great personal bravery,—his name might have stood equally high with the heroes who have become illustrious, and whose names are associated with our great victories. But he preferred other pursuits,—peaceful activity to martial glory,—and brought his discernment of character, and his habits of discipline, and his keen sense of what is public service, into the duties of his office. What, as a public character and a public servant he has done in this Colony and elsewhere, other and more fitting channels must disclose; but I, in this sacred place, may, I believe, be thought not to derogate from the holiness of my office or the hallowedness of the sanctuary of God, if I single out some of those virtues and points of character which adorned him as a private individual. As a friend he was firm and sincere, as an adviser he was open and straightforward; he knew not to flatter, but he never withheld merited praise; as a man he was feeling and sympathizing; a true tale of sorrow or distress could move him to tears; he was sensitive to kindness, and from his very high personal worth few men have had firmer friends amongst those who really knew him. As a husband and a parent he was kind, anxious, and tender. As a Christian and a man of practical piety he was steady, consistent, exemplary. Punctual at public worship; fixed and absorbed in his whole demeanor while engaged therein, and a regular attendant at the Holy Communion; ready to aid in any charities or works of love for the Lord's glory or for man's necessities, he was an ornament and a true support to the Church to which he belonged. He was sincere without vaunting profession; charitable without ostentation; and in his Christian life, as in his public services, in

the strictest sense a conscientious and an honest man.

“ But there was something deeper in his hidden Christian life and character than perhaps any one supposed. The sick bed and the hour of death are the truest revealers of man’s character to man, and in these he was truly good, truly great, truly all that we can look or hope for in a dying Christian. One who attended him in his last hours thus writes, for I cannot withhold his words:—‘ I had the privilege of ministering to him in his last days. He died in the faith, and even wished for death. He bore his sufferings very meekly and patiently. His mind was calm and clear to the last. His religious feelings were lively, and his convictions more deep than I was prepared for: he believed himself pardoned and saved through the merits of his Redeemer. His latter days were very edifying, and full of tenderness to all about him. He repeatedly kissed me, and was very grateful for my poor services. I shall ever think of him as one of the most upright, conscientious, able men I have met with in life. He never thought of himself, or his own interests,—duty was the one idea prominent in his mind.’

“ Such was the deceased! While among us, from the very stamp of his character, as well as from his official position, he stood as a beacon on the rocks, unmoved while political tempests loudly raged, and the waves of our sea of troubles dashed most angrily,—now the strife of contest and the commotion of life with him are ended, and the still, awing solemnity of Death speaks to us after the whirlwind, let the silence of the grave, and the sanctity of repose hush every murmur into peace, and may the light from that beacon shine down,

calmly and undimmed, and cast its long line of lustre over the scene in unruffled serenity, where it unceasingly burned with steady light amid the perils of the storm."

The death of a public man is not truly felt till honest reflection looks back to the services he has rendered.\* Then, even those who differed from him give consent and voice to the general eulogy which illustrates his virtues; the commonweal testifies how great a part it had in his life, how great a loss in his decease; and the country where he did service writes his name among its benefactors; and although few may be the actual attendants at his grave, yet in sympathy and regret the nation follows his last mortal remains, and consigns them to their repose; for

"Not friends alone such obsequies deplore,  
They make mankind the mourner: carry sighs  
Far as the fatal Fame can wing her way,  
And turn the gayest thought of gayest age  
Down the right channel through the vale of death."

\* When it was ascertained that Mr. Montagu's return to the Colony was fully decided on, in almost every town and district addresses, testimonials, and acknowledgments of confidence and esteem were in preparation to be presented to him on his landing. And though this purpose failed of its accomplishment from the announcement of his decease, yet these public expressions of honor and personal regard, as well as appreciation of Mr. Montagu's services may well find a place in this Memoir. They are printed in the Appendix.



## CHAPTER XVI.

## CHARACTER.

PUBLIC CHARACTER.—SELF-RELIANCE.—GRASP OF CONCEPTION.—CAPABILITIES FOR PUBLIC SERVICE.—FIRMNESS.—STEADY VIGILANCE.—GREAT INFLUENCE.—SENSITIVENESS IN DISCHARGE OF DUTY.—GREAT HONESTY OF PURPOSE.—PRIVATE CHARACTER.—DECISION AND ENERGY.—SIMPLE UNOSTENTATION.—BLAMELESS INTEGRITY.—STEADY FRIENDSHIP.—EXTREME SENSIBILITY.—DEPTH OF RELIGIOUS FEELING.—GENERAL CONCLUSION.

HAVING in former chapters recorded several of the leading public acts of the subject of this memoir, the biographer feels his task will be most imperfectly executed, if he go not beyond the mere surface acts and external routine duties of the public servant, and look into the character of the man. A memoir, to do justice to the individual of whom it speaks, should be something more than a dry statistical series of outward performances; it should disclose, if possible, the principles, and motives, and regulating springs, which kept these in equipoise before the world; and, further still, endeavour to dissociate the man from the machine of office, divesting him of its trammels and its trappings, and exhibiting *himself*, with the nice points of his more hidden character, his affections, his sympathies, and the lights and shades which these throw upon his daily life. It has been observed that “the narrative of a man’s life is his

character." But there are many traits in the disposition and inward life of a public man which do not with sufficient distinctness manifest themselves in his public acts ; or at least not with such prominence as to cause them to be discerned by the mere casual observer.

To portray the character of John Montagu most faithfully, it will be best to exhibit it in two phases—how it appeared to public view, and how it was steadily manifested in private.

**PUBLIC CHARACTER.**—Sketching his portrait as a public man, we should draw the decided profile and mark the broad outline of his character as standing out in the grandeur of self-reliance. Left early without a father's control, and with little check at work upon his ardent and impulsive nature, when a boy, he appears to a considerable degree to have been self-cultivated, not only in the discipline of his mind, but also for the development and formation of his character. Joining the army when young, and soon in active service, he was exposed early to temptations ; but his good solid sense seems to have called out a firm resolution to resist them. Thrown on his own guidance he may have acquired, from very necessity, the habit of leaning on his own judgment, and of strengthening that by his wide observation and growing experience. Be this as it may, few public men, when placed in a difficult position, could sustain it with the firmness and manly independence with which Mr. Montagu could. Few men needed less the advice of many-counsellors to lead his judgment to a decision ; and few men could have supported their opinions and decisions, when once formed, with as little wavering and compromising as he could. In political debate there was a warmth in his public

speaking, and a forcible earnestness, which caused some to pronounce his style and manner to be cutting and severe. But nothing was further from his design: his rule was (though in the heat of a discussion he might be sometimes drawn from it), "to use soft words but hard arguments." His temper was as firm as his arguments; and those who were but partially acquainted with him might consider his determination, obstinacy; and his self-reliance a species of absolutism; but with him his line of conduct was a process: the two steps of which were—first, the assurance that his opinion was well matured, and then a steady trust in his own firm-mindedness not to be persuaded nor dissuaded from it.

Another feature of his character, as publicly exercised, was his *grasp of conception and enterprize*. It was remarkable how quickly he seemed to understand any question put before him; give him but its leading points and bearings, and in an incredibly short space of time he made the matter perfectly *his own*. The different public acts and the great diversity of measures, in which he took a prominent, if not the leading, part, bear witness into how many entirely opposite subjects and undertakings he threw the whole vigor of his mind, and the whole energy of his body. Some men by exclusive application to one particular study, or one favorite pursuit, or congenial enterprize, attain considerable experience and ultimate eminence; but Mr. Montagu's mind seemed to grasp within its capacity every necessary object which the physical or commercial or moral interests of his sphere of duty suggested to him. In the minute details of a difficult finance arrangement, or in the bold and stupendous achievement of hewing through granite rocks, or throwing arches across dizzying gulfs to open a

mountain pass, he was alike the indomitable, persevering spirit,—the master mind,—the careful painstaking investigator and scrutineer of the whole, from the first design to the remotest winding up of the undertaking. Let anything call his busy attention to plan out the difficult machinery for a complete and reformatory convict system, or to adapt the arrangements of a public hospital, so that the institution should administer its relief with mercy and kindness, as well as with economy and care, and each work was alike ably and diligently done. See him in the day by day routine and sameness of his office duties, or in the exciting and rapid outbreak of a war, whose suddenness called on him to raise with incredible despatch a relief force of levies and volunteers, and he was the same,—acute of perception; ready for every demand; full of resources; animating, and quickening every one about him with the magic of his influence, and with an energy which seemed to string and tighten up every nerve of his mind and body for action.

He possessed also great *capabilities for public service*. A steady mind, a cool judgment, regular habits, extreme punctuality, scrupulous attention, unwearied assiduity, great physical powers, and diligence and perseverance in carrying through whatever he took in hand. The retentiveness of his memory was so remarkable that it is recorded of him by one who was intimately acquainted with his official career, “that often when it was found necessary to get up official subjects, and particular papers were missing, he would give their dates, a description of their appearance, and particular expressions they contained; and when the documents turned up, he invariably proved to be correct.” Nothing connected with the

public service was too little, nothing too arduous, to claim his thought and demand his care. He was ever anxious to converse with strangers and visitors to ascertain what measures for the public good were experimented in different countries, with what present advantages, and what apparent probability of ultimate success; and his great end in this was to turn whatever he heard, and whatever was elsewhere transpiring, to some practical advantage in his own sphere of action. It is the mark of a great mind not only to originate, but also to make its own, by adaptation, whatever has been originated by others. All great social improvements, and moral influences, and useful inventions, and fresh appliances which are for the public good, are a kind of common stock, and become of the most extensive benefit by being introduced into different conditions of life, into different countries and under different circumstances and combinations, that so they may be fully tried, and shaped, and dovetailed, and fitted to the most general, if not to the universal amelioration of mankind; and, as if actuated by this impression, Mr. Montagu's constant and inquiring thought seemed to be, in what manner, and by what means, whatsoever was beneficial for the social order and compactness, the sound and healthy advancement, the political and commercial greatness of the community could be introduced, localized and applied.

Another distinguishing point in his public character was *firmness*. He could neither be warped by flattery, nor be moved by frowns. His first question in every case of perplexity seemed to be—"what *ought* I to do?" Not, "what will this or that party expect me to do?" With every honest desire to be approved by all, as far as he could, he was in his public



tions, few men were less influenced by the mere desire or exactions of popularity. In corroboration of this it may be mentioned that Mr. Montagu, whose popularity was always great in the Eastern Province of the Colony, was quite prepared to risk this when his line of duty demanded it. At the outbreak of the last Kafir war, several Kafir convicts were sent, without due authority, from Port Elizabeth to be received into other convict stations, farther removed from the scene of war. The people of Port Elizabeth probably thought it safer that these Kafirs should be more withdrawn from their own people, who might make an effort to release them; and on this surmise and fear they may have acted. Mr. Montagu saw it otherwise; and in the course he adopted, showed his moral courage in incurring momentary popular resentment, rather than compromise the authority of the Government. He conceived the Government would be lowered, if it allowed the inhabitants of any part of the Colony to dictate terms regarding the locating of convicts, or from their fears, to change the place of their destination, when the circumstances of the country did not absolutely require their removal. On this occasion the convicts were immediately sent back; and many of the people at Port Elizabeth afterwards acknowledged the benefit that part of the country had derived by their being returned, and kept at work near their town.

Not only in cases like the above, but in all great public questions, Mr. Montagu was too steady to his trust,—too resolute to trace out fearlessly what his course should be, and then magnanimously follow it,—to come under the description of one who,—

“ Can change and vary with all forms he sees  
Be anything but honest; serves the time;

Hovers betwixt two factions, and explores  
 The drifts of both, which, with cross face, he bears  
 To the divided heads, and is received  
 With mutual grace of either."

No! most men who at all understood him, knew his principles, and knew that he would not, from fear nor favor, shrink from the defence of them. His measures, and line of conduct, and firm stand for the general good were of that well tried sort, that he could afford to wait and let the clear experience of to-morrow dissipate the wrong surmises and misrepresentations of to-day. He had no fear of a public frown, if he knew he deserved public gratitude,—

"For true nobility is exempt from fear."

The following sentence occurs in a letter in which he was vindicating his own conduct on a most trying occasion:—"Conscious as I am of a pure public motive, I would rather suffer under the unjust exercise of severity, than from the reproaches of my own conscience." Self-consciousness of rectitude was continually his bulwark; and behind this he was prepared for any assault. His truthfulness and the nobleness of his intentions emboldened him with that genuine greatness which can endure misapprehensions and bear a distortion of its real motives for a season of unpopularity; and leave time and results, and the reaction of the public excitement to right them. His family motto appeared to be the rule and commentary of his life—*disponendo me non mutando me*. Such a character as his always commands veneration; and eventually, when it has been proved and fully understood, receives its merited praise. In great political ferments and party struggles, a firm spirit, which stands as a breakwater to stem the beating tide, must prepare itself to be unpopular.

for a season ; but when the vexed storm is allayed, and the tide is tranquillized within its peaceful landmarks, the very populace, which dashed so violently against it, looks up with a degree of irresistible admiration on the firmness and stability of the high-minded one who stood as the bulwark,—

“ Against whose mighty side  
Pushed the rude shoulders of the hurricane :”

And not only so, but a public man who has stood unshaken and unmoved against popular prejudices and passions, from a high sense of duty and from the honest conviction that those prejudices were mistaken and those passions dangerous, will, if he be great-minded enough to wait, ultimately reap the reward of his momentary unpopularity, with an accumulating interest. Let him only be patient and enduring in his honesty, and

“ Honesty, even by itself, though making many adversaries  
Whom prudence might have set aside, or charity have softened,  
Evermore will prosper at the last, and gain a man great honor  
By giving others many goods to his own cost and hindrance.”

*Steady Vigilance* was another marked quality in his character. The last two years of his holding office were years of internal struggles and outward dangers. Public opinion ran high ; the popular ferment threatened at one time an utter disorganization of all government ; many minds were completely paralyzed ; the Council of the Colony was silenced if not defunct ; public works were for a period at a stand-still. Yet throughout the upheavings of the popular disturbance, and the chaos in which all the social elements were confused, the steady vigilance of Mr. Montagu was most untiring. He watched for the moment when the Council could again be formed ; was ready at every change and subsidence

to advance another step to strengthen the bonds of order; like a masterly fencer he parried off many a movement which he believed would imperil the public safety; and through two years of vast personal responsibilities and popular disfavor, stood, to the exasperation of some and the admiration of others,—

“Serene and resolute and still  
And calm and self-possessed !”

Another point which showed the greatness of his character was his *great influence*. The late Bishop Shirley in one of his letters writes:—“The view of life which deepens in my mind daily is, that its very essence is influence. The nature and degree of our influence on others is the measure of our own existence and power, intellectual or spiritual. He who has no influence on others may quit the stage and go to bed, for his is a living death. He who has it and does not exert it is the wicked hider in the earth of a talent of inestimable value, for which his Lord will call him to a tremendous account.”

Of this talent Mr. Montagu made great use, for probably no man's influence was greater with those over whom he came in contact than his. His character, and the high esteem in which it was held, threw a most remarkable influence over his department, and called out the abilities and energies of several rising young men, who, as his subordinates, kept in constant and steady motion all the machinery of the public service in its manifold ramifications. The unapproachableness and rough bearing of some, when in authority, oftentimes serve to check and chill and alienate from them the personal esteem and confidence of those who are under them. But with Mr. Montagu it was otherwise; for with all the strictness of his office, and with all the discipline

with which it was conducted, his subordinates at all times expressed for him admiration, gratitude, and manly respect. On his suspension from office in Van Diemen's Land, and consequent departure from that Colony, one of the senior clerks in his department expressed to him his high sense of the advantages he derived from his influence and example in the following terms:—"I assure you that I shall ever look back to my connection with you (brief as it has been) with mingled feelings of pleasure and regret; and I most earnestly hope that my future conduct may always be regulated by reverting to the example of one so universally esteemed in private and public life as yourself." A like acknowledgment, containing the most satisfactory expressions of regard, he also received on the occasion of his leaving the Colony of the Cape of Good Hope, for his health. It was from the clerks of his department, and evinces their appreciation not only of his arduous duties, but of the courtesy and friendliness and influence towards, and with, those who carried out his measures in their various details.

" Colonial Office, Cape of Good Hope,

" 26th April, 1852.

" Dear Sir,—Upon your approaching departure for England, we hope that the unanimous feeling of those who have had the pleasure (some of us from the period of your arrival in this Colony, the greater number of us for some years past) of serving in the Colonial Office under your immediate superintendence, may warrant this expression of our personal regard for one whose constant and unvarying consideration and kindness towards us has made the public service our pleasure, as well as our duty.

" It has been with deep concern that we have observed for some time past that your health was becoming impaired by your incessant and untiring exertions for the public



service, during a period of no ordinary difficulty and responsibility, and which has at length compelled you to seek some relaxation from them.

“ In parting from you (we hope only for a time), we wish to record our deep sense of the kindness and courtesy which we have one and all uniformly experienced at your hands. We have not been insensible to the patience and forbearance with which you have, in each day’s necessary official intercourse, at all times received and communicated with us,— never for a moment, in the press of business, or however anxiously occupied with important matters, has one harsh, or even hasty look or expression escaped you.

“ Pressed as you have been by the most harassing duties, with incessant and varying demands upon your attention, not only from the ordinary business of the Colony, but from the wholly different duties thrown upon you during two Kafir wars, and for the last two years by political affairs and your position as President of the Council, we feel that this is much to say, and much to be grateful to you for.

“ If the assurance that you leave behind you the warmest feelings of respect, esteem, and gratitude on the part of every one of your subordinates, should serve as a source, however humble, of satisfactory retrospect to you, in resting for a time from your official duties, it will afford us real pride and pleasure.

“ Allow us now, with every kindest wish for the safe and prosperous voyage to England of yourself, Mrs. Montagu, and your family, and for your speedy restoration to perfect health, to subscribe ourselves,

“ Yours, &c.,

“ Signed by fourteen Clerks.

“ The Honorable John Montagu,

“ Secretary to Government, &c., &c., &c.”

The influence of his very name was considerable as may be gathered from the annexed statement of one who on the news of his death, and the position of his family, was endeavoring to raise some trifling sums, by way of acknowledgment, among the constables and others at one of the convict stations.—

“ My subscription list will be about 30%. Every single individual on the station having tendered me from five shillings and upwards, although the majority of them being new comers have never seen Mr. Montagu, the great projector of the convict system. The name, and the circumstances when stated, have had the desired effect.”

Another fine quality in his public character was his *extreme sensitiveness with regard to the discharge of the duties and responsibilities which devolved upon him*. He never seemed to think he had done enough ; and the personal labors and anxiety which he bestowed on all he undertook were truly overwhelming. Nobody knew Mr. Montagu but as identified with his public duties : his conversation, his thoughts, in fact his whole daily life, were public service. He knew no cessation. If out of his office, his papers and his projects followed him. His meals, his hours of rest, his time for intercourse with his family were, in the last few years of his service, encroached upon. His reading all tended in the one direction,—it was connected with annals and reports and statistics bearing on moral advancement, social conveniences, international and political measures, and whatever is calculated to promote and cement the true interests and important relations of mankind. No one could have sacrificed more than he did ; for he sacrificed all,—his time, his talents, his prospects, his health, his recreations, the solacing quietude of home and family, all to close application to his public duties. Yet, notwithstanding this, there was no selfishness in his character, but a most utter abnegation and forgetting of self ; no immoderate reaching after personal aggrandizement, but the pure wish and singleness of intention to discharge to the fullest and

most conscientious degree, the services intrusted to him. An extract from his letter to Mr. Stephen, at the time of his personal difficulties, will show how keenly sensitive he was lest his private cares should render less undivided his solicitude in the fulfilment of his public functions:—"Having related to you my position and feelings, will you now permit me to add my wishes? If Lord Stanley would permit me to retire from my present office by providing for me in England I should indeed feel very grateful to him  
\* \* \* \* \* I am not ambitious of a very exalted or a very lucrative station; my desire is to be usefully employed in the public service with my mind relieved from the fear of debt. In England I could live as retired as I pleased, without impairing my usefulness in office in any way; but as I have nothing left to support my family and myself beyond the salary my office would furnish, I am compelled to look to that as my last and only resource. But if Lord Stanley should be unable to comply with this request, I am quite ready to relinquish my present office, if his Lordship will approve of my receiving the retiring allowance my twenty years' services would justify. Sorry as I should be to dis sever myself from office, I am of opinion I had better do so, rather than continue to hold it, and not execute the duties to that extent of usefulness my conscience tells me I might do under different circumstances."

Another eminent quality, well known to those who had dealings and intercourse with him, was his *uncorrupted honesty of purpose*. His motives were pure and simple; his aims noble and benevolent. Few men were less selfish or less self-seeking than he. Personal ambition, the enjoyment of the so-

cialities of life, his own ease, the common bounty of healthful relaxation, these and much beside, as has been already observed, he sacrificed to the one call of duty. His acts, like those of all men in office, were open to misapprehension; his motives, like those of all who take their one undeviating course, were often misunderstood:—but let the whole career of Mr. Montagu at the Cape be fairly reviewed, and few candid men will hesitate to allow, that ulterior motives can as little be traced from his public acts, as from those of any the most straightforward, uncorrupt, and impartial administrator who ever had to preside over the execution of great affairs. With a most just abhorrence of what he styled “self and pelf” views, he looked, in the discharge of all his functions, for the grand result of raising the Colony which he so energetically served to stability and progressive greatness. To aid him in this he sought out active energetic men; and, in doing so, was sometimes charged with favoritism and partiality, and with passing by men of long service. Such charges are ever made in the disposal of greater or lesser patronage; but in all Mr. Montagu’s appointments, it must be allowed that his great aim was, to secure the best qualified and most diligent men to execute the duties to be intrusted to them; and being self-conscious that this was the directing principle by which he was swayed, he left the capabilities of those he promoted, and the judiciousness of his appointments and recommendations to illustrate themselves, and did not seek step by step to clear his way, by justifying all he did, against every objection and pettish insinuation. He was a manly example, that

“Purity of motive and nobility of mind will rarely condescend  
To prove its right, and prate of wrongs; or evidence its worth to others:”

and it was a saying of his:—"Innocence does not look for, because it is not conscious of requiring, opportunities to proclaim itself."

PRIVATE CHARACTER.—In private life as well as public, Mr. Montagu showed *great decision and energy of character*. His losses in Van Diemen's Land, and the uncertainty where they would stop, or to what extent they might involve him, would have paralyzed the energies of most men; but they served only to call up some of the most striking qualities of his character, and to exhibit in him—

"The reason firm and temperate will,  
Endurance, foresight, strength, and skill."

He did not sit down and pine, but he girded up his resolution to meet the worst; and he did not only resolve, but act. His undelayed retrenchments, his simple habits, his unhesitating avowal that he was plunged into sudden losses, all showed he was prepared at once to grapple with his difficulties. And if manly energy, and straightforward, high-minded principle could overcome them, this he determined should be done; and he effected it. From the year 1845, when his losses first came upon him, and for eight consecutive years, by rigid economy he paid off at the rate of 1,300*l.* a-year, and just lived to see his whole debt liquidated. In all lesser and daily matters, he was equally decided: no one who well knew his character would solicit the same favor, or request his co-operation in the same instance, a second time; when his answer was once given, it was definite and final. If the appeal were one of charity, if the solicitation were one to which as a friend he could accede, if his company or patronage were sought for any object which he deemed commendable and worthy of encouragement, in any of these cases,



few men more promptly, or in a more considerate manner, would show assistance, kindness, courtesy, than he; but whether the request would find compliance might be at once known, and from his expressed decision, few things could move him. In his opinions, whether religious or political, in any task he set himself to accomplish, in the manner of his daily life, towards his children and his household, he was equally firm and decided. A kind father, but with a father's proper strictness and authority; a generous and good master, but one who never forgot a due and steady restraint over those who were under him.

Another feature of his character was that of *simple unostentation*. He was above the low vanity of vying with those about him for the grandest appearance, and the most lavish style of entertainment. He wished to be what he seemed to be, and to seem to be what he really was.\* He did not esteem limited means, and rigid economy, and straitness from misfortunes, to be a disgrace. But he considered it a species of dishonesty to keep up an expensive outside appearance, for the sake of hiding real and pressing difficulties. Like all great men he considered that he should gain public esteem not for what he *had*, but for what he *was*, and for what he *did*. *Actions*, not *possessions*, he believed to set the stamp of worth upon a man's character; and with this impression he did not hesitate, when his

\* The old philosophers knew the true value of such a line of conduct as this. Epictetus taught Ἐάν τις συγκαταθῆ λογισμῶ πείθοντί σε ἀρέσαι τινί, ἴσθι ὅτ' ἀπώλεσας τὴν ἔνστασιν. Ἄρκου οὖν τῷ εἶναι ἐν παντὶ τῶν τῷ Θεῷ μόνῳ ἀνακειμένων· εἰ δὲ δοκεῖν βούλει, σεαυτῷ φαίνου, καὶ ἱκανὸν ἔστι τοῦτο.—Epicteti Enchiridion, cap. xxx. Xenophon also has left us a like sentiment:—Ὅκ ἔστι συντομωτέρα ὁδὸς περὶ ὧν ἂν βούλη δοκεῖν φρόνιμος εἶναι, ἢ τὸ γενέσθαι περὶ τούτων φρόνιμον.—Cyropæd. lib. i. c. 6.

exigencies demanded it, to strip from around himself and his household many of those luxuries and conveniences which the conventionalities of society have arbitrarily pronounced to be almost necessaries. There was something truly grand in a man who believed that his official position required him to maintain certain appearances, and to exhibit a generous hospitality, when pushed by a sterner exactor than the expediency of external show, selling all his household effects but such as were necessary for the strictest domestic economy,—curtailing his establishment, foregoing his carriage in a climate where much bodily exercise is fatiguing and oppressive, training his sons to rise by arduous exercise, and leaving them only an example of honorable diligence as the best patrimony he could bequeath to them, and living patiently year by year on less than a moiety of his public income, to meet losses brought on him through a noble spirit of public sacrifice!

Another chief ingredient in his character was *strict scrupulousness*. All his payments were exact and punctual; and no poor man oppressed, no tradesman straitened by long credit, no one with whom he had dealings importunately entreating for his due, had to speak of Mr. Montagu's name with bitterness. His honesty was of that sort whose character is formed on the highest principle of divine and Christian morals: "Say not unto thy neighbour, go and come again, and to-morrow I will give; when thou hast it by thee." "Owe no man anything, but to love one another." "Withhold not good from them to whom it is due, when it is in the power of thine hand to do it." In illustration of his most rigid fair-dealing it may be recorded, that one or two of his most intimate friends continually urged on him to

effect an insurance on his life, as a future provision for his wife and the youngest of his children, should they survive him; but his prompt and unalterable reply was: "He could make no provision for his family out of that which belonged to others; that all he could possibly put aside, beyond what was required for the decent maintenance of his household, was for the defraying his debts, and that until they were discharged to the last farthing, he could make no reserve." It is painful to add, that although all his liabilities were honored to the full, his health and life were not spared sufficiently long after his difficulties were removed, to enable him to make the smallest provision for his widow and bereft children!

Among the amiable qualities of his character may be placed his *steady sincerity*. If any man acquired his friendship he found his affection most warm, and his regard most disinterested and sincere: and, for his own part, few men have had stauncher friends and stronger adherents than he had. From his constant attention to his official duties, but little leisure was left to him to cultivate a close acquaintance, or to enjoy the interchange of the sweetest charities of social communion; yet his heart was full of friendship, and no man enjoyed more to impart his confidence to those he esteemed worthy of his trust. To such he was free, transparent, unreserved; and it seemed a relief to him to speak on matters which opened up some of the most generous feelings of his kind heart. To some strangers, at first there was in his manner a degree of official distance, and brevity, and abruptness; but when the first interview was passed, and he *knew his man*, there was a great suavity of disposition, and a winningness about him, not arising from flattery or mere hollow courtesies,

But from some secret influence which he acquired and firmly maintained over those who were once impressed with the weight and appreciation of his true worth and sterling sincerity, and fine sense of honor and gentility. "Montagu," an old friend of his proudly remarked, "like all others of his name, was a gentleman."

Another property of his character, although recognized but by few, was his *extreme sensibility*. Though a man of strong mind, he possessed the very finest feeling. Open to, and readily touched by, any instance of real distress or sorrow, he was the readiest not only to lend his aid but to reveal his sympathy. He esteemed, with a degree of tender reverence, a man struggling nobly with adversity, and was always most desirous, in these cases, to help such an one generously. His charities were considerable, though little known; the harrowing trials of our common humanity he looked on with a tearful eye and a wounded heart; and often I have seen him, on hearing the recital of some story of touching distress, overcome with the most unrestrainable and tender emotions. He could steel himself to endure injustice or unkindness; on such occasions not a feature, not a muscle, not a shade on his countenance would betray the concealed struggle which was powerfully suppressed within; and he would preserve a remarkable self-possession and self-control; but an unexpected word of kindness, any generous avowal of gratitude where he least anticipated it, any mark of public esteem, could overcome him in a moment, and readily (and to him involuntarily) bring tears into his eyes.

His private character was also strengthened by that virtue which can alone make it of true and



lasting worth, a *deep religious feeling*. In desiring to discharge his duty honorably and conscientiously before man, he never lost sight of that higher aim to discharge it religiously and in the fear of God. Mr. Montagu was a steady, zealous, consistent member of the Church; a punctual observer of its ordinances; a firm believer that its doctrines are primitive and scriptural, and its constitution apostolical and divine; a hearty maintainer of its principles; a regular communicant at its altars; its defender in public, its promoter and ornament in private life; its diligent representative in his family; its humble learner in its sanctuary and in his closet. In his outward deportment as a Christian, throughout the most active period of his public life, he was exact, charitable, and irreproachable;—the depth of his inward sincerity and devotion, and dependence upon Christ, had to be fully tried, and strengthened, and evidenced, in his sick and dying hours. Of his religious impressions, and those deep matters between the soul and its God, with which a stranger can rarely intermeddle, he was generally silent and reserved; yet there were times when he spoke devoutly and with very warm interest on sacred matters, and then he would unfold that there was a deep earnestness within; a constant seeking after higher holiness; a desire to be in sincerity, in life, in trust, in heart, in soul, a Christian so instructed in and regulated to his Saviour's will, and so strengthened by His grace to fulfil it, that having served Him faithfully in this life, he might hereafter attain to His heavenly promises.

Little more is now required than to condense the description of the foregoing character into a few



amongst us, defies the power of detraction. If it were not a host in itself it would find a host of defenders; but to think he needs an apologist or defender is to overlook the greatness of his lasting public acts, which are the best defence and vindication of the soundness of his good intentions, and of the wisdom of his judgment. We are not fain to allow that integrity of purpose and staunchness of principle will not ultimately bring their own enduring respect,—a respect which, in his case, is strong enough to preserve him from being lightly spoken of, or of being suffered to glide into oblivion. Mr. Montagu, when fairly considered, will be pronounced a true friend of that Colony which he served. In his endeavors for its advancement he was eminently unselfish; the loud-sounding littleness of egotism found no place in him; and although he was the prime mover, and mainspring, and support in almost every great scheme which was recently undertaken for the improvement of the Cape, yet he never laid himself open for popularity or public praise, but seemed content to throw himself into that only position which can preserve the consistency of a leading public character,—viz. to be fortified by the consciousness of rectitude, and lean on the assurance that after-time will do him justice, if the present fail to appreciate him. Although no proud bust or public column has yet been raised to him, nevertheless from the height of the pedestal upon which his own celebrity and the elevating commendation of great and good men have figuratively placed him, he can as calmly and grandly look down, as do those bronze or marble statues which a nation has actually erected to preserve and honor the memory of her greatest and wisest benefactors.

Even now the Colony for which he sacrificed himself begins to view him as a chief character in its history, and it will yet universally acknowledge him as the greatest, the wisest, the most upright of its advisers, promoters, and benefactors. The portraiture of his life, character, and actions may well and truly be exhibited, mottoed, and summed up in the following striking lines :—

“ Trust payeth homage unto Truth, rewarding honesty of action :  
And all men love to lean on him, who never failed nor fainted ;  
Freedom gloweth in his eyes, and nobleness of nature in his heart,  
And Independence took a crown and fixed it on his head :  
So he stood in his integrity, just and firm of purpose,  
Aiding many, fearing none, a spectacle to angels and to men :—  
Yea,—when the shattered globe shall rock in the throcs of dissolution,  
Still will he stand in his integrity, sublime—an honest man.”

## APPENDIX.

( A. pp. 29—34. )

No. 1.

A RETURN showing the amount of Government Promissory notes issued between the years 1832 and 1837 in conversion of the Rixdollar paper currency—when and from what funds any portion of these notes have been withdrawn from circulation and cancelled, and how much remains in circulation on the 26th October, 1843.

Amount issued between the years 1832 and 1837 . . . . .	£	202,698
Cancelled on the 12th May, 1841, from repayments of capitals of the Long Loan Fund . . . . .	10,000	
Ditto on the 6th July, 1841, from the same fund . . . . .	20,000	
Ditto on the 14th April, 1842, from 500,000 Rixdollar Fund . . . . .	11,612	
Ditto on 1st November, 1843, from the Long Loan Fund . . . . .	20,000	
	61,612	
In circulation on 1st January, 1843,		£141,086
Cancelled on the 15th May, 1843, from repayments of capitals of the Long Loan Fund . . . . .	25,000	
Ditto on the 10th October, 1843, from surplus general revenue . . . . .	25,000	
Ditto on the 26th October, 1843, from the Long Loan Fund 13,700 <i>l.</i> , from the Storm Fund 3,300 <i>l.</i> and from the general revenue 3,000 <i>l.</i> . . . . .	20,000	70,000
		70,000
Amount of Government notes at present in circulation . . . . .		£71,086

Treasury, 26th October, 1843. . . . .

(Signed) HARRY RIVERS, Treasurer-General.

(B. p. 37.)

No. 2.

A RETURN showing the amount of securities in hands of the Treasurer-General belonging to the Long Loan, Agricultural and Storm Funds, consisting of original bonds and securities on cash credits granted by the late Government Discount Bank.

	£	s.	d.	£	s.	d.
Long Loan Fund amount						
good and recoverable .	2497	1	10			
Agricultural do. do. do.	526	5	0			
Cash credits do. do. do.	2607	1	2 $\frac{3}{4}$			
	<hr/>			5630	8	0 $\frac{3}{4}$
Long Loan Fund, amount						
doubtful . . . . .	1146	5	0			
Agricultural do. do. do.	670	0	0			
Cash Credits do. do. do.*	8994	9	3 $\frac{1}{2}$			
	<hr/>			10,810	14	3 $\frac{1}{2}$
Long Loan Fund, amount						
bad and irrecoverable †	5414	5	2 $\frac{3}{4}$			
Agricultural do. do. do.	572	19	6			
Cash Credits do. do. do.	1481	19	1 $\frac{1}{4}$			
	<hr/>			7469	3	10
Storm Fund (none)						
				<hr/>		
				Total	£23,910	6 2 $\frac{1}{4}$

Treasury, 26th October, 1843.

(Signed)

HARRY RIVERS, Treasurer-General.

(C. p. 44.)

No. 3.

Statement of moneys advanced or disbursed by the Government of the Cape of Good Hope on account of other

\* In the amount of £8,994 9s. 3 $\frac{1}{2}$ d., classed as doubtful, are included the sums of £5,711 2s. 6d. unpaid vendue acceptances, part of which, £5,412 1s. 3 $\frac{1}{2}$ d., has been received by the Treasurer-General and carried to the credit of his public account, and of £1,559 17s. 9d. the amount of bills found in June, 1828 to be missing from the bank.

† In the amount of £5,414 5s. 2 $\frac{3}{4}$ d., classed as irrecoverable, are included sums to the amount of £3,109 advanced to country districts for the erection of public buildings.

(Signed)

H. R.

governments or individuals, repayable to the Colonial Treasury, and remaining unpaid.

	£	s.	d.
Maintenance of certain Chinese, (formerly of the East India Company's Establishment at St. Helena,) from 1st July, 1840, to 30th June, 1843, repayable by the British Government . . . . .	410	0	6
Pension to J. Renton, as a serjeant of infantry in the East India Company's service at St. Helena, from 1st July, 1839, to 30th September, 1843, repayable by the British Government . . . . .	142	7	2
Pension to J. Freeman, as a gunner of the East India Company's service at St. Helena, from 1st July, 1839, to 30th September, 1843, repayable by the British Government . . . . .	77	13	0
Pension to D. Jones, as a soldier in the East India Company's service at St. Helena, from 1st April, 1840, to 30th September, 1843, repayable by the British Government . . . . .	47	18	6
Advances in May and June, 1839, to the master of the West Australian schooner "Champion," to meet the disbursements of that vessel, repayable by the Government of that Colony . . . . .	503	10	9
Maintenance and passage to Bombay of a Lascar in April, 1843, repayable by the St. Helena Government . . . . .	13	3	0
Advance on the 5th September, 1842, to the surgeon in charge of the Somerset Hospital, to enable him to meet disbursements on account of persons rescued from the wrecked ship "Waterloo" . . . . .	300	0	0
Advance on 22nd August, 1843, to the Collector of Customs to enable him to make disbursements on account of liberated Africans landed from the "Progreso," to be repaid from the military chest, . . . . .	900	0	0
Total, . . . . .	£2,394	12	11

(Signed) P. S. BRINK, Aud.-Gen.

Audit Office, Cape Town, 29th October, 1843.



Statement of liabilities and debts of the Colony paid since the 17th May, 1843, to the end of the year 1852.

	£	s.	d.
Government promissory notes redeemed and destroyed . . . . .	141,086	0	0
Debts to the Home Government, (East India Company's Loan to the Colony,) . . . . .	4,272	0	0
Debt to the Home Government, capital and interest of the so-called Storm Fund Loan . . . . .	38,493	0	0
	<hr/>		
	£183,851	0	0
	<hr/>		

( D. p. 49. )

Extract of a despatch from Governor Sir George Napier to the Right Honourable the Secretary of State, No. 219, of the 22nd November, 1843.

Adverting to your Lordship's despatches Nos. 200 and 236, of the 17th January, and 27th February last, and to the previous correspondence on the subject of the paper debt of this Colony, I have much satisfaction in announcing to your Lordship that, as will be observed from the enclosed proclamation, and the corresponding notice of the Deputy Commissary-General, in regard to the future disposal of bills, I have at length been enabled to withdraw the guarantee of Her Majesty's Government, under which the promissory notes of this Government circulated in this Colony and were exchanged by the commissariat department for bills on the Lords Commissioners of Her Majesty's Treasury.

I have also made arrangements for the final liquidation of the debt, in the manner which will hereinafter appear; and I am satisfied that this will be effected without distress to the community, or inconvenience to the local finances.

In furtherance of this object, I directed the Secretary to Government to prepare a full report upon the paper currency, and upon the ways and means of discharging it. This report is enclosed.

The original debt, as arising from the issue of the

guarantee notes in exchange for those of the six-dollar denomination, was, your Lordship is already aware, 202,698*l.*, but of this 61,612*l.* was withdrawn from circulation, and cancelled in 1841 and 1842; and in my despatch No. 47, of the 25th March last, I mentioned to your Lordship that steps were then in progress for the retrieval of a further sum of 25,000*l.*, which would reduce the amount of the outstanding notes to 116,086*l.*, since which it has been in my power, by the appropriation to the purpose of repayments to the late bank funds and of surplus revenue, to cancel an additional sum of 45,000*l.*, viz., on the 10th ultimo 25,000*l.*, and on the 25th 20,000*l.*, so that the actual debt, on account of the paper currency, amounts at this moment to no more than 71,086*l.*, as stated in the proclamation, one-third of which will, I doubt not, be shortly in the hands of the Treasurer-General in exchange for debentures or specie, at the will of the holder; whilst, in regard to the remaining two-thirds, it is most probable that they will come in but slowly, and will not be presented at the Treasury for several months.

This part of the subject, however, may now be considered disposed of, as your Lordship will, I believe, admit after a perusal of Mr. Montagu's report, which goes so fully into every point connected with the financial affairs of this Government, that it seems to me scarcely requisite to do more, in this place, than to recommend it to your Lordship's attention; but I must at the same time add, that it contains explanations and particulars upon which, although unnecessary for myself, I wished him to be explicit, as I conceive they may be extremely useful to my successor, and it embraces an amount of official information of no slight importance, when considering the subject of the debts of the Colony, and of which, therefore, I am willing to believe your Lordship will not object to avail yourself.

Proceeding now to Mr. Montagu's suggestions on the means which offer themselves for paying off the debt, I must, in the first place, express my regret to observe from the report, that a considerable loss will, in all probability, accrue upon the securities held by the Treasurer from loans made from the late Government Bank, and that there will

also be some deficiencies upon the arrear taxes and land-rents, but exertions are now making for the recovery of those arrears, and your Lordship may rely that no relaxation will be permitted whilst any remain uncollected which can possibly be recovered. In the Bank losses also, it will be remarked, that of the doubtful claims a sum of 5,412*l.* 1*s.* 3½*d.* has been already paid into the Colonial Treasury, on account of the late residue department, and of those classed as irrecoverable, a sum of 3,109*l.* arises from loans to some of the former district administrations for the erection of public buildings, which, since the abolition of the local boards, have been vested in the Colonial Government.

I have approved of Mr. Montagu's suggestions for closing the private fund of the late Orphan Chamber, and transferring to the Treasury the amount of Mr. Dessin's legacy, and of the unclaimed sums administered for unknown and foreign heirs; the former as belonging of right to the Government, under the altered circumstances of the Orphan Chamber administration, by which that administration is, and has been for some years, vested in the Government,—the latter, from the absence of probability that any portion will be now claimed, in default of which it lapses to the Government, which still remains responsible for the payment, upon the production of sufficient proof; and having given the necessary directions in this respect, I beg to solicit your Lordship's sanction.

I have also approved of the present disposition of the Prize Negro Fund being left undisturbed, but I am unwilling to notify my approval to the Institutions holding loans from that fund, without your previous sanction.

In regard to the proposed redemption of the quit-rent, I beg to state that I have for the present authorized the sale of such rents to the extent of 40,000*l.* only, as being probably sufficient, with the other funds at the disposal of Government, to meet the demands for the extinction of the Colonial debts, but that object being attained, I am of opinion that it would be highly beneficial to allow the whole of the quit-rents to be redeemed on the same terms, and to apply the proceeds, in certain portions, annually, to public works, for the development of the resources of the Colony,

and the encouragement of European immigrants, by which the consumption of dutiable articles would be greatly augmented, and the loss of the land revenue be, in a few years, more than compensated, and by which the moral, as well as the physical strength of the population would be increased; neither of which advantages can be expected from the importation, upon however large a scale, of blacks, who, although desirable, and even valuable as laborers, do not feel the wants or possess the acquirements of civilized life, nor, in their necessary distribution among the comparatively thinly scattered inhabitants, is there any probability that they will, generally speaking, for many years to come, be more than mere machines, unable to compete with the European in anything but mere labor, and adding little to the advancement of the real interests of the Colony.

Another point of Mr. Montagu's Report to which it is necessary to refer, is the Storm Fund, which, from some laxity in granting the original loans without sufficient security; from repayments having in some instances been made into the Colonial Treasury instead of the Bank, by which, under the immediate directions of Government, the fund was administered; and from some other causes, has fallen into much confusion; but as I have obtained all the information on the subject which the books of the Bank and Audit Office can afford, and have received answers from the several Civil Commissioners to the circular letter of which I enclose a copy, from all which a detailed statement of the fund is now preparing in the Colonial Office, I trust that it will shortly be in my power to bring the matter under your Lordship's notice in some tangible shape.

“ Before taking any final steps for withdrawing the guarantee of Her Majesty's Government for the Colonial notes, I submitted Mr. Montagu's report and suggestions to the consideration of the Executive Council. But as the measure now carried into operation, is so much at variance with the resolutions come to by that Council on the 29th June, 1841, I feel it incumbent upon me to explain, that in bringing that Report before the Executive Council, I informed the members of the change which it had effected in my views, and that I considered the measures proposed by

Mr. Montagu better adapted to present circumstances, and more consonant, upon the whole, with the spirit of your Lordship's instructions.

The Attorney-General and the Collector of Customs, the only members, excepting myself, now in the Executive Council, who had seats when the resolutions of October 1841 were passed, have seen no reason to alter the opinions embodied in those resolutions, in regard to the most eligible mode of withdrawing the Government notes from circulation, by substituting, as far as could be done with safety, a new note, payable in specie on demand at the Colonial Treasury, and providing for the deficiency by issuing debentures. They still put the same interpretation as they then did, upon your Lordship's instructions on the subject, but having done their duty, firmly and consistently, by an open expression of their sentiments in the Executive Council, they cheerfully and readily waived their own opinions to support the present measures and arrangements when proposed for the consideration of the Legislative Council.

Being myself, therefore, the only person obnoxious to the charge of inconsistency, and subject to your Lordship's censure if you shall see cause to disapprove of the mode now adopted for relieving Her Majesty's Government at once, and without the issue of new notes, from all guarantee or liability on account of the paper currency of this Colony, I beg respectfully to submit my reasons for approving of Mr. Montagu's views on this point in direct opposition to those I formerly held.

---

Downing Street,  
11th March, 1844.

Sir,—I have received Sir G. Napier's despatch, No. 219, of the 22nd November last, and its several enclosures, reporting the withdrawal of the guarantee of Her Majesty's Government, under which the promissory notes of the Cape of Good Hope were circulated, and the arrangements which are in progress for the final liquidation of the paper debt of the Colony.

I have to signify to you the entire approval of Her



Majesty's Government of those arrangements, and of the appropriation for that purpose, of the sum of 40,000*l.*, to be raised by redemption of quit-rents, and of the several other funds referred to in your predecessor's despatch.

Her Majesty's Government had been prepared to assent to the renewed issue, and continuance in circulation, of some portion of the Colonial Government notes, under the impression that the Government might not have had any other immediately available means of liquidating the paper debt than the issue of debentures; but the very considerable diminution of the debt already effected, and the further means of providing for paying off and withdrawing the notes, which have been suggested by Mr. Montagu, and found to be available by the local Government, will reduce the necessary issue of debentures, and the consequent charge for interest, much below what had been contemplated.

Under these circumstances Her Majesty's Government entirely approve of Sir G. Napier's determination to withdraw, as soon as possible, the whole of the Government notes, and of the deviation in this respect from the arrangement in which he had originally concurred; and they do not object to the temporary continuance in circulation of notes in the old form, under the provisions of the proclamation of the 9th of November last.

In order to prevent any disturbance of the satisfactory footing on which the currency of the Cape of Good Hope will now be placed, I must distinctly caution you against being induced by any plea of convenience to the public, or on any other ground, either to authorize any future issue or circulation of Government notes, or any other material deviation from those measures, or to sanction or countenance any issue or circulation of notes by individuals or banking establishments, or to permit any such notes as can be legally issued, to be received by public officers on the public account, without express previous authority from Her Majesty's Government.

Adverting to the arrangement for the redemption of quit-rents, I have to request that you will report to me your opinion as to the expediency of extending the redemp-

tion of quit-rents on similar terms, for the purposes referred to in the correspondence.

Her Majesty's Government can express no opinion as to the propriety of resuming, or leaving undisturbed, the loans from the Prize Negro Fund, without more explicit information in regard to the security given for the loans,—the objects to which the sums borrowed were applied by the South African College, and the Cape Town School of Industry,—and the means those institutions may possess of liquidating the respective debts.

Her Majesty's Government observe with satisfaction that steps were being taken by the Colonial Government for the investigation and recovery of other outstanding debts, and they request that you will take care that the proceedings for those purposes are effectually followed up, and that you will report the results of them, in addition to any information which may have been obtained relating to the Storm Fund.

I have already had the satisfaction of bearing testimony to the zeal and ability with which Mr. Montagu had applied himself to the duties of his office, but I cannot conclude this despatch without a further acknowledgment of the very able and efficient manner in which he laid before your predecessor his views in regard to the extinction of the paper debt of the Colony, and his proposals for carrying the measure into effect.

I have, &c.,

(Signed) STANLEY.

Lieut.-Gen. Sir P. Maitland, K.C.B., &c.

---

Downing Street,

19th April, 1844.

Sir,—I have received Sir G. Napier's despatch, No. 16, of the 2nd February, transmitting a proclamation which he had issued, cancelling a further sum of 10,000*l.* of Government promissory notes at the Cape of Good Hope, and reporting the progress of the measures adopted by him, on the recommendation of Mr. Montagu, the Secretary to

Government, for the extinction of the paper debt of that Colony.

I am glad to learn that those measures have been successful, and that they have been carried into effect without any inconvenience to the Government or the community. It will be satisfactory to you, on assuming the government, to find that the Colonial currency has been placed on a sound footing by the course suggested by Mr. Montagu.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed)

STANLEY.

Lieut.-Gen. Sir P. Maitland, K.C.B., &c.

---

Government House, Cape of Good Hope,

16th March, 1844.

My Lord,—Referring to my despatch, No. 16, of the 2nd ult., in which I informed your Lordship, that in the course of another month I hoped to be enabled to cancel 10,000*l.* more of the Government paper money, and that before giving up the administration of the Government, I would report the amount and particulars of claims or credits then outstanding, I have now the honor to enclose a proclamation of the 29th of the same month, notifying the withdrawal and cancellation of the amount I had anticipated, of which 8,100*l.* consisted in surplus revenue, and 1,900*l.* was realized by the sale debentures, and I have also much pleasure in forwarding for your Lordship's further information the accompanying report made to me by Mr. Montagu, containing every necessary particular in regard to the Government claims.

From this document it will be observed that there are at present ample surplus funds in the Colonial Treasury to redeem an additional sum of 10,000*l.* of notes, and which will be so applied as soon as the necessary number of notes shall have been remitted to Cape Town from the Commissariat chests on the frontier. It likewise clearly shews that 37,393*l.* 17*s.* 9*d.* of the outstanding claims can be safely depended upon to meet the remaining 20,000*l.* of notes when presented, and to pay off the debentures of 14,000*l.* sold by

the Government towards the conversion of the paper money debt, which may now be considered liquidated, as the notes will come in but slowly, and the certainty exists that there will be sufficient funds to meet them whenever presented.

“It affords me, my Lord, no slight gratification, that my exertions to accomplish this object have proved so successful, and that before resigning the Government, I have been enabled to place the Colonial finances upon so healthy a footing, and I trust that the arrangements I have made will not be found undeserving of your Lordship’s approbation.

I have, &c.

(Signed) **GEORGE NAPIER.**

The Right Honorable the Lord Stanley,  
Secretary of State.

Downing Street,  
27th June, 1844.

Sir,—I have received Sir George Napier’s despatch, reporting that he had been enabled, before giving up the administration of the Cape Government, to cancel ten thousand pounds more of the Government paper money, and that as available funds exist for the redemption of the remaining portion of the debt, it may now be considered liquidated.

Having already signified to you the entire approval of Her Majesty’s Government of the arrangements made by your predecessor, for the extinction of the paper debt of the Colony, I have now only to state that it has been gratifying to them to learn, that he had been able before the close of his administration, to bring this intricate subject to so satisfactory an issue.

You will strictly adhere to the course of proceeding adopted by Sir George Napier until the remaining amount of the Government notes shall have been withdrawn and cancelled, and the debentures, which have been issued, shall have been paid off.

I have the honor to be, Sir,  
Your most obedient humble servant,

Downing Street,  
22nd August, 1844.

Sir,—I have received your despatch, reporting the measures you had been enabled to take for cancelling a further sum of 20,000*l.* of Government notes, leaving only 10,000*l.* in circulation, and informing me that, in consequence of the resources of the Colonial Treasury of the Cape of Good Hope, being in a condition to meet this charge of 20,000*l.* of notes, you had considered it advisable to direct the discontinuance of any further issue of debentures in exchange for the Government notes or specie.

I have to express to you the gratification with which Her Majesty's Government have received this account of the satisfactory state of the paper debt, as well as of the finances of the Colony under your government.

I have the honor to be,

Sir, your most obedient humble servant,

(Signed) STANLEY.

Lieut.-General Sir P. Maitland, K.C.B.

(E. p. 150.)

Copy of a despatch from Governor Sir George Napier, K.C.B.,  
to Lord Stanley.

Government House, Cape of Good Hope,  
23rd January, 1844.

My Lord, — In my despatch, No. 212, of the 27th October last, I had the honor of reporting the measures then in progress for establishing an efficient system of convict discipline, for improving the inland communication of this Colony, and for rendering of more general benefit the services of the convicts sentenced to hard labor at the public works, and in which I informed your Lordship that I was about to introduce an ordinance for giving legal effect to the plan suggested by Mr. Montagu. I have now the honor to enclose the ordinance alluded to, which passed the Legislative Council unanimously, on the 22nd November last, and recommend it for Her Majesty's most gracious approval. I have yet had no reason to doubt that the plan has given general satisfaction throughout the Colony. My own opinion



of the vast importance of the whole measure introduced is daily strengthened; and I feel satisfied that the effect it will ere very long produce in checking crime, in improving the minds, the morals, and habits of the convicts, and the class of persons they belong to, and of opening the resources of the country, can scarcely be duly appreciated at present. I have no hesitation in assuring your Lordship that it promises results of the greatest benefit to this Colony.

---

Sir Peregrine Maitland to Lord Stanley.

Government House, Cape of Good Hope,  
3rd March, 1845.

My Lord,—I have the honor to transmit to your Lordship a report from the Secretary to Government, of the operation of the new convict system, introduced into the Colony with your Lordship's sanction, during the first twelve months of its existence, ending with the 31st December last; and also a report from the Central Board of Commissioners of Public Roads of their proceedings during the same period.

From these two documents, taken together, I trust it will appear to your Lordship that the advantages expected to be derived from the systematic application of convict labor, according to the regulations already approved by your Lordship, have been realised to the utmost extent that the brief space of one year could allow.

While, on one hand, the internal communication has been improved by the well-regulated employment of a large amount of labor, at no greater expense than is absolutely necessary for the maintenance and control of the convicts under any circumstances, so, on the other, an important amelioration of the state of the convicts themselves has been effected by the careful discipline and instruction to which they have been subjected.

To the propriety of their behaviour, the ease with which they are held, the small amount of crime, and consequently of punishment, which exists among them, the progress which they have made in secular and religious knowledge under such advantageous circumstances,—to these acts I would especially call your Lordship's attention, as

Showing the success and beneficial results of the plan adopted; and I can add, that having myself visited all the stations, I can bear testimony to the accuracy of these statements of the report, and to the greatly improved condition of the convicts in general.

The Right Honorable Lord Stanley.

---

Extract from Sir P. Maitland's despatch to Lord Stanley,  
26th February, 1846.

I have the honor to transmit for your Lordship's information, the annual reports, for the year 1845, of the Central Board of Commissioners for Public Roads, and of the working of the convict system established in this Colony.

\* \* \* \* \*

I have no less satisfaction in being able to lay before your Lordship a very favorable report of the operation of our convict system. The abolition of the penal settlement at Robben Island, at the close of last year, has furnished about one hundred additional convicts for labor on the roads. The same regulations as to discipline, distribution, and instruction, have been continued, as were enforced with happy results during the past year. It has been found that, on the average, a greater amount of efficient labor has been obtained from the convicts than would be obtained from an equal number of free men; so that, on the score of economy, we have every reason to be satisfied. At the same time, not only has strict and orderly discipline prevailed, so as to render punishment very seldom necessary, but a high state of health has also existed among the convicts, the deaths during the past year being no more than one in eighty on the whole number under charge; and a very considerable progress has been made by many in religious and secular knowledge, under the diligent care of visiting ministers of the gospel, and of the superintendents of the several stations.

---

Right Honorable W. E. Gladstone to Sir P. Maitland.

Downing Street,

26th April, 1846.

spatch, No. 57, of the 26th February, transmitting the annual reports for the year 1845 of the Central Board of Commissioners for Public Roads, at the Cape of Good Hope, and of the working of the convict system established in the Colony.

I have read these reports with much satisfaction, and especially that which relates to the working of the new convict system.

The results of that system, as it regards the welfare both of the Colony and of the convicts themselves, appear to me to be highly important, and as calculated to throw much useful light on the general question of convict management.

---

Extract from Sir H. Smith's Despatch to Earl Grey,  
21st December, 1848.

My Lord,—I have the honor to report, for your Lordship's information, that I have recently returned from a short visit to the Division of Worcester, which I made principally for the purpose of opening the new line of road, now completed, through the Mosterd's Hoek Pass. I have often, from time to time, had occasion to address your Lordship on the great advantages which this Colony is daily deriving from the increase of the means of internal communication, under the system devised and conducted by Mr. Montagu; but I have not before witnessed so pleasing an illustration of these advantages (except in the great Montagu Pass at George) as was presented upon the occasion of the opening of this new road.

The 1st of December, the anniversary of my arrival in the Colony, having been fixed upon for the ceremony, I arrived at Mosterd's Hoek on the previous day, and on the morning of the 1st proceeded to inspect the convict station, the arrangements of which were most creditable to all concerned. I have never seen so perfect an establishment for the reform of the dissolute, and at the same time deriving great benefit from their labors.

\* \* \* \* \*

The whole of the Mosterd's Hoek pass was constructed

convicts employed averaging 200. I have already remarked that the appearance of the convict establishment and of the convicts themselves was most satisfactory, and I should add, that while they have been thus employed in the construction of works of public utility, no pains have been spared to improve their moral condition, and to prepare them for becoming, on their liberation, honest and useful members of society. But I will not trouble your Lordship with any further remarks on this portion of the subject, as I propose, at the end of the present year, to call upon Mr. Montagu to furnish a detailed report of the working of the convict system in force in this Colony, during the first five years of its establishment; and I have no doubt, that when I shall have had the honor of submitting that report, the advantages of the system will be apparent to your Lordship, as they are to myself, who have had the opportunity of observing them on the spot.

---

(F. p. 157.)

**Regulations for the Discipline and Management of Convicts employed on the Roads of the Colony of the Cape of Good Hope.**

Colonial Office, Cape Town,  
1st January, 1844.

1. THE official inquiry which was lately made in regard to the manner of employing convicts sentenced to imprisonment with hard labor in the several divisions of this Colony has, in the opinion of his Excellency the Governor, established the following points:—

2. That the present system, or rather practice, is attended with an average loss of one-fifth of the collective labor of the male convicts now under sentence; and that from the lax manner in which the labor of those placed on the effective list is in general exacted, the end and purpose of such punishments are frustrated to a serious extent.

3. That the employing of convicts to clean and repair the streets of the district towns and villages, or on the roads in their immediate vicinity, not only affords the convict every facility of intercourse with his friends or former associates,

and of procuring luxuries that are not allowed, and other enjoyments incompatible with his condition,\* but from its debasing effect on the minds of the young, is, in a moral point of view, highly prejudicial to the best interests of society.

4. That the present system does not only not contemplate,\* but by its very arrangements either neutralizes or wholly counteracts that process of reformatory discipline which is essential to the salutary exercise of penal justice, a process which, while it strictly regards the extent and degree of punishment awarded for the offence committed, seeks, both on moral and political grounds, to rescue the delinquent from the power of vicious habits or degrading propensities, and aims to restore him, if possible, to society, prepared to resist its temptations from a higher motive than the dread of punishment consequent on crime.

5. To remedy the evils which have sprung from the present practice, or rather with a view to re-model the whole system of convict management and discipline, his Excellency the Governor has been pleased to approve of the following code of rules, which has been drawn up for the instruction and guidance of those to whom this department of the public service will in future be committed, under the immediate direction and control of the Government.

#### SECT. I.—*General Rules.*

“6. The great end of punishment is to deter men, by example, from the commission of crime. All superintendents of convict gangs, and all subordinate officers are, therefore, enjoined to carry faithfully and impartially into effect the sentences with the execution of which they are entrusted, exacting such an amount of labor as the health and physical strength of the convict will admit, rigorously imposing the privation of every luxury and indulgence not authorized by Government, or by the certificate of the medical officer in charge, and strictly prohibiting all intercourse with friends, relatives or others, except under the sanction of some specific rule contained in this code.

7. At the same time in carrying the sentence of imprisonment and hard labor into effect, both justice and humanity



require that no suffering be imposed which the sentence passed and the condition to which it necessarily reduces the prisoner do not imply. Due attention is, therefore, to be paid to bodily health, cleanliness of person, the airiness and general salubrity of all places of confinement, and the food and clothing supplied; and though the discipline must be rigorous and uncompromising, unless where character and conduct have by the rules of this code obtained a mitigation, yet every officer is carefully to avoid anything approaching to harshness or severity in the treatment of the convicts under his charge, either in language or manner, but by a mild, judicious and temperate exercise of his authority, he is to endeavor to convince them that the degree of labor and coercion to which they are subject is the consequence of crime, and exacted solely in satisfaction of justice.

8. It is to be observed as a standing rule, that conversation during the hours of labor and at meals, though not prohibited unless for misconduct, is to be under continued restraint, and confined as much as possible to matters connected with the work in hand; nor is any individual not belonging to the station to be permitted to have access to or intercourse with any of the convicts, except by the special permission and in the presence of the superintending officer, who will enter in his report the grounds on which it was granted.

9. In the distribution of labor among the convicts of a gang, character and conduct, as far as the health and strength of individuals will allow, are alone to determine what kind of labor is to be allotted to each, those who manifest a bad and restless disposition, or a tendency to skulk, being always employed on that which is most irksome. No convict is to be invested with power or authority over any of his fellow prisoners, or employed in any permanent situation of ease. The cleaning of wards, sweeping of barracks, cooking, washing, &c., must be performed by the convicts as duties generally, and in rotation, those only being excluded who are under temporarily increased punishment.

10. Unless specially directed otherwise, all male convicts sentenced to imprisonment with hard labor in this Colony for any period exceeding three months (the convicts

sentenced to Robben Island excepted), shall in future be transferred, on conviction, through the civil commissioners of divisions to such of the superintending officers of convict gangs at the several road stations as shall be determined on by his Excellency the Governor, where their labor shall be placed at the disposal of the Central Board of Commissioners of Public Roads. The body of convicts thus employed shall be divided into such a number of gangs or road-parties as his Excellency the Governor shall direct; each gang shall be placed in charge of an officer, to be called the superintendent of that gang or road-party, and shall consist of three classes, which will be placed during the hours of labor under the immediate direction and control of a head-overseer, with an adequate number of sub-overseers and constables.

11. No gang shall in any case exceed 100, and should there be occasion to bring together on any particular section of road a number exceeding that now mentioned, it will be necessary to place a part of the gang in charge of an additional head-overseer, and to form a subsidiary station, which will also be in charge of the superintendent of the station.

12. In each gang there will be three classes. Convicts on being transferred to a road station immediately after sentence will, in every instance, be attached to the first or lowest class of the gang, where, without either pardon or mitigation, they shall undergo one-sixth of their sentence. (Sentence for life for the purpose of this computation will be counted as twenty-four years.) This period must be served with uniform good conduct, and must be the minimum period for detention in that class. Misconduct may have the effect of prolonging a convict's detention there indefinitely, within the limits of the term of his original sentence. Transition from this stage of punishment and discipline to one less stringent and severe, will be withheld from a convict during the whole or any part of his sentence, who by misconduct, renewed offence or disinclination to reform, shall forfeit all claim to be considered. Nothing, however, in this rule shall be so construed as to affect the exercise of the prerogative of the Crown, either on the part of Her Majesty, or her representative, to pardon or commute the sentence at

13. Convicts who have served a part of their sentence before being transferred to a road station, will be classified according to special directions by his Excellency the Governor, after he has duly considered the case of each such convict, and the report of his conduct and character from the officer under whose charge he was when so transferred. Those of good character may be eligible to be placed at once in the second or even third class, without reference to the period of imprisonment which they were originally sentenced to undergo.

14. To facilitate the classification of convicts on entering the gangs according to their respective degrees of guilt, estimated by the amount of punishment awarded, the first or lowest class of each gang shall be subdivided into three sections; and in drafting the convicts on their arrival at a station into the several sections of the first class, unless specially directed otherwise, the following rule is to be observed:—Convicts sentenced to hard labor for any period exceeding seven years, to be placed in the first or lowest section; those whose sentence is less than seven years, but not less than three, to be placed in the second section; all those whose term of hard labor is less than three years, to be placed in the third or highest section.

15. No deviation from this rule will be allowed in any case, except on the special report and recommendation of the judge by whom the sentence was passed.

16. The advancement of a convict to a higher section, or degradation to a lower, during the period of his servitude in this class, will be determined in every instance by the Governor, and intimated to the Superintendent by the Secretary to Government.

17. No convict will be promoted from the first to the second class of a gang before the minimum period of service in the former shall have been completed. The members of the third section of the first class will also be held eligible for promotion into the second class; and that not before having remained without interruption in the third section for the period ordered by his Excellency the Governor, which period will in a degree be regulated by the length of the

direct authority of his Excellency the Governor, whose decision in each case will rest chiefly on the monthly reports of the superintendent of the gang on the individual conduct of the convicts under his charge, as it regards obedience, application to all duties imposed, temper, conversation, language and outward demeanor, as also attendance and conduct at school and chapel. The reports of the superintendents on these most important points in reformatory discipline must, therefore, on no consideration be of a general character, and should consist as little as possible of arbitrary description, either on his part or that of his subordinates; so that by these returns, which will be carefully registered, his Excellency the Governor may be placed, as nearly as possible, in the position of an actual observer.

18. In determining to what extent and in what manner a mitigation of punishment, as the reward of good conduct and an endeavour to reform, can be bestowed on the convict on being promoted into the second class, the great end of punishment, viz., to deter by example, must not, out of regard to the interests of society, be compromised. And in accordance with this, his Excellency has authorized the following to constitute the privileges of the second class:—The hope of pardon or commutation of the sentence, on the recommendation of the superintending officer, founded on the conduct and character of the individual while undergoing punishment; the being eligible to pass without any fixed period of service therein from the second to the third or highest class; relief from the irksome and fatiguing kinds of labor to which the convicts of the first class are subjected, though in no respect from continued labor, so essential a part of reformatory discipline, except in the case about to be mentioned; the setting apart weekly certain of the hours assigned for hard labor to instruction and moral training, under the superintendents of the gang, in addition to the exercises of the evening school; this, however, to be optional with the convict, and such as decline will continue at labor. Another mitigation of punishment the promoted convict will enjoy in the privilege of better associates; this he will not undervalue, if he has profited, as must be presumed, by what

19. In regard to the mitigation and privileges consequent on promotion from the second to the third or highest class, his Excellency appoints, that they shall, in the first place, consist in those conferred on the convicts of the second class, but, on a more enlarged and indulgent scale, and with this additional privilege, that convicts having a knowledge of any handicraft or trade shall be employed therein as often as the wants of the station shall require. Secondly, in giving the convict an interest in his labor, by lodging in the savings bank a certain proportion of its value on his behalf, to be given him on the completion of his sentence, with the interest thereon, either at once or by instalments, as his Excellency the Governor shall, from the circumstances of the case, see fit to direct. This latter privilege, which is connected with a very important step in the reformatory process, is to be enjoyed by all members of this class without distinction; he who becomes unfit for or undeserving of this privilege, ought to be returned to the second class, unless its temporary suspension for not more than ten days have the effect of recovering him. Lastly, there will be held out to all convicts who shall continue in this class, until the completion of their sentences, the prospect of employment on the public roads as free laborers, at stations selected for that purpose, where the means of instruction and moral training will be continued at the public expense.

20. This privilege will be extended to such as can produce at the completion of their sentence the certificate of the superintendent of the station as to general good conduct and behaviour; as also to such as may have received pardon or a commutation of their sentence previous to its completion.

21. Trivial offences, occurring in the second and third classes, and which it will be competent for the superintendent summarily to punish, are not to be visited with degradation; the punishment for offences occurring in these classes, and of a character which brings them under the cognizance of the visiting magistrate, ought to be accompanied with degradation; and if the offence be of a serious kind, the degradation of the offender ought to be to that section of the first class



SECT. II.—*Rules for the guidance of the Visiting Magistrate.*

22. As the law must be necessarily severe in regard to convicts, it will be the duty of the visiting magistrate, in determining on the kind and degree of punishment for any given offence, to have regard to the temper, disposition, and general conduct of the offender. For this purpose he will invariably consult the register of the superintendent from which his returns are made up, in preference to any opinion from that or any other officer, given on the spur of the moment, and it may be under exciting circumstances.

23. As a general rule, punishment by flogging, in cases in which it is permitted by law either with or without additional infliction, ought to be the last resort in all instances of summary jurisdiction. Its frequent occurrence, even where necessity compels the magistrate to have recourse to it, cannot fail to have an injurious effect on the discipline of the station. The kinds of punishment which the visiting magistrate is recommended more particularly to exercise, are the temporary suspension of privileges and allowed indulgences in the second and third classes, should the offence occur there; accompanied, if necessary, with such further punishment as the magistrate by law may be authorized to inflict.

24. The magistrate, in awarding the punishment, will not fail to explain to the offender, briefly, but calmly and patiently, the grounds on which the punishment has been awarded, and impress upon him the folly of persisting in a course of conduct which excludes all hope of a mitigation of his sentence, or of the restrictive discipline under which he is placed, and exposes him to prompt and certain punishment.

25. The magistrates appointed to visit the convict stations will do so at uncertain periods, and not less than four times every month. The visiting magistrate will, when practicable, be accompanied on such occasions by a medical officer, appointed by the Government. The superintendents of the gangs are to take such steps as to them may appear necessary; for the confinement of any convict who may misconduct himself, until the visiting magistrate shall have decided upon the case.

26. In addition to the discharge of his magisterial duties,

The magistrate, in conjunction (when practicable) with the attendant medical officer, will on each visit, inspect the barracks, cells, and other apartments erected for the accommodation and safe custody of the gang. They will also visit the gangs at work; and at least twice a month every individual of the gang will be narrowly inspected by them. A separate monthly report will be sent in both by the visiting magistrate and medical officer to the Secretary to Government, communicating the results of their several visits in a detailed and precise form, and stating whatever may appear to them erroneous or defective in regard to the management and discipline of the station, or affecting in general the important interests his Excellency has in view in the re-modelling of the system. Any irregularities on the part of any officer of the station, or any want of diligence and attention in the discharge of their duties that may come under the notice of the magistrate and medical officer, either personally or otherwise, will be recorded in their monthly reports, as also in the visiting-book of the station.

27. The visiting magistrate and medical officer, in conjunction with the superintendent of the station, will inspect, monthly, all bedding, clothing, cooking utensils, implements of labor, &c., and condemn such as may be no longer fit for use; they will at the same time report to the Central Board of Road Commissioners on all deficiencies of stores and clothing, the manner in which the contractors for the supply of food, clothing, &c., have fulfilled their engagements; the state of the buildings generally, and any other want that may come under their notice. A duplicate of this report is to be sent at the same time to the Secretary to Government.

28 The visiting magistrate is not required to interfere with the internal and moral discipline of the station; for this the superintendent is specially responsible; but one of the most important of his duties is to ascertain and report accordingly, whether his Excellency's orders in regard to the management and discipline of the gangs have been complied with, and in a manner corresponding with their intent and spirit; whether the convicts are classified and worked according to the directions which have been issued by the Govern-

by the rules, or specially authorized; whether the labor is equally and judiciously distributed, and in amount what might be reasonably expected, and whether that process of moral and religious training is in effective operation which the system contemplates. On these his Excellency calls on every visiting magistrate to report faithfully and impartially.

SECT. III.—*The Special Duties of the Superintendent of a Convict Station.*

29. The superintendent will be wholly responsible for the station committed to him, in all that regards its discipline, management, and internal economy generally; and it will be his duty to see that the principles embodied in the rules of the first section are brought fully and efficiently into operation.

30. He will have the entire control of all subordinate officers of the station, and will be held answerable for their good conduct and the right discharge of their respective duties. He will therefore report to the Secretary to Government any instance of disobedience of orders, neglect of duty, or improper behaviour of any kind on the part of any officer of the station that may occur. And should there be necessity for prompt and summary measures on account of any such act, he is hereby empowered to suspend the party from his office, until his Excellency's pleasure is known.

31. The superintendent is charged with the safe custody of all convicts at the station, and for that purpose there will be placed under him an adequate constabulary force, which he will apportion among the classes of the gang, as circumstances require. In order to prevent as far as possible the escape of any convict, the classes of each gang are to be mustered three times every day by their respective overseers; viz., in the morning before proceeding to labour, at noon, and again in the evening immediately before being locked up in their several apartments for the night;—the morning and evening muster to be in the presence of the superintendent or head-overseer.

32. All escapes are to be reported immediately to the Secretary to Government, and every effort used by the superintendent, aided by the other officers of the station, to trace

and arrest the fugitives. A minute description of each is to be forwarded to the civil commissioner of the division forthwith, and to the field-cornets of the neighbouring wards. The same will also be published in the Government Gazette, for general information.

33. All convicts on being re-apprehended, or on being detected either in planning or attempting an escape, are immediately to be degraded by the superintendent to the lowest class, and independently of the punishment awarded by the visiting magistrate, are to be worked in heavy irons; and such other means of rigorous confinement adopted, as will ensure the future safe custody of the delinquent. This is to be continued until orders to the contrary be received from the Secretary to Government.

34. It will be the duty of the superintendent, aided by the head-overseer, to see that the convicts go to their beds, and rise at the proper hours; that they are clean, and marched off to their places of labor at the fixed time, each class headed by its overseer, and attended by such a number of constables as shall be necessary; that the time allowed for meals and occasional cessation from labour is neither exceeded nor abridged; that the conversation of the convicts, during the hours of labor and at meals, is properly controlled, and instantly checked and recorded when unbecoming and improper, or when the details of crime or allusions to its commission are in any shape introduced. It will also be his duty, on their return from labor, to receive the reports of the overseers of classes on the conduct of every individual under their charge—and in every case of absence from muster, to inquire into and record the reason, authorizing such to be placed on the sick list as appear to him unfit for labor from disease or any other disability.

35. All stores, bedding, clothing, implements of labor, &c., will be in charge of the superintendent, for which he will be responsible. As already stated in the 27th rule, he will, in conjunction with the visiting magistrate and medical officer, condemn such as are no longer fit for use, or have been supplied in violation of the terms of contract, reporting to the Board of Road Commissioners accordingly.

36. The superintendent will see the rations given out



daily, and take care that no more than one day's allowance be given out at one time. He will see that the provisions supplied are wholesome, and of the quality specified in the contract; and for this purpose he will submit the same, when necessary, to the inspection of the medical officer, on whose decision he will invariably act. He will strictly prohibit any other allowances being given to any convict by friends, relatives, or others, than those supplied at the public expense, and by the direct authority of the Governor.

37. It will also be the duty of the superintendent to see that the same prohibition is strictly enforced in regard to bedding, clothing, or any luxury or indulgence of any kind whatever not sanctioned by the rules of the station and provided by the Government. Nor are any letters, packets, or parcels, to be received by or sent from any convict, unless by the special permission of the superintendent after he has opened and inspected the same; who must report thereon, and assign his reason for granting the indulgence; excepting those in the third class, whose letters and parcels will not be opened unless the superintendent shall have some special reason for so doing. No wine, ardent spirits, tea, tobacco, snuff, or any narcotic substance or preparation can, under any circumstances, be allowed the convicts, or used by them, but on the authority of Government or the direct prescription of the medical officer, when they will be supplied at the public expense, as authorized or prescribed.

38. The more important duties which will devolve upon the superintendent of a station, are those of a moral and religious character. On his labors as a moral trainer and religious instructor, will mainly depend that process of probationary and reformatory discipline, by which it is sought to protect society from future outrage and injury on the part of the discharged convict, by eradicating low, sensual, and vicious habits, establishing those of sobriety, industry, and self-control, and by counteracting, through moral influences, motives which had previously led to an immoral life, and the commission of crime.

39. For this end he will endeavor to procure every information he possibly can respecting the manner of life and occupation of every convict, when placed under his charge,



previous to his apprehension and trial; his habits, propensities, and the peculiar temptations, both immediate and remote, which had led him to the commission of crime. This inquiry, so important to the right application of the course of discipline he will have to exercise, the superintendent will not cease to prosecute by continued and systematic observation, even of the most trivial incidents, and above all by endeavoring to gain the confidence of the prisoner, through an unfeigned solicitude for his reformation and future happiness.

40. For the same end he will mix at all hours with the convicts of the several classes, observing minutely and recording in his journal daily, for the information of the Government, whatever is indicative of the state of mind and feeling at the time. And in his intercourse on such occasions with individual convicts, he will not fail to inculcate incidentally such truths and maxims as are most likely to contribute in each case to generate or arouse moral feeling, and lead to a right apprehension of guilt, though he will carefully avoid direct allusion to the particular crime of which the party has been convicted, or his previous course of life, unless invited by his remarks to do so.

41. It will be the duty of the superintendent to conduct the Sunday and evening schools alluded to in the 5th section; and for that purpose he will have the assistance of the head-overseer—the sub-overseers acting, if required, as monitors of the classes under their charge. No interference with the classification of the convicts of the gang, during the exercises of the school or the services of the chapel, is to be permitted under any consideration. The individuals of each class and section are to be kept carefully apart, and no one is to be allowed to hold intercourse with any but those of his own class or section. The sections of the first class are to be taught in a separate apartment by the superintendent and his assistant the head-overseer alternately, or by such other arrangements as will enable the superintendent to direct and review the proceedings in all the classes.

42. It will be the duty of the superintendent, immediately after the morning muster, to read to the whole body of convicts some appropriate passage of Scripture, and to conclude with prayer; the same form will be observed at the

close of the evening school, and in either case it should not occupy more than ten minutes. Arrangements will be made to secure, as often as practicable, the services of a clergyman on Sunday. In the absence of the clergyman, it will be the duty of the superintendent to supply the deficiency under his direction. In the exercises of the school and the services of the chapel, both the Dutch and English languages will be employed when circumstances require it.

43. The superintendents of convict gangs must diligently exert themselves to secure the safe custody of the convicts entrusted to their charge. They will moreover be empowered to inflict punishment for minor offences against the rules laid down for the discipline and management of convict stations. Of such are, 1st, disobedience of orders, insolence or disrespect in language or manner towards any officer subordinate to the superintendent in charge at the time, or any constable or officer of police on duty; 2nd, the commission of any nuisance or indecency, the neglect or disregard of the rules for personal cleanliness, washing and mending of clothes, and the performing in turn the ordinary duties of the station; 3rd, absence, without any satisfactory reason to assign, at the hours appointed for muster, school, and the services of the chapel; 4th, abusive, indecent, or disrespectful language on any occasion, or towards any person, swearing, malicious lying, the use of intimidating language or threatening acts; 5th, carelessness, indolence, or neglect in performing the work prescribed, or the evasion of all work by skulking; the refusal to work in silence when such is imposed; unnecessary or undue absence from work or any other engagement on the plea of necessity; 6th, the wanton destruction and wasteful and negligent use of clothing, food, implements of labor, or any other property entrusted to them.

44. For the correction of such offences, or others not enumerated but of a similar kind, the superintendent, should he deem the case not sufficiently aggravated to reserve for the decision of the visiting magistrate, will be empowered to inflict, at his discretion, a temporary suspension of all privileges and authorized indulgences in the second or third class, should the offender belong to either, and will also be legally

empowered, in regard to certain of the said offences, to inflict such punishments as shall be by law provided. During the infliction of punishment, the individual ought to be wholly separated from the members of his class.

45. The superintendent will prepare monthly reports, according to an approved form, of the character and conduct of every individual convict under his charge, scrupulously adhering, both in his monthly report and daily register, to the prescribed system of notation by means of conventional numbers and other symbols, which will be so devised as to indicate precisely and minutely the incidents and facts on which he has based his record of good or bad conduct for the month, in regard to every individual convict. In the monthly report, he will also record all offences and misdemeanors that have been committed, either in direct violation of the rules or otherwise, and the punishments which have in consequence been inflicted, either by himself or the visiting magistrate.

46. It will be the duty of the superintendent, in drawing up his report, to place the names of the convicts on the respective class lists, according to their average merit for the month, as determined by the system of daily notation already alluded to. The list, on being completed, ought to be read aloud to the class, and its order of merit observed during the whole of the succeeding month, on all occasions of muster, of marching to and from labor, of school exercise and chapel service. The first on the list should be styled the foreman of the class for the month, and the first three appointed censors, to report on all cases of misbehaviour that may occur beyond the knowledge of the superintendent or his overseers, especially during the hours they are locked up. In order to keep permanently in view the importance attached to the standing of the convict in his class, as determined by daily notation, there will be badges attached to their dress, bearing the name of the class and the number which the convict holds for the month; and on the badge "1," there will be inscribed the words, "Foreman of the class No. —."

47. Along with this monthly register of conduct, &c., the superintendent will forward, for the consideration of the Governor, and through the Secretary to Government, recom-

mendations on behalf of such as he may consider deserving of promotion, as also the names of those, with a minute statement of their misbehaviour, who ought to be degraded.

48. It is a standing order which in no instance is to be departed from, that no superintendent, head-overseer, sub-overseer, or officer of police, shall have any interest, directly or indirectly, in any contract for the supply of food, clothing, bedding, or any other necessary that may be required for the station; nor shall they receive any present, gift, or other donation, from any contractor or his agent.

49. In the discharge of his arduous and important duties, the superintendent will not fail to maintain a constant and, if necessary, confidential correspondence with the Secretary to Government, through whom he will receive his instructions.

SECT. IV.—*Duties of Head Overseers of Gangs, and Sub-Overseers of Classes.*

50. It will be the special duty of the head-overseer of the gang to render the superintendent every aid in carrying out the principles of the system, and in maintaining due subordination. He will render him every assistance also in conducting the Sunday and evening schools, in inspecting the convicts at muster, in maintaining the classification of the convicts as prescribed by the rules, and in seeing that the rations for the several classes and sections are duly issued, of good quality and according to allowance.

51. Until a storekeeper be appointed to the station, the head-overseer will be responsible to the superintendent for all stores, clothing, bedding, implements of labor, &c. He will see that no articles are issued without being properly marked, and on the written order of the superintendent, to whom he will make monthly returns of all issues, and of the amount of supply still remaining. He will use the strictest economy in the distribution of stores.

52. It will be the duty of the head-overseer, when so directed, to see that all punishments awarded, either by the superintendent or visiting magistrate, are carried into effect; especially as regards solitary confinement, temporary separa-

duty to see that the ordinary duties of cleaning quarters, airing the bedding, ventilating all apartments, cooking, washing, &c., are performed in rotation by the several members of each class, excepting those who are under punishment or disgrace, or on the sick list, when it comes to their turn.

53. The head-overseer will be directly in charge of the third or highest class when at work, but as he will have to exercise a general supervision over the work performed by the different classes of the gang, he will from time to time exchange with those in charge of the second class, and the several sections of the first; on which occasions he will report to the superintendent on the state of discipline and control in which he finds them, and the degree of industry to which they have advanced.

54. It will be his duty to report daily the amount of labor performed by the members of the third class, with the view of determining what proportion of its value shall be placed to their respective credits, conformably to the provisions of the 19th rule. And in all the classes and sections to see that in the distribution of daily labor, due regard is had to the character and conduct of each individual, as determined by the daily register of the superintendent, and that it is in strict conformity with his instructions.

55. Sub-overseers will be held responsible to the superintendent for the safe custody of every convict of the class under his charge during the hours of labor, including those allotted for meals, and for that purpose his class will be attended by an adequate number of constables. He will head his class during the hours allotted for school, and aid in their instruction, and in maintaining order and attention as he may be directed. Under the directions of the superintendent and head-overseer, he will see that the convicts of his class are locked up at the proper hour, that they attend muster when required, and he will aid in their inspection as to cleanliness, &c. when ordered.

56. The head-overseer in charge of the third class, and the sub-overseer in charge of the second, and the several sections of the first, will on no account quit their station during the hours of labor, or when the convicts are at meals, except with the special permissions of the superintendent.



They will carefully avoid all harshness in language or manner in the treatment of the men under their charge, though they will firmly insist on the performance of the amount of labor imposed, and on the due maintenance of discipline. They will be required to instruct the convicts in the use of their tools, and direct them in the manner in which the work is to be performed.

57. The head-overseer and the respective sub-overseers of classes will carefully watch the conduct of every convict during the hours they are under their charge, and furnish the superintendent with a daily report thereon, minutely detailing every circumstance which it is of importance that the superintendent should know; above all, they will exercise an unceasing watchfulness and control over their outward demeanor and conversation.

58. They will have invariably to attend to the mid-day muster, and to report without the least delay on any occasion of absence not accounted for, or any suspicious circumstances leading even remotely to conclude that an attempt at escape is contemplated. Under such circumstances, the overseer will be authorized to use every lawful means to secure the safe custody of the parties, independently of any orders to that effect from the superintendent, reporting on the same accordingly.

SECT. V.—*Rules for the guidance of the Convict.*

All convicts are to remember that they are undergoing coercive labor, and are subject to severe discipline, as the consequence of crime; and that by good conduct alone, and evident reform, they can hope to escape from the severe course of restraint, discipline and labor, on which they must first enter, and under which they must undergo a determinate portion of their sentence. Above all, they must consider obedience to be their *first* duty, and be made to feel that a refractory and insubordinate line of conduct will invariably be accompanied with a rigorous exaction of every privation and penalty legitimately implied in the sentence, independently of additional infliction for overt acts of misconduct or offence.

60 . Perfect silence is to be kept at the musters, and

during inspection. No conversation is to be allowed but with the permission of the superintendent or head-overseer, during the exercises of the school. When silence is imposed as a punishment during the hours of labor, it is to be strictly observed, and any violation of the order which in all cases is to be issued by the superintendent will be invariably visited with a severe penalty. Silence must also be strictly observed in marching to and from the place of labor.

61. No convict is to leave the station assigned him during work without permission of the officer in charge, nor is he to stray from the quarters allotted him in the barracks. When not at hard labor, or any other stated duty, or on leave of absence, he must invariably be found in his quarters, avoiding intercourse on every occasion with any convict not belonging to his class or section.

62. He is not, under any circumstance, to undertake work of any kind, which he has not been ordered to perform, either by the superintendent, head-overseer, or other officer in charge for the time being.

63. Convicts are to pay a becoming outward respect to all persons placed in authority over them, and invariably to observe the form of obeisance prescribed by this rule, on meeting or being accosted by the visiting magistrate, superintendent of the station, or other superior officer. The form of obeisance appointed is that observed by the private soldier on meeting any commissioned officer of Her Majesty's service, when off duty.

64. The various rules prescribed for labor are not to be departed from on any account, except when task-work has been allowed, when the party is permitted, after his task is finished, to proceed to his quarters for the purpose of reading, or any other useful engagement of which the superintendent shall approve. No convicts not allowed task-work are to quit their station even when the work is finished, without leave, the excuse for which must be assigned in the daily report of the officer in charge. No convict under aggravated punishment is in any case to be allowed task-work. Those subjected to extra hours will be placed under proper officers for that purpose.

65. The following are the hours assigned for labour and meals:—

FOUR MONTHS :	LABOR.	MEALS.	LABOR.
16 October to 15 February	6 to 11 A.M.	— . 1	to 6 P.M.

TWO MONTHS :	LABOR.	MEALS.	LABOR.
16 February to 15 April	½ p. 6 to 11 A.M.	— . ½ p.	to 12½ p. 5 P.M.

FOUR MONTHS :	LABOR.	MEALS.	LABOR.
16 April to 15 August	½ p. 7 to 11 A.M.	— . 12 to ½ p.	4 P.M.

TWO MONTHS :	LABOR.	MEALS.	LABOR.
16 August to 15 October	7 to 11 A.M.	— . 12 to	5 P.M.

66. On returning from work every evening, school will be held for all the classes for one hour by the superintendent, aided by the head-overseer and other subordinate officers. A certain portion of this time is to be devoted to the reading of such passages of Scripture as shall be prescribed by the Government from time to time, the occasional reading of books of amusement and instruction, whose general tendency is to elevate and purify the mind; exercises in arithmetic and writing, and such other employments as the superintendent shall deem beneficial or conducive to the end in view, viz., the moral reformation and intellectual improvement of the convict. It is to be understood that in this hour is included the time required for muster and reading prayers.

67. In like manner a Sunday school will be held for all classes of the gang, at such hours as the superintendent shall fix on; the exercises to be entirely of a religious kind. A return will be kept of the conduct and progress of each convict, both in the evening and Sunday schools, the particulars of which will be embodied in the monthly report of the superintendent.

68. No absence will be permitted, except in case of sickness or solitary confinement, from the exercises of the evening school. But such shall be allowed to be absent from the Sunday school, from the services of the chapel, and from morning and evening prayers, as shall have obtained leave to that effect from the Secretary to Government. Books of an amusing and instructive kind, will be distributed among the convicts twice a-week, after the close of the evening school.

69. The following is the scale of rations approved of for the several classes of the gang; and no other articles of food or unauthorized indulgence are to be permitted on any account, but by the prescription of the medical officer.

70. Bread or flour,  $1\frac{1}{2}$  lb.; rice, 2 oz.; fresh meat,  $1\frac{1}{4}$  lb.; salt,  $\frac{1}{2}$  oz., to be issued daily to each convict. Soap,  $\frac{3}{4}$  lb.; 2 needles and 2 skeins of thread, to be issued monthly to each convict. Tobacco will be issued by the superintendent as an indulgence to any man he may consider deserving of it, at any rate he pleases, not exceeding  $\frac{1}{2}$  lb. for a man each month.

71. Clothing and bedding will be issued yearly according to the following scale, or such other as may hereafter be allowed:—1 cloth jacket; 1 Russia duck smock-frock, open at the breast; 2 pair of trousers of tanned leather; 3 striped cotton shirts. A sufficient supply of undressed leather for *yeldschoen*, the uppers being of cow, and the soles of ox hide, to be issued as required, and made up in spare hours, but not to exceed four pair in a year, without special authority; 2 woollen caps for use during the cold season, with a supply of palmiet and thread for one hat; 1 blanket, 1 rug, 1 pillow, and 1 pailasse, once in two years, with additional supplies when the articles have been condemned by the proper authorities.

72. Any article injured through carelessness, or wantonly destroyed, or having the mark altered or defaced, will subject the offender, on conviction, to punishment.

73. In giving sanction to the above code of rules for the instruction and guidance of those to be entrusted with the future management and direction of the convict establishment of this Colony, his Excellency does not anticipate that the whole can be fully carried into effect on the immediate transference to road stations of the convicts now under sentence of hard labor in the several divisions; but he expects and desires that they be regarded as embodying the principles on which this branch of the public service will in future be conducted. And he commands all visiting magistrates, superintendents, and others concerned, to see that they are carried into effect as speedily and efficiently as circumstances will admit, not failing to report from time to

time to the Secretary to Government whatever may prove a bar to their complete and systematic adoption.

By command of his Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

---

( G. p. 236. )

Report of the Committee appointed by the Legislative Council "To consider whether arrangements might not be made whereby an Administration of Justice of equal or greater efficiency would be obtained at a smaller cost than is at present incurred."

1. The Committee, feeling the importance of the duty entrusted to them, have not failed to avail themselves of such sources of information as appeared to them best calculated to lead to correct conclusions in respect to existing arrangements for the administration of civil and criminal justice in this Colony.

2. They have obtained evidence on the subject of inquiry from their Honors the Chief Justice and Puisne Judges of the Supreme Court, from two of its advocates, from six gentlemen holding, or who formerly held, the office of resident magistrate, one clerk of the peace, and nine gentlemen engaged in mercantile and other pursuits.

3. They have been furnished with official returns of the civil and criminal business performed by every resident magistrate, justice of the peace, and clerk of the peace throughout the Colony, during the three years ended on the 30th June, 1844; and of the civil and criminal business transacted in the Supreme and Circuit Courts during the same period.

4. They have also been favored by Mr. Justice Menzies with tables, which are annexed to his evidence, on the criminal statistics of the Colony, from the establishment of the Supreme Court in 1828 to the present date.

5. The evidence and returns now referred to will be found in the minutes and appendix annexed to this report. The Committee desire to express to the Council their sense



of the value and importance of much of the evidence which has been elicited, and they beg to recommend both the evidence and the returns to their careful and dispassionate consideration.

6. As it is of the first importance that the system adopted in any country for the administration of criminal justice, secure to the accused an impartial trial as soon after his committal as is consistent with the ends of justice, regard being had to the nature of the country, and the extent of its financial resources; and as the efficiency of any system will, in the main, be tested by this criterion, the Committee take leave to present to this Council, as the first of the results of their inquiry, the following analysis of the return appended to their minutes, of the number of days that each person committed for trial in the Supreme and Circuit Courts of this Colony, from the 1st January, 1828, to the 31st December, 1833, was kept in confinement before trial.

7. During the period referred to, which embraces the first six years subsequent to the creation of the Supreme Court and trial by jury, there were in all 1,760 prisoners brought to trial in Cape Town and the country districts, of whom 1,585 had been committed to gaol, and 175 at large on bail. Of those committed 294 were tried at the quarterly criminal sessions of the Supreme Court, and 1,291 before the half-yearly sessions of Circuit Court in the country districts.

8. Taking the aggregate number of prisoners committed and tried in the six years included in this return, together with the number of days which each person is shown to have been imprisoned previous to trial, the average period of confinement is found to amount to  $119\frac{1}{10}$  days,—the shortest period of confinement being 3 days, and the longest 465. This average, however, the committee would observe, blends in its results the trials at the quarterly sessions of the Supreme Court, with those of the half-yearly sessions of the Circuit Court in the country districts.

9. Classifying the trials with reference to the quarterly and half-yearly sessions, the average period of confinement before trial, during the six years, is  $53\frac{3}{5}$  days and  $134\frac{1}{2}$  days, respectively,—the former applying to Cape Town and the

Cape Division, where they were quarterly, — the latter to the country districts, where they were half-yearly. In respect to the individual average for the ten country districts, the lowest is  $83\frac{4}{5}$  days, and the highest  $181\frac{3}{5}$  days.

10. Assuming that in ordinary cases the maximum of confinement before trial, where quarterly sessions are held, would be 100 days, the Committee find that of the 294 unbailed cases tried before the quarterly sessions of the Supreme Court, 9 only, or about 3 per cent. of the number committed, had been imprisoned before trial for periods of 100 days and upwards; that of the 1,291 committed in the country districts, and tried at the half-yearly sessions of the Circuit Court, there were 792 confined before trial for periods exceeding 100 days, amounting to  $61\frac{2}{5}$  per cent. of the number committed.

11. In respect to the districts taken individually, it further appears that of the ten in which Circuit Courts were held during the six years in question, there were none in which the proportion of prisoners confined before trial for periods exceeding 100 days, did not amount to four-ninths of the number tried, and only two in which it did not exceed one-half; and that in five of the ten districts, which contained about three-fifths of the number imprisoned before trial, seven-tenths of the prisoners have been confined for periods exceeding 100 days.

12. The Committee are not in possession of any similar return for a later period; but they know not any circumstances then existing, and likely to influence the results now stated, which do not exist at the present moment, and with a corresponding effect. They are also ignorant of the number of witnesses imprisoned in order to secure their evidence at trial during the period referred to. It is obvious, however, that the above averages are as applicable to them as to the prisoners against whom they had to appear. From the return for the three years ending on the 30th June, 1844, it appears that, during that period, there were 79 witnesses imprisoned, who were confined on an average for 35 days, and that of these one-fifth were confined on an average  $109\frac{3}{4}$  days, — the longest period being 198 days.

13. The following table exhibits the results to which the

Committee have sought to draw the attention of this Council.

Court, where held.	No. of sessions yearly.	No. tried during the 6 years.	Of whom were committed.	Of whom were bailed.	No. confined for 100 days and upwards.	Proportion p. ct. of the number committed	Average period of confinement.
						Per cent.	Days.
Cape Town,	4	307	294	13	9	3	53·6
Graham's Town,	2	230	184	46	123	66·8	141·9
Uitenhage,	2	187	162	25	84	51·9	115·6
Somerset,	2	206	177	29	128	72·3	153·8
Graaff-Reinet,	2	261	241	20	147	61·0	157·1
Stellenbosch,	2	110	99	11	44	44·4	98·1
Worcester,	2	191	191	nil	104	54·5	122·7
George,	2	35	25	10	12	48·0	83·9
Swellendam,	2	82	64	18	38	59·4	127·2
Beaufort,	2	103	99	4	76	76·8	178·1
Clanwilliam,	2	47	47	nil	36	76·6	181·6

Total number tried	.	.	.	.	1760
Of whom were bailed	.	.	.	.	175
Committed	.	.	.	.	1585

Average number of days each prisoner was confined before trial (including the Quarter Session Cases in Cape Town and Cape Division), 119·1 days;—Cape Town and Division excluded, 134·8 days.

14. Before proceeding to the analysis of other returns, the Committee would remark that the contrast exhibited in the above table, between the results in respect to confinement before trial, where Quarterly and where Half-yearly Sessions are held, is in some degree accounted for by the fact, that the district over which the Supreme Court has criminal jurisdiction is both populous and compact, at least comparatively so. They are, however, of opinion that the institution of Quarterly Criminal Sessions at each of the district towns, and Half-yearly Sessions at other central situations among the agricultural population of the country districts, would greatly reduce and modify the contrast which at present exists and which in the minds of the Committee established

the necessity of providing for more frequent gaol deliveries, in justice both to the prisoners committed, and the witnesses imprisoned to secure their appearance.

15. In respect to the civil business brought into the Supreme and Circuit Courts during the three years ended on the 30th June, 1844, the returns furnished the Committee show that 1,195 cases were disposed of in the Supreme Court during the period mentioned. Of these 21 were removed from the Circuit Court, and one brought by appeal. Of the 1,195 cases 664 were strictly country cases, the defendants residing neither in Cape Town nor in the Cape Division. The proportion of town to country cases was as 8 to 10 nearly. The liquid cases amounted to 1,064, yielding an average of  $29\frac{5}{9}$  cases disposed of each monthly sitting of the Supreme Court. The lowest number of cases for any one month was 7, and the highest 78. Of the above cases 594 were country cases, amounting to  $\frac{14}{25}$  of the whole number. The illiquid cases were 131 in number, of which 47 were country cases, being  $\frac{9}{25}$  of the whole. The above numbers do not include the country cases, amounting to 22, which were brought from the Circuit into the Supreme Court,—the classification of which into liquid and illiquid is not given.

16. In connexion with the civil business referred to in the preceding paragraph, there were 236 rules and orders made on special motion in the Supreme Court, and 684 granted of course. In 8 of the cases the Court was not unanimous, and of those 5 involved questions of law.

17. The number of civil cases brought during the three years referred to, before the Circuit Court in the country districts amounted to 1,091;—of which, as already stated, one was brought by appeal, and 21 removed to the Supreme Court. Of the 1,091 decided, or removed, 652 were liquid cases and 439 illiquid. The average number of suits at each Half-yearly Session was 182. At the Sessions held at Graham's Town, there were 431 of the above cases disposed of, being  $\frac{2}{5}$  of the whole number nearly.

18. Comparing the liquid cases from the country districts which were brought into the Supreme Court with those decided in the Circuit Court, during the period mentioned, they appear in the proportion approximately of 51 to 50,

whilst the illiquid cases during the same period are in the proportion of 3 to 28. And of the 2,286 cases decided in the Supreme and Circuit Courts in aggregate, 531 belonged to Cape Town and the Cape Division, and 1,755 to the Country Districts,—being in the proportion of 10 to 33 nearly.

19. From the statements laid before the Committee of the contingent expenditure incurred on account of the Judicial Department for the three years to which the other returns refer, the annual average expense for the conveyance and accommodation of Judges on circuit amounts to 2,466*l.* exclusive of the allowances to Fieldcornets, and to Burghers employed by them, in ordering relays of horses and oxen. Assuming that each circuit occupies, on an average, 66 days, as stated in evidence, the daily expense incurred annually for the conveyance and accommodation of the Judge when on circuit cannot be estimated at less than 20*l.*—The average annual expense incurred in summoning jurors and witnesses, and in paying the expenses of witnesses attending the preliminary examinations, and afterwards giving evidence in the Circuit Courts, cannot be stated separately with any degree of precision, as it is mixed up with similar expenses in connexion with the courts of the resident magistrates, and the Criminal Sessions of the Supreme Court. The expense for conveyance and lodging of Circuit Judges, summoning jurors and witnesses, expense of witnesses, inquests, criminal punishments, and other incidents relating to crime, appears, by the Auditor General's return, to average annually 6,242*l.*

20. In respect to the amount of transport service required, and the manner in which it is supplied, the Committee have been enabled, from the arrangements adopted since the commencement of this year for paying for impressments on the spot, to ascertain with accuracy the details as to the relays impressed, or contracted for, and the number of Fieldcornets and Guides ordered to attend the Judge during a circuit.

21. The first long circuit of the present year, which did not include either Cradock or Somerset, extended over 1,912 miles, reckoning the hour by a horse-wagon at 6, and by an ox-wagon at 3 miles. Of this space 1,155 miles were travelled



of oxen. For 318 miles, relays of horses were supplied by contract, and for the remaining 207 miles, teams of oxen. The amount of transport performed by impressed services somewhat exceeded  $\frac{7}{10}$  of the whole distance, viz:

Transport by impressment,

	No.	Miles.	
Horses . . . .	1,372	1,155	} 1,387
Oxen . . . .	472	232	

Transport by contract,

Horses . . . .	188	318	} 525
Oxen . . . .	1,518	207	

1,912

22. The number of Fieldcornets who attended the Judge while passing through their respective wards, was 50. The number of saddle-horses required for the Judge was 121, and of mounted Guides, 83. The total number of horses employed in transport throughout the circuit was 1,556, and of oxen, 1,990.

23. In addition to the services and transport ordered for the long circuit, as now detailed, there are required for the half-yearly circuit, termed the short circuit, to Clanwilliam, which extends over a distance of 428 miles, the services of 14 Fieldcornets, and 21 Guides. The number of horses required to be impressed is 380, and of oxen 44. Two relays, or 20 horses, are supplied by contract. Taking, therefore, the two circuits into account, the amount of personal services, and of transport to be supplied each year, the latter by impressment chiefly, are 128 Fieldcornets, 208 Guides, 3,918 horses, and 4,068 oxen, with about 800 drivers and leaders, to travel yearly, in two circuits, about 4,680 miles, and hold 12 courts during each circuit.

24. The Committee have further ascertained that the average amount of transport effected by each impressed relay was 17 miles; and the average distance from which they were brought to perform service, including their return after service performed, was  $14\frac{1}{2}$  miles, or  $7\text{-}9\text{ths}$  of the distance they had to serve. The least was 3 miles, and the greatest 96.

25. The difference of tariff rates for the services of impressed relays, and of the rates paid under contract, cannot be fairly estimated. The prices paid for transport by con-

tract, through the Cape Flats, the Great Karroo, and Cradock Flats,—where double horsing, and other expenses incident to such tracts of road greatly exceed the usual rate,—cannot be justly brought into comparison with other tracts of similar extent, but of far less difficulty, where relays are supplied by impressment. The only tract of any extent, where transport is furnished by contract, is that which extends from the Kromme Rivier Hoogte to the Bushman River, the distance being 186 miles. This service is performed by oxen only, and is contracted for at the rate of 5s. 0½d. per mile, being 6½d. more than the tariff rate of 4s. 6d. But as this tract of country abounds in cattle, and has excellent pasture, it is not considered that contracts could be procured on equally favorable terms in the other districts were the Government to abandon the present system of impressment. The expense of circuit transport under contract in the Cape and Stellenbosch Divisions, is at present 22s. 4d. per mile, and in the other divisions 8s. 10¾d.; which last is nearly double the amount of the tariff rate.

26. Much dissatisfaction having been expressed in several of the districts with the system of impressment for the transport of the Circuit Judges, the Committee have, in the course of their inquiry, endeavored to ascertain the grounds of complaint. A prevailing cause of complaint is the shortness of the stages for which the relays are generally impressed, connected with the character and circumstances of the population, and the great distance from which, in many instances, the parties are brought to the line of road. The tariff rate does not compensate for the trouble of collecting horses or oxen, and the inconvenience of suspending all other employment, for short services; but when the transport is frequent, or the services long, the tariff allows a fair remuneration, unless the requisition occurs in seed time or harvest, or during the lambing and shearing seasons. In the district of Albany generally, and along the line of road from Port Elizabeth to Graham's Town, the tariff allowance is much under the price paid by private individuals. And it has been customary in the district referred to, to estimate the distances *liberally* on this account; a practice which also obtains in other parts of the Colony.

27. The Civil Commissioners of Divisions being instructed to place on the line of road, relays of horses in preference to oxen, if at all practicable, it not unfrequently happens in districts where horses are not abundant, that the same parties are put in requisition for relays at each return of the Circuit Judge, which is felt as a grievance and often a serious interruption to the business of the farm. And it is not of unfrequent occurrence that the complement of horses required for a team has to be collected from several farmers of the same Fieldcornetcy, each of whom is subjected to the same amount of trouble and loss of time as if called upon to supply the whole team, though entitled only to a share of the allowance, corresponding to the number of the horses supplied. Requisitions of such a character cannot fail to give to this branch of public service, in the minds of most men, the aspect of an oppressive impost.

28. Another source of complaint appears to arise, in thinly peopled districts, from distributing the whole of the requisition for the district among a number of individuals in rotation, as required by law, instead of procuring from one, supplies of as many horses as possible. Thus A, B, C, live apart, and at a distance from the line of road and the place where the relays are required—say of 6 hours—and that a riding horse is impressed from each. They have each to mount another horse, lead the one required 6 hours, and return home; again ride and return home with the impressed horse after service; and for the 24 hours' or 3 tariff days' employ of two horses and one man, they would each have to receive *five shillings*. This, where it occurs, is unquestionably oppressive, but the Committee believe that it happens in comparatively few instances. It is alluded to here solely for the purpose of showing what grievances the existing system is capable of inflicting, and they cannot but express their regret that any system should exist in a British colony which imposes such exactions on individuals in behalf of the public service.

29. It is also urged in objection to the present system of impressment, that the compulsory supply of Government transport at certain seasons, such as seed time, harvest, &c., when every hand is required for the business of the farm, is

often a source of loss to the farmers that appears in striking contrast with the compensation which the tariff allows him. In such cases the service, it is known, is often performed to avoid the penalty to which a refusal exposes him, and the annoyance and inconvenience of being brought into court.

30. The Committee having thus placed before the Council the most prominent and important of the facts bearing on the subject of inquiry, which they have elicited from a minute analysis of the returns laid before them, they proceed to submit the conclusions they have formed after a careful and dispassionate review of the whole.

31. The Committee, then, are of opinion :

- I. That from the nature of the country, and the great distance at which many of the inhabitants live from seats of magistracy, the present system of dispensing criminal justice in the country districts by means of Circuit Courts held twice a year, is attended with serious evils both to individuals and society, from the long period that often intervenes between the committal and the trial of the accused party,—the average length of imprisonment before trial during a period of six years, reaching in one district as high as  $181\frac{3}{5}$  days,—while instances occur sufficiently frequent to draw attention, in which periods are exceeded of 300, 350, and 400 days.
- II. That the evils referred to are greatly aggravated from the defective state of prison discipline, and total absence of classification of prisoners in all the gaols of this Colony,—from the painful means sometimes resorted to for safe custody in prisons deemed insecure,—and from the fact, arising it is presumed from deficiency of accommodation, that the witnesses imprisoned to secure their appearance are not unfrequently confined in the same apartment with prisoners committed to take their trial.
- III. That, irrespective of the considerations now adduced, it becomes a duty of the Executive Government to devise, if practicable, some means of reducing the heavy expenditure inseparably connected with long circuits, and of alleviating the hardship imposed

upon the inhabitants of the country districts by the impressment of transport service,—seeing that the number of men exceeds 1,100, and of horses and cattle 8,000, that are brought upon the line of road annually, and at seasons often the most inconvenient.

IV. That the administration of civil justice in the country districts, from the analysis of the returns of country cases brought into the Supreme Court during a period of three years, would be rendered cheaper, and more accessible, were the sessions held more frequently than the present system admits of,—a large proportion of the country cases brought into the Supreme Court being what are technically termed liquid, in respect of which the saving of time is of the most consideration.

32. In framing suggestions for the consideration of the Council, as to the manner in which the present judicial system of the Colony could be modified, and rendered more applicable to its wants and means, the Committee, though differing widely in opinion on other points, have agreed unanimously:—

I. That additional seats of magistracy are highly necessary among the agricultural population of the country districts.

II. That this might be effected,—without incurring any great additional expense, and without injury to the present system of public prosecution,—by abolishing the office of Clerk of the Peace, and appointing to the new seats of magistracy, such of the incumbents as are found qualified.

III. That the summary jurisdiction at present vested in resident Magistrates, might be enlarged to three months' imprisonment, with or without hard labor; but that their power of inflicting corporal punishments, which at present is undefined, should be limited to thirty-six lashes.

IV. That the civil jurisdiction of the resident Magistrates' Courts might be advantageously extended,



both in liquid and illiquid cases, to sums not exceeding 30%.

V. That it would greatly facilitate the administration of justice among the inhabitants remote from the seats of Magistracy, were the residents, instead of having their sittings exclusively there; to hold courts occasionally at other places within their districts.

VI. That the resident Magistrates should be held exclusively responsible for the peace and security of their districts.

VII. And that the Grand Jury system, which has always been limited to Cape Town and the Cape Division, be discontinued, it being unnecessary where, as in this Colony, all criminal proceedings are carried on under the directions and control of a responsible public prosecutor.

The smallest number of resident Magistrates, which the Committee conceive the wants of the Colony at present require, is thirty.

33. To remedy the evils elicited by this inquiry, it appears to your Committee that no scheme will be found adequate, which does not provide for Quarterly Criminal Sessions of Jury Courts at most of the chief towns of the country districts, as, in their opinion, the most formidable of the evils to be dealt with is the long periods which, in a majority of cases, intervene between committal and trial, taken in connection with the present state of the Colonial prisons, and the little prospect there is of any material improvement being effected in the character of their accommodation, or their management.

34. If this Council agree in the opinion thus expressed by the Committee, they will at once come to the conclusion that the removal of one of the Judges of the Supreme Court to the Eastern Frontier, or the appointment of an additional Judge to that district of the Colony, will not meet the case, as in neither instance could the present system of half-yearly circuits be done away with.

35. Another scheme has occurred to some, which is the creation, in each of the several divisions, of a court some-

what analogous to the Sheriffs' Courts in Scotland, and the Barristers' Courts, in Ireland, where certain classes of crime might be tried before a Jury, and thus leave comparatively few cases for the Circuit Court to dispose of, which would be held half-yearly as now. While the Committee acknowledge that such an arrangement would greatly improve the judicial system, by reducing, in a great majority of cases, the period of confinement between committal and trial, they see an insurmountable objection to the adoption of the scheme. No man, in their opinion, ought to preside in a court where Trial by Jury is practised, who is not professionally qualified for so important a function; and to institute such courts in every division of the Colony, with additional Magistracies, as already recommended, would involve an expenditure in addition to what has now to be met, for which the finances of the Colony are wholly inadequate.

36. The only other scheme which occurs to your Committee, and which they have resolved to recommend to this Council, may be thus briefly described, at least in its outlines:—It is proposed to introduce Trial by Jury in civil cases as to issues of fact into all courts where the same mode of trial now prevails in criminal cases. This, of course, excludes the intervention of a jury in all cases of liquid documents of debt, provisional sentences on which will be obtained from the court, as is the practice at present. They are aware that objections have been made to this arrangement, and they have not failed to give them their due consideration; and that doubts also are entertained as to whether the ends of justice could be thereby served or not. Looking, however, to the value attached to this venerable form of procedure by the most eminent jurisconsults of the past and present times, regarding it as one of the most influential means of attaching the people to, and securing their respect for, the judicial institutions of the country, and bearing in mind that this mode of trial has been long and successfully adopted in the administration of criminal justice in this Colony, and has not failed in any known instance,—even where prejudices in regard to caste and color, which now happily are fast disappearing, darkened and contracted the views of many conscientious men,—the Committee are

prepared to recommend to this Council the institution of civil juries to try Issues of Fact, leaving it to the option of either of the litigant parties to call for a common or special jury, or neither, as they may find it most consistent with their interests.

37. Under this arrangement it will be unnecessary for more than one Judge to preside in civil, as it now is in criminal, cases. The Committee, therefore, propose that the Colony be divided into five Judicial Circles in each of which a permanent superior Local Court shall be instituted, with a jurisdiction both in civil and criminal cases of the same extent and power as exercised by the present Circuit Courts; that one of the circles be attached to the Supreme Court, in which the Chief Justice will preside;—that the Puisne Judges of the Supreme Court be appointed each to a separate circle; and that two additional Judges be provided for the remaining circles.

38. It is further proposed that the Chief Justice shall sit every fortnight for the trial of criminal cases as they arise within his circle; and that the other Judges shall hold, each in his own circle, Quarterly Sessions both for criminal and civil business at the chief towns and Half-yearly Sessions at other seats of Magistracy within the jurisdiction of his court; and that to each court there be attached a Crown Clerk, who, under the instructions of the Attorney-General, shall conduct all criminal prosecutions raised in the court at any session within the circle, and act as its Registrar and Secretary. The Committee would further remark, that it would tend greatly to diminish the expense of criminal justice were the sessions at the seat of residence of each Judge held monthly instead of quarterly,—an arrangement which they are of opinion could in general be effected without interfering with other duties.

39. In respect to quarterly sessions, both for civil and criminal trials, at the principal towns in the several districts, the Committee are aware that it has been urged in objection to this arrangement, and in support of the present system, that courts of circuit and gaol deliveries are now as frequent, in this Colony as in England. If any analogy bearing on this subject existed between the character and circumstances

of the two countries, from which such a comparison could be fairly drawn, the Committee would be ready to acknowledge that what was deemed sufficient for the administration of justice in England ought to satisfy the Council in respect of this Colony. But, when it is considered that the onerous duties both of original and appellate jurisdiction, which devolve on the Judges of the three Courts of Westminster, render such an arrangement impossible in England,—that four-fifths of the criminal cases that would be brought before the Circuit Courts as constituted in this Colony, are disposed of in the towns and counties of England by local courts vested with extensive jurisdiction,—that from the short distances witnesses have to come and the rapid transport available in every county; the promptitude with which prisoners are brought to trial always secures them against long previous imprisonment,—it will scarcely be urged that because half-yearly Circuit Courts are adopted in England, they are sufficient for the purposes of justice in this Colony, where, during a period of six years, more than one-fourth of the prisoners committed were confined before trial for periods exceeding six months,—while in one of the districts the average periods of confinement for the six years exceeded that time.

40. The Committee would further observe, in respect to quarterly criminal sessions in the districts of the interior, that while such an arrangement secures to the acquitted a more speedy relief from the evils of imprisonment,—which in this country is not a light consideration, both in a moral and physical point of view,—it also provides for the prompter punishment of the convicted, who would thus be speedily transferred from a state of expensive and pernicious idleness to one of unremitting hard labor, attended at the same time with the means of improvement and reform, where the public has the benefit of his labor to lessen the expense of its penal establishments. As it regards our Eastern Frontier, where Kafir depredations cannot be too promptly dealt with, the advantages of such an arrangement appear to this Committee both obvious and great.

41. It also forms a part of this scheme, that an appellate jurisdiction be given to any three of the Judges in Banc,



who shall meet, for that purpose, at such places, and on such occasions, as the occurrence and amount of appellate business may require. In this court all motions will be made for new trials of cases decided by any one of the five Judges and a civil jury.

42. To that part of the scheme which assigns to each Judge a separate court, and a distinct province, the Committee are aware that objections are entertained to the effect that the insulation of the Judges will break up the bar, and inflict on the system the evils that arise, either real or imaginary, from the intimacies and relations that a Judge is likely to form from permanent residence in the midst of a comparatively contracted community. In regard to the first of these objections, the Committee have thought it of importance to ascertain whether the alleged breaking up of the bar, a consequence which the Committee take leave to question, would, in its present state, more than counter-balance the advantages which the division of the Colony into five circles is expected to realise. From a comparative view of the state of the bar in 1828 and 1845, it appears that 1828, when the Charter of Justice was first introduced into the Colony, twelve advocates were admitted on the roll of the Supreme Court; that at present there are thirteen advocates entitled to practise in the Supreme Court; that the practice of the court is confined to four of the thirteen, and that one of the four has lately been appointed Recorder to the settlement of Natal, leaving the three to share the profits of a practice which cannot, under the most favorable view, be considered to exceed 2000*l.* per annum. The Committee, however, as already mentioned, question the likelihood of such a result from the proposed change.

43. In respect to the evils supposed to arise from placing an insulated Judge permanently in the midst of a small and scattered community, from the intimacies and connexions he is likely to form, and the likings or prejudices that may grow out of too close a knowledge of persons and circumstances,—the Committee have to remark that the facilities which the Judges now have in their circuits through the Colony, of becoming intimately acquainted with, and being known in every district, the advantages, if any, of having



local courts presided over by a stranger Judge have long ceased to be realised in any of the country districts; and that to obviate the objections alluded to, it would be necessary that the Judges of the Colony be changed every five years.

44. But the Committee are of opinion that if the advantages accruing to judicial inquiry from the local knowledge possessed by jurors be so great that the removal of the venue to another district can only be granted on the showing that justice would be defeated by impanelling a jury on the spot from the state of local feeling at the time, the local knowledge acquired by a Judge from permanent residence in the same district can scarcely be assumed to be as unfavorable as that possessed by juries is considered to be conducive to the ends of justice.

45. In regard to the conveyance of the Circuit Judges, by examining the plan proposed it will be seen that each Judge would, on an average, travel annually on circuit 1,593 miles. One Judge would be absent on circuit twenty-three days, twice in the year; and one week twice a-year. Of the three other Judges the longest period on circuit would be thirteen, and the shortest two days,—the average would be about a week. The aggregate distances travelled annually by the four Judges would be 6,372 miles to visit the seats of magistracy either twice or four times in each year, to hold fifty-six courts on circuits, which with the monthly courts at their places of residence, would amount yearly to 104 courts for the trial of prisoners. The effect of this arrangement would be to reduce the period of detention in gaols before trial to between two-thirds and three-fourths of the present average of 135 days. Until contracts for transport can be entered into on eligible terms, the Committee recommend that the Government provide it by other means than impressment; this can be done for each judicial circle by two men and ten horses, at a charge of 250*l.* a-year, or 1000*l.*, eight men, and forty horses, for the whole Colony.

46. In accordance with the views which the Committee have now submitted to this Council, the following resolutions were passed at a meeting held on the 21st October:—

- ministration of justice would be improved by dividing the Colony into five judicial circles, and appointing one Judge to reside in each to try criminal cases, as at present, and to try questions of fact in civil cases by juries; and that provision be made for hearing appeals and new trial motions before a Court to consist of three Judges.
- II. That a considerable increase in the number of Resident Magistrates is most urgently required by the circumstances of the Colony.
- III. That while the system of public prosecution of crime as established in this Colony is, in the opinion of this Committee, a wise and salutary one, Clerks of the Peace are not a necessary part of the system, and may, in order to provide new Magistrates, be advantageously dispensed with.
- IV. That the jurisdiction of Resident Magistrates be increased in civil cases to 30*l.*, and in criminal cases to three months' imprisonment, with or without hard labor; and that their power to inflict corporal punishment be limited to thirty-six lashes.
- V. That a Crown Clerk be appointed to each of the judicial circles, excepting that of Cape Town, to conduct, under the directions of the Attorney-General, all criminal cases to be tried before those courts.
- VI. That the present system of pressing horses and oxen for the transport of the Judges on circuit be abolished, and that they be hereafter conveyed on circuit by contract, or by transport provided by the Government.
- VII. That the police of the Colony be remodelled throughout the country districts, for the purpose of rendering them more efficient for the suppression of crime, under the directions of the resident Magistrates.
- VIII. That the system of Grand Jury, as heretofore existing in one division of this Colony, is anomalous, unnecessary, and ought to be abolished.
- IX. That the time has arrived when the principle of

trial by jury in civil cases should be adopted throughout the Colony."

47. It now remains for the Committee to request the attention of this Council to the financial effects of the arrangements they have proposed, and to consider such other portions of the expenditure incurred for the administration of justice as have been brought under review by this inquiry.

48. The expenditure now incurred for the public establishments engaged, either wholly or partially, in the administration of justice, is annually:—

By the Colonial Treasury . . . . .	£46,178
By the British Treasury . . . . .	1,800
By Suitors for Civil Process . . . . .	4,792

Making a Total of . . . . . £52,770

The probable annual expenditure as proposed by the Committee would amount to 45,390*l.*, to be defrayed through the Colonial Treasury only.

49. The Committee are unanimously of opinion that the charge of 1,800*l.* a-year for the four Special Magistrates, appointed by Her Majesty's Government under the Slavery Abolition Acts of the Imperial Parliament, and who are now employed as resident Magistrates, should cease to be borne upon the British Treasury.

50. In regard to the Police of the districts, the Committee are of opinion that they should be increased, and that a higher and more equal rate of remuneration should be assigned to the constables, with a view to obtain a more efficient class of persons, and that an intelligent Inspector of Police be appointed for each district; that there should be one or more mounted police in each district, and that the criminal and civil process of the Courts should be served by the police, under the responsibility of the Inspector; and that as the functions of Field Commandants have terminated with the Commando system, that office should be abolished, and the Field Cornets be decreased in proportion to the augmentation of the Police force.

51. As it is desirable to discontinue remunerating public servants by fees, the Committee recommend that there be a Deputy Sheriff appointed to each of the four judicial circles

at fixed salaries,—who should give security to the Sheriff, in like manner as the Sheriff does to the Government; and that, in future, all fees of office in that department be received for the public, and accounted for as such in the usual manner. The Clerks to the resident Magistrates, under a similar arrangement, should perform the office of Messenger to the Magistrates' courts.

JOHN MONTAGU, Chairman.

Committee Room Legislative Chamber,

Cape Town,

6th November, 1845.

---

(H. p. 246.)

REPORT OF MINORITY.

Your Committee appointed "To consider whether arrangements might not be made whereby an Administration of Justice of equal or greater efficiency would be obtained at a smaller cost than is at present incurred," have inquired into the several matters to them referred, and have agreed to the following report:—

In the discharge of the duty entrusted to them, your Committee proceeded to the examination of such witnesses as were deemed most likely to afford useful information; and the minutes of the evidence taken, with an appendix containing much additional matter, are submitted with this report. Upon a reference to those annexures, it will be seen that your Committee have examined the three Judges of the Supreme Court, six gentlemen who hold, or have held, the office of Resident Magistrate, one Clerk of the Peace, two Advocates of the Supreme Court, and nine gentlemen engaged in mercantile or other unprofessional pursuits; and they have also had before them a large number of official or other returns connected with the criminal and civil business of the Colony.

As your Committee, in stating with as much succinctness as the subject will admit the conclusions at which they have arrived, will not feel themselves called upon to discuss or advert to the opinions of any particular witness by whom their inquiry has been assisted, they desire in this place to

record their sense of the value and importance of much of the evidence obtained, and to recommend the whole of it to deliberate and dispassionate consideration.

The principles upon which all legislation regarding the administration of justice ought to be based seem tolerably clear. It may be assumed, that every sound judicial system should aim at three great ends:—first, so to compose the Courts of Justice that what they administer as justice shall really be such; secondly, so to place the seats of justice, that justice shall, as much as may be, be brought home to the inhabitants; and, thirdly, so to fix the cost of justice, that upon the one hand, individuals shall not, by fear of the expense, be deterred from seeking it; and, upon the other hand, that a judicial establishment, rendered unexpensive to individuals, shall not absorb an undue proportion of the general revenue. Of these three great ends, your Committee are disposed to regard the first as greatest. But none of them can, with propriety, be pursued to the neglect of any other of them; and the first, notwithstanding its importance, must, to some extent, be modified by the other two. Viewing, then, the present judicial system of the Colony with reference to its adaptation to secure, in just proportion the distinct and often inconsistent ends enumerated, your Committee are of opinion, that while it is susceptible of improvement, its fundamental principles ought to be preserved.

The charge incurred for the judicial establishment unquestionably forms a very large item in the annual expenditure of the Colony. But when we take into consideration the extent of our territory, and the thinness of our population, together with the fact that no part of the expense in question is, or, in all probability for some time to come, can be provided for by local assessment, it will not appear surprising that the burthen imposed upon the general revenue should be heavy. It is presumed that no one who duly estimates the importance of an efficient administration of justice, and the causes which, in this Colony, conspire to make such an administration of justice expensive, will be disposed to reduce, as disproportionate, the amount now devoted to that object. It appears to your Committee that your endeavors



should be directed, not to lessen the annual charge of the judicial establishment, but to devise, if possible, the means of making that establishment more efficient.

Entertaining views generally favorable to the present system in its fundamental principles, your Committee are indisposed towards the adoption of any extensive alterations of which the expediency may reasonably be doubted. Believing that few administrative questions are more difficult than those which relate to the constitution, distribution, and gradation of courts, your Committee are of opinion that no organic changes regarding such subjects should be made in a system which has been long tried and which is not unpopular, except after the most cautious inquiry, and upon the clearest reason. Upon the other hand, it will be the duty of the Council to take care that no proved abuse shall be permitted to continue, and that all evident improvements shall be carried into effect.

Your Committee will now proceed to arrange under separate heads, the several matters upon which they deem it proper to report; and in so doing they propose to advert, first, to the constitution, distribution, and jurisdiction of the superior and inferior courts; secondly, to the system for the prosecution of crime in those courts respectively; thirdly, to the mode of executing the civil and criminal process of those several courts; and lastly to the important subject of police. In pursuing this order, your Committee believe that all the remarks and suggestions which they have to offer to the Council, save those relating to trial by jury in civil cases, will be not inconveniently arranged; and in concluding this report, they will separately advert to that important subject.

#### *Supreme Court.*

In the opinion of your Committee the present constitution of the Supreme Court should remain unchanged. They deem a court composed of three Judges to be better, at least in a Colony like this, than a court composed of any lesser number; and,—without adverting to the peculiar circumstances which have limited the Supreme Courts of a few Colonies to two Judges, and those of a greater number to

any alteration which would reduce the number of Judges now forming our Supreme Court.

Two projects connected with the point now in question have been considered by your Committee; one, that of withdrawing a Judge from the Court at Cape Town, in order to form a separate but subordinate Court at Graham's Town; and the other, that of adding two to the number of our Judges, so as to make five in all; and then leaving the Chief Justice to be permanent in Cape Town, to divide the Colony into five districts, and place the four Puisne Judges respectively in Worcester, George, Graham's Town, and Graaff-Reinet.

A full discussion of these projects, and of the several reasons advanced in their support, would greatly, and, in the opinion of your Committee, unnecessarily swell out this report. That discussion may, with propriety and advantage, be reserved for Council. But some brief reference to the grounds upon which your Committee have been led to withhold their assent from both the projects mentioned seems to be demanded, as well by the nature of the projects themselves, as by respect for the arguments and authority of those by whom they are respectively supported.

With regard to the first proposal, there is no difference of opinion in the Committee. The members are unanimous in thinking that no plan has been suggested which would justify the erection of a separate Court at Graham's Town by the means proposed.

The question is not the naked one, Whether a separate court there would or would not be a desirable thing. Provided the court were an efficient one, it may at once be admitted that, considered in itself and without regard to absolute expense and other claims, it would be a desirable thing. But the question simply is, Whether, in order to create such a court as that of one Judge in Graham's Town, we should leave such a court as that of two Judges in Cape Town. Your Committee are of opinion that such a proceeding would be most unwise. It would reduce inconsiderably, if at all, any of the present expenses, and would certainly entail some expenses wholly novel. But above all, it would leave the courts at either end of the Colony so

constituted, that the public confidence in the efficient administration of justice must almost necessarily be shaken. The reasons for this opinion might easily be expanded and enforced; but since, as already observed, no difference of opinion upon the point exists in your Committee, it is deemed needless to enter more minutely into the question. The project, which is wholly distinct of creating a new Judge at Graham's Town, leaving the constitution of the Supreme Court unaltered, will be adverted to hereafter.

The plan of dividing the Colony into five districts, and placing a Judge in each, is one which has been strongly supported in Committee. It has been so supported chiefly upon the ground, as your Committee consider, that it would considerably shorten the delay before trial in all cases, criminal and civil, and that it would remove great and daily increasing difficulties connected with the means of transport for the Judges upon their present circuits. That these things would be very advantageous can admit of no doubt. The sooner a man is tried (provided he have had sufficient time to prepare for his trial) the better; since, if innocent, he is the sooner liberated; and if guilty, the sooner punished. In the same manner it may readily be shown that no avoidable delay should take place in the determination of civil cases; in which delay always leads to expense, and often to injustice. And in regard to the transport of Judges on circuit, your Committee acknowledge the possibility that if each of five local Judges were to perform the circuit of his own district, and no more, some arrangements might be made respecting the number and supply of the necessary wagons and horses, which would be both cheaper and more convenient than any system which can be devised for conveying the Judges, with a due attention to their comfort, over so long a circuit as that of the entire Colony.

But, neither these nor any other advantages which have been suggested, have satisfied your Committee that the public welfare which is inseparably bound up with an intelligent, impartial, and uniform administration of law would be consulted by breaking up the present Supreme Court for the purpose of substituting five separate Judges, deciding separately in five separate places, three of these places being

remote villages, in which there is not, nor is likely soon to be, a public press, or a public opinion, or professional aid.

Your Committee are aware that two safeguards against the mistakes or misconduct of the local Judge were meant to be provided; one, that he should try no question of fact without the assistance of a jury; and the other that three out of the five Judges should assemble once a year in Cape Town, for the hearing of new trial motions and appeals. Under such circumstances, it is supposed that the local Judge contemplated would be precisely in the situation of the existing single judge on circuit, except as to that which would give him an advantage, namely the influence and assistance of jury trial in civil cases.

Believing that trial by jury in civil cases would not tend to improve the administration of justice if generally adopted in such courts as those proposed, your Committee do not regard its introduction there as any recommendation. They are of opinion, that such courts have no peculiar fitness for jury trial in civil cases, but rather the reverse. They consider that whenever trial by jury in civil cases shall be introduced into the country districts, it will, at least in the first instance, be most fitly resorted to in circuit rather than in strictly local courts; because a stranger Judge will be less likely either to overrule or be overruled by the members of the jury, than a person always resident upon the spot, whose strength or weakness all his neighbours know; and because in case of a new trial granted by the Supreme Court, upon the ground that the jury have failed to discharge their functions rightly, that new trial will, in all likelihood, be had before a different Judge from him who presided at the first trial, and whose report of the proceedings may have led the court above to set aside the verdict. For such reasons your Committee—instead of considering that the contemplated courts, as compared with circuit courts, present any peculiar facilities for the introduction of trial by jury in civil cases—are disposed to think that the converse is the fact, and since they do not believe, as will be hereafter stated, that even in the circuit courts trial by jury in civil cases can yet be fitly introduced, they would regard the proposal to establish it in

increase than to compensate for any defects under which these courts might labour.

Your Committee would also observe, that whenever trial by jury in civil cases shall be introduced in any part of the Colony, the principles of our law, and the nature of our pleading, will require in every instance the decision of a previous question, viz. :—Whether or not any, and, if so, what questions in the particular case before the court are proper to be tried by a jury; and that, where the decision of this question, always one of delicacy, must rest with a single Judge, who will be liable to the suspicion of either unduly grasping at jurisdiction, or of getting rid unduly of individual responsibility, it will necessarily become peculiarly delicate.

Viewing, therefore, the courts referred to as they would exist without trial by jury in civil cases, your Committee are compelled to regard them as a retrograde movement in the administration of justice, and to state their impression, that the public in general would view such a change in our present system with well-founded apprehension.

It is conceived that, in their practical operation, such local courts would differ widely, and for the worse, from the existing circuit courts. Appeals from the circuit courts now come on for argument immediately after the conclusion of the circuit. Appeals from the local courts may, upon the system proposed, lie over for a year. The circuit courts will, in general, furnish an inducement for the attendance of something like a bar. The business before the local courts, or most of them, could never furnish any such inducement. In cases of difficulty, evidence can now be taken on circuit, and the case then removed for argument before the full court. No such beneficial practice as this could obtain in the local courts referred to. The circuit Judge is now enabled to keep up or increase his professional knowledge, by the discussions of the bar, and by conference with his brethren. It is conceived that annual re-unions of three out of the local Judges would not have the effect of preventing those functionaries from gradually losing whatever law they might originally have possessed.

But if the circuit courts, as they stand, have advantages



which the suggested local courts would not possess, the constitution of the Supreme Court, as it now exists, would, by the establishment of these local courts, be wholly changed. It is intended that it should be a court of appeal from the local courts, and nothing more. The Supreme Court is now a court before which all cases may be brought in the first instance. If the parties agree, all cases brought in the Supreme Court, no matter from what part of the Colony, may be there determined. If the question be one merely of law, the case can, by either party, be always retained there.

If facts be disputed, and the witnesses distant, so that they may more readily be heard elsewhere, the case is removed to the most convenient circuit court, to come back, if need be, to the Supreme Court for further argument, and final determination. Motions in bankruptcy, provisional cases, special verdicts in criminal cases, and matters of a like nature, are now decided in Cape Town by three Judges—with the assistance of a bar—in the presence of a public, at least comparatively intelligent—and under the observation of a vigilant press. Your Committee conceive that an annual meeting of three out of the five suggested Judges, for the purpose merely of hearing appeals from judgments separately pronounced by those Judges, would be a very indifferent substitute for the present Supreme Court. A court of appeal is doubtless necessary. But no court of appeal, however competent, can remedy half the mischief which may be done by defective courts of first instance.

Had the suggested system presented anything that could be deemed to be counter-balancing advantages, your Committee, while admitting its inconveniences, would have, nevertheless, embraced it. But they are unable to discern any such advantages.

If viewed in relation to expense, it may safely be asserted, that the suggested system, giving it credit for every saving that it could possibly effect, would, upon the supposition of but two circuits in the year through his district by each local Judge, cost more than the present system at the present rate of transport. And, indeed, without such circuits, the expense would be greater than with them—to say nothing of the great hardship and inconvenience to which all witnesses

would be subjected, by being compelled to resort to the distant seat of the local Judge, instead of to their district town.

It is maintained, that the present mode of obtaining transport cannot continue, and that the Judges must be conveyed by contract. Your Committee are not in possession of the evidence upon which this allegation is founded. But assuming, for the sake of argument, that the system of contract must be resorted to, and that the result would be a considerable increase in the expense of transport, your Committee do not see why the greater distance to be performed by the five suggested Judges in their circuit should, by contract, cost much less than the transport of the present circuit Judge. It remains to be proved that one wagon only would be demanded by the district Judge, as well as that if one wagon be sufficient for him, one wagon would not be sufficient for the circuit Judge, now that fresh supplies may be had in so many towns and villages throughout the Colony.

Your Committee are disposed to doubt whether any accurate estimate of the comparative expense of the present and proposed system can now be framed. It is needless to remark, that in comparing the expense of the two systems, all reductions equally competent to both must be thrown out of the calculation. It is only upon the items necessarily peculiar to each, that their relative cost can be determined. And your Committee feel some confidence that, upon an accurate examination of the present system of a supreme court of three Judges, and two circuits in the year, with the proposed system of five Judges, with their establishments, performing two circuits in the year, it will be found that the latter will be the more expensive.

For what objects, then, should a certain, and, as your Committee believe, a considerable additional charge be placed upon the public revenue, and all the cases now decided in the first instance by three Judges be decided in the first instance by but one?

These objects have been already stated. That they are desirable objects your Committee have admitted. But that they are of paramount importance your Committee cannot

speedier trial of criminal and civil cases—they can perceive as little how the suggested system could be expected to accomplish it, unless at an expense which would still more increase the comparative cost of the proposed system.

With two circuits in the year, the average detention of prisoners before trial in the circuit courts may be stated to be about 120 days. Two circuits in the year through the district of the local Judge would give the same average detention in every place except his place of residence. Upon this supposition nothing is gained except in reference to prisoners at that place. In order to shorten the detention in the other places, the Judge must either cause the prisoners and witnesses to be brought to his residence, or he must go circuit more frequently than twice a-year, and in either way much additional expense must be incurred. If a sense of what is due to untried men requires that we should incur that additional expense, let it be incurred. But when it is remembered that in England there are but two circuits in the year to try men committed by magistrates who are not always stipendiary, and men whose cases no disinterested and responsible public prosecutor examines, it will be admitted that the practice in this Colony cannot be justly deemed regardless of what is due to the liberty of the subject. No man can be committed for trial in this Colony except upon evidence that satisfies a salaried magistrate, whose duty it is to understand the law, and apply the evidence. As soon as any man is committed, it is the duty of the Attorney-General to consider the evidence taken; and should it appear insufficient, to order the man to be discharged. And, finally, twice every year there is a general gaol delivery. Your Committee cannot admit that, under such circumstances, it is necessary to break up the Supreme Court, and to incur an additional expense, in order to have such general gaol deliveries oftener than twice a-year.

Your Committee are disposed to think that, considering the paucity of criminal cases in this Colony, and particularly in the country districts, criminal sessions may possibly be held too frequently. Except in so far as by the trial and punishment of offenders, the minds of the mass are educated into a state in which, anterior to all reasoning about con-

sequences, crime comes, by a sort of moral instinct, to be regarded as a thing not to be committed, trials and punishments entail an almost useless amount of suffering and expense. The trial, therefore, as well as the punishment, should be public, and should be witnessed by the public. When solemn sittings are held at intervals, during which such a number of cases has arisen as will attract an audience and fix attention, salutary lessons may be given, which could not be inculcated if cases were to be disposed of pretty much as they come in, in the presence merely of the parties interested, the officers of the court, and such loungers as might straggle in.

Your Committee do not advocate long imprisonment previous to trial. But it is only to innocent men, or to speak more properly, to men who are finally acquitted, that such previous imprisonment is really a hardship. The returns before the Committee go to show that in this Colony the number of acquittals amounts to less than 9 per cent. of the committals. By Parliamentary returns for 1834 and 1835, which are all that your Committee have had an opportunity of consulting, it appears that the committals in England and Wales in those years amounted to 43,182, and that the acquittals were 12,412, being rather more than 28½ per cent. of the committals. This difference, arising, as your Committee conceive, from the exercise of the office of Public Prosecutor, should not be neglected when we are reasoning about the evils of confinement before trial.

Your Committee, therefore, are of opinion that the Supreme Court should not be broken up in the manner which has been proposed, and that two circuits in the year should continue to be made as usual.

*Additional Judge at Graham's Town.*

The general question regarding the creation of a separate but subordinate Judge in Graham's Town, has been fully considered by your Committee. Assuming his salary to be equal to that of a Puisne Judge in Cape Town, the establishment of a court of the most economical description would necessarily entail a considerable expense. Your Committee believe that the amount which would be required may be

more beneficially applied in adding to the existing Magistracy. With two circuits in the year to the eastern districts, and two posts in the week from thence to Cape Town, where the Supreme Court sits, your Committee conceive that the reasonable necessities of the inhabitants of Albany are sufficiently consulted. In regard to the eastern districts other than Albany, your Committee have reason to conclude that whether the Court is placed at Graham's Town or Cape Town is to them a matter of indifference. But that the non-local court to which they have recourse should be composed of three Judges or of one, is by no means a matter of indifference. Your Committee, while they have no doubt that the inhabitants of Albany would gladly possess a court of equal efficiency with the present Supreme Court, are by no means certain that the general feeling amongst them would be favourable to the erection of a court consisting of but one Judge, to whom, and whom only, they could, in the first instance, look for justice. Related as the Supreme and Circuit Courts at present are, suitors can, when so disposed, combine, in a great degree, the cheapness of local inquiry into facts with the advantage of a more remote, but at the same time, a more satisfactory determination of the law. Your Committee are disposed to question whether the inhabitants of Albany would exchange these advantages for a single Judge, even with an appeal to Cape Town. But were this otherwise, your Committee could not recommend that so large an addition to the charge of administering justice should be made for the sake of placing any one frontier district, however important, in a different position from that of every other.

#### *Resident Magistrates' Courts.*

Your Committee recommend that a considerable increase should be made to the number of the resident Magistrates. Upon the paramount importance, or, to speak more properly, the urgent necessity of such an increase, your Committee believe that all are cordially agreed. It may be safely said that additional Magistrates are one of the chief wants of the Colony. Important districts and large numbers of people lie upwards of 100 miles from any Magistrate. The



extreme remoteness of the existing seats of justice induces serious social evils; questions between master and servant are left unsettled; crimes are compounded in some instances; in others the supposed criminals are summarily subjected by the injured parties to severe corporal punishment; in a greater number complete impunity is enjoyed by criminals who are well known to be such; and the ultimate effect is a general vitiation of the moral sentiments of our distant population, leading, in its turn, to the commission of fresh crimes. To furnish the means of supplying new Magistrates, without impairing by any injudicious retrenchment the efficiency of the existing administration of justice, has been an object to which your Committee have directed much of their attention.

It appears to your Committee that the means may be found of adding to the number of existing Magistrates, so as to make their whole number thirty, without sensibly, if at all, diminishing the efficiency of any other part of the present system. The sites at which the new Magistracies should be established seem to be pretty generally agreed upon, and will not be difficult to determine.

In reference to the convenience of the inhabitants, and the efficiency of the Magistrates, it has occurred to your Committee to suggest that a complete revision of the limits now assigned to the several Magistracies in the Colony, for the purpose of making the position of each Magistrate as central as possible, would probably be attended with very beneficial consequences.

Your Committee are aware that none of the purely fiscal arrangements of the Colony come within the scope of their inquiry, but they submit, for consideration in the proper quarter, that if every such district were separated from the rest, as well for financial as magisterial purposes, the convenience of the inhabitants would be very much promoted. Your Committee do not see any sufficient reason which should prevent the Government from equalising, as vacancies occur, the salaries and duties of all Magistrates,—or why, in other words, the offices of Magistrate and Civil Commissioner should not be universally combined. The slight multiplication of Public Accountants, which would be the

consequence of such a change, ought not, your Committee think, to stand in the way of an improvement which would relieve great numbers of our rural population who desire to pay transfer dues or land rent, from the necessity of undertaking, with one public functionary in their immediate neighbourhood, long, harassing, and expensive journies to another public functionary placed at a distance.

Your Committee are of opinion, that the time has come, when it behoves the Colonial Government to take upon itself the maintenance of the four Magistrates hitherto paid by Her Majesty's Government, namely, the Magistrates of Wynberg, the Paarl, Malmesbury, and Caledon. While it is true that a principal part of the late slave population is still to be found in the vicinity of the places above enumerated, it has not appeared to your Committee that that circumstance can justify a call upon the Home Government to provide longer for Magistrates, whose special services were in their nature temporary, who have already been supported for nearly seven years, and whose duties are not distinguishable from those of resident Magistrates in general.

*Jurisdiction of the Resident Magistrates' Courts.*

Your Committee are not prepared to recommend that the jurisdiction of the courts of resident Magistrates should be largely increased.

A purely summary trial has certainly many obvious advantages. It saves the expense of supporting the prisoner previous to conviction; it saves the expense of the double journey of witnesses; it strikes the minds of the people by the suddenness with which the punishment may be made to overtake the crime. But your Committee are disposed to think, that these advantages could not, in practice, be altogether realised by a large extension of the summary jurisdiction, or that, if realised, it must be by the sacrifice of still greater advantages. A prisoner brought in immediately upon his apprehension, may not be prepared to take his trial; and if, in such a case, the Magistrate should, as soon as he had evidence which could warrant a committal for trial, instead of committing for trial, find the prisoner guilty, and

—it is to be feared that mischiefs might ensue, against which no system of appeal or supervision could effectually guard. Upon the other hand, if the commitment and the trial are still to be distinct proceedings, the double journey of the witnesses would continue to be necessary; and, from the same causes, the other anticipated advantages would likewise be diminished. To allow the witnesses to depose, and then retire to their homes, leaving the prosecutor or prisoner to bring other evidence afterwards, but before judgment, would let in another serious inconvenience; for no trial can, in general, be satisfactory, in which there is not, during its progress, a constant power of recalling and confronting witnesses. A summary jurisdiction, by which the double journey of the witnesses is dispensed with, appears to your Committee to involve difficulties of so grave a nature, that it can only be allowed under two conditions; one, that the cases submitted to it shall be of the simplest class; and the other, that the punishments to be inflicted under it shall be so limited as to make the consequences of an error of judgment comparatively unimportant.

Influenced by such considerations, your Committee are not prepared to recommend that the Resident Magistrates should have jurisdiction in any criminal cases other than those of which they can now take cognizance, nor that their power of punishment should exceed three months' imprisonment. But such a moderate increase they conceive would be decidedly expedient. It would not, in effect, throw a much greater number of cases into the court of the Resident Magistrate than those on which he now adjudicates; but it would enable him to pronounce, in some of these cases, a more fitting punishment, and also to discriminate between different degrees of guilt more strongly than he can do when, as at present, he can in no case imprison for a longer period than one month.

Assuming that the number of the Resident Magistrates will be augmented, and their criminal jurisdiction increased in the manner pointed out, it may become worthy of consideration whether means may not be devised for securing or promoting the legality, uniformity, and efficiency of their proceedings. For this purpose your Committee are disposed

to think that the several Resident Magistrates in the Colony (except, perhaps, those of Cape Town and Gräham's Town), should be called upon to transmit to some competent authority the record of every criminal case summarily disposed of by them, whether it shall have terminated in a conviction or an acquittal, and containing a statement of the charge, the evidence, and the judgment. This record it should be the duty of the authority referred to, to peruse, for the purpose of ascertaining whether any irregularity, or apparent error, had crept into the proceedings. Should such be found in any case where a conviction had been had, the convict should be pardoned, and where any acquittal seemed to have proceeded upon a wrong principle, such a representation might be made to the Magistrate as would have the effect of preventing a recurrence of the mistake. In the same manner a certain degree of uniformity in the sentences of the various Magistrates might be expected gradually to arise from the influence of such a superintending authority as that which the Committee have in view. That authority might be either the Attorney-General, or a separate officer who, like the Attorney-General, should be permanently resident in Cape Town. But your Committee are of opinion that, should such surveillance be deemed by the Council to be salutary, it should be given to the Judges of the Supreme Court; a course which would, at once, secure the highest degree of qualification, and be attended with no expense.

An extension of the civil jurisdiction of the Resident Magistrates is not open to the same or equal objections as an extension of the criminal. It is therefore recommended that the civil jurisdiction should be increased.

The Resident Magistrate of Cape Town has, at present, jurisdiction in civil cases where the cause of action does not exceed twenty pounds in value. In the country districts the Resident Magistrates cannot decide cases involving an amount of more than ten pounds. Your Committee are of opinion, that if any difference should exist between the jurisdiction in Cape Town and the jurisdiction in the country districts, the jurisdiction should be greater in the country than in the town; because, while the Supreme Court is always open to such suitors in Cape Town as cannot proceed

before the Resident Magistrate, suitors in the country, whose cases the Resident Magistrate cannot hear, must wait for circuit. But your Committee recommend, that the jurisdiction of all Resident Magistrates should be equalized, and that they should (subject of course to the restrictions now by law provided, which prevent them from trying titles to lands or offices, or any cases in which their judgment could bind rights in future), be competent to adjudicate in every instance in which the sum or matter in dispute shall not exceed the amount or value of thirty pounds.

Liquid documents,—by which are understood unconditional promises to pay money, or absolute acknowledgment, of debt, — are, in their nature, such clear evidence of a claimant's right, that the law of this Colony, like that of most countries, gives to the holder of them peculiar facilities for realizing their amount. Your Committee were, at one time, of opinion that, in regard to such documents, the jurisdiction of the Resident Magistrates might, with safety, be increased to forty pounds, and that in all illiquid cases the limit of twenty pounds should be prescribed; but as questions might occur regarding what were liquid and what illiquid cases, we have come to the conclusion that a general jurisdiction to the amount of thirty pounds should be bestowed.

#### *Prosecution of Crime.*

Your Committee are of opinion, that to provide, as our judicial system does, a responsible public prosecutor, is not merely sound as a principle of general application, but that, in practice, it has worked well in this Colony.

If crime, as in some countries, must be prosecuted by the parties injured, it will, in many instances, be either prosecuted vindictively, or not prosecuted at all, to say nothing of the hardship of declaring that those who have for the most part already lost by the crime, shall come forward to prosecute the criminal, regardless of time, trouble, odium, and expense. If crime, as in some other countries, can never be prosecuted but by the public prosecutor, that officer is invested with an arbitrary power which may be abused by incapacity or corruption. When the public prose-



cutor is required to examine every case, and prosecute or not as he sees cause, but, at the same time, the party injured is at liberty to proceed, after the public prosecutor has declined to do so,—both the evils which have been specified are avoided. And this is the system established in this Colony.

Entertaining so favorable an opinion of the office of public prosecutor, your Committee conceive that none of the powers or duties now belonging to it should be interfered with, and that it should continue to direct, as heretofore, all prosecutions before the Colonial Courts.

The public prosecutor is, at present, represented in each district by the Clerks of the Peace. Your Committee are of opinion that such officers are not an essential part of the system of public prosecution; that the duties performed by them are shown by the returns to be wholly incommensurate with the incurred expense; that those duties may more cheaply, and as efficiently, be performed by other officers, and that the Clerks of the Peace should be abolished. By this means a saving of 3,966*l.* per annum would be effected, which would go far towards covering the expense of the new magistracies so much required.

If the principle of Clerks of the Peace in all seats of magistracy is to be maintained, your Committee do not discern any practicable mode by which the means of paying any considerable number of new Magistrates can be provided, without materially increasing the annual expense of the judicial system. Upon this supposition, you cannot create a new Resident Magistrate without creating a new Clerk of the Peace, and thus an obstacle of a nature almost, if not altogether, insurmountable, is thrown in the way of the most eminent improvement of which the administration of justice in this Colony is susceptible. But if, on the other hand, it be found that the duties of new Magistrates can be discharged without the assistance of such officers as Clerks of the Peace,—then the question arises, whether the duties of the present Magistrates may not also be discharged without such aid; and your Committee are of opinion that they can be so discharged; and that the office of Clerk of the Peace may be discontinued without leading to diminished

Your Committee are of opinion, that the Resident Magistrate should himself receive the report of crimes, and take the preparatory examination. The intervention of an officer between the committing Magistrate and the witnesses, appears to your Committee, to be, in a great degree, a useless form. Every Magistrate who is competent to estimate the weight of the evidence, must be presumed to be competent to elicit it by the necessary questions. It is true, that two investigating officers will, in general, if equally zealous and intelligent, investigate more thoroughly than one, and that by being relieved from the duty of conducting the whole investigation himself, the Magistrate may be supposed to have his attention less distracted, and his judgment more unbiassed. But it appears to your Committee that, in the face of a pressing necessity for as many Magistrates as can be procured, to incur a heavy expense for the sake of such advantages as they have now alluded to, would be to refine too much, and sacrifice practical utility to systematic perfection.

Your Committee consider that there is nothing in the taking of a preparatory examination which it could be improper or incongruous for the Magistrate to perform, and that the examination, when taken, may be transmitted to the Attorney-General's office by the Magistrate as fitly as by the Clerk of the Peace.

Another portion of what may be termed the court duty of the Clerk of the Peace, is to prosecute in summary cases. It is conceived that the interference of such a functionary with such cases is not required. By hearing the parties concerned, the Magistrate will be able to attain a perfect knowledge of the case,—and he does not seem to stand in need of assistance from any one in the character of advocate or agent.

The remaining duties of the Clerk of the Peace, which regard the administration of justice, are two; one connected with the first stage of each criminal case, and the other with the last,—the first being to trace out the crime, the criminal, and the evidence against him, previous to the preparatory examination, and the second to conduct the case in the Circuit Court after the indictment.

Your Committee conceive that between these different duties,—the one being that of a police officer, and the other that of an advocate,—there is no natural connection, and that their union in the same officer is not desirable. In all probability the person by whom one of them is performed with singular ability, will be, on that very account, deficient in the other. Your Committee are of opinion, for this amongst other reasons, that those duties ought to be divided.

In regard to the tracing of crime and criminals, this, being a police duty, should, in the opinion of your Committee, be performed by police. An inspector of police acting under the resident Magistrate of the district will, it is anticipated, be more competent to discharge the peculiar function now in question than officers charged with, and competent to, the other functions of the present Clerks of the Peace. Indeed, without some such head of police, the Clerks of the Peace could scarcely act efficiently while engaged in tracing crimes or criminals; and with such a head of police, acting under the Magistrate's orders, it appears to your Committee, that the Clerks of the Peace may themselves be dispensed with. The subject of police in the country districts will be afterwards adverted to under a separate head.

The manner in which prosecutions in the circuit courts should be conducted after the abolition of the office of Clerk of the Peace, has been much considered by your Committee; and while the members are not, in all respects, unanimous in matter of detail, they are generally agreed upon the principle which it will be expedient to introduce. They are of opinion, that by the employment of a circuit<sup>t</sup> prosecutor—(one, or more than one, should it be found desirable,)—whose head-quarters should be Cape Town, and who should be, while there, in personal communication with the Attorney-General relative to the country cases to be tried,—the duty in question may be efficiently performed, whether the circuit prosecutor should be chosen out of the present Clerks of the Peace, and should receive a stated salary, and be debarred from other practice, or whether the office should be filled by an advocate willing to undertake the duty together with his private business, or, whether, in order to prevent too many demands from being made upon the attention of one advocate,

and to encourage, for public convenience, the attendance of at least two advocates on circuit, it would be advisable to arrange that the public prosecutor should be represented by different advocates in different towns;—all these are questions upon which it will be for the Council to decide. Your Committee will, at present, only say that any one of the modes above suggested is, in their opinion, capable of working well. It may confidently be assumed that the prosecutor or prosecutors depute, whoever he or they may be, will, in intelligence and legal knowledge, be superior to the average of Clerks of the Peace; that, in regard to the majority of cases, personal communication with the department of public prosecutor will have imparted ample information as to the circumstances of the case; and that in the rare instances in which, for the purpose of challenging jurors, a certain degree of purely local knowledge is demanded, the necessary knowledge can always be obtained upon the spot. Your Committee must also observe, that as there is rarely minute local knowledge without some little local prejudice or prepossession,—they do not deem it desirable as a general principle that the prosecutor who conducts the case in court should possess that minute knowledge.

Should the recommendations of your Committee, in regard to the office of Clerk of the Peace, be carried into effect, the course which will be pursued with respect to the tracing and trying of criminals will, in its main features, be as follows: There will be the chief of the district police, who, besides directing his energies to the prevention of crime, will be bound to make every exertion when crime is committed, to secure the perpetrators. Acting under the orders of the Magistrate, and, when practicable, in conjunction with the Field Cornet, he will cause the prisoner, with the necessary witnesses,—and, if possible, none but the necessary witnesses,—to be brought to the district town. Arrived there, the magistrate will proceed, should the case be one above his summary jurisdiction, to take a preparatory examination. When this shall have been completed, and the prisoner committed for trial, the Magistrate will transmit the depositions to the Attorney-General. Should this officer consider that the evidence is, in any respect, defective, he



will communicate with the Magistrate upon the subject, pointing out what is defective, and suggesting the best mode of supplying the deficiency. When the case is one which the public prosecutor feels it his duty to indict, he will, in due time, transmit the indictment to the Magistrate, in order that it may be served upon the prisoner, and that the witnesses may be summoned. The manner in which such service and summoning are to be made will be referred to in another part of this Report. In the meantime, the circuit prosecutor will have read and considered the depositions and communicated with the Attorney-General in regard to any difficulties which may be presented by the case. When the circuit prosecutor reaches the circuit town, the Magistrate, through his clerk, will hand him, as a brief, a copy of the depositions, and the Magistrate's clerk and the chief of police will confer with the circuit prosecutor regarding any matter connected with any of the cases which may appear to any of the parties to be important. In court the circuit prosecutor will, as counsel, conduct the case. The duty of having the witnesses in readiness, and of afterwards paying their expenses, will be divided between the chief of police and the Magistrate's clerk. When the circuit has closed, or sooner if convenient, the circuit prosecutor will furnish to the Attorney-General's office a report of the cases tried, exhibiting the result of each, and offering such remarks upon any error which may have been committed, either in the preparation of the indictment or any other part of the getting up of the case, as may serve to improve the practice of the office.

Your Committee are of opinion, that according to the system now described, the functions of the public prosecutor and those of the Magistrate are in no way unconstitutionally blended; that under it the Magistrate cannot in any just, or even intelligible, sense, be said to be under the control of the Attorney-General, and that, in so far as it tends to impose upon the Magistrate an undivided responsibility for the state of his district in regard to the prevention and prosecution of crime, it is preferable to a system which divides that responsibility between the Magistrate and the Clerk of the Peace, in proportions not clearly defined either by law or common opinion.



*Grand Jury.*

The existing Grand Jury system in the Cape Division may be regarded as a part of the present system of prosecution of crime. Your Committee, without saying that this institution is necessarily mischievous, look upon it as a useless anomaly which ought to be abolished. It is calculated to do ill what the Petit Jury can do well. It presents no check upon the public prosecutor which the Petit Jury and an open trial would not more effectually present. It decides in secret upon evidence taken in secret,—where there is neither judge to expound the law, nor machinery to bring out the facts, nor a public audience to witness their proceedings, and judge their judgment. It has no sense of responsibility sufficient to control any prejudice or prepossession which may exist amongst the members. It was introduced into this colony from England, where its ancient function was that of public prosecutor,—namely, to inquire into rumoured offences, and determine what parties should be proceeded against, and where, in all probability, it never would have been known had another official and responsible public prosecutor been provided. It arose in the mother country long before the practice of commencing criminal cases by a preparatory examination before Justices of the Peace was known, and in the opinion of eminent authorities might well have sunk into disuse when that practice became universal, inasmuch as it then ceased to be, what it had been before, a preliminary inquest. It never existed in Scotland, where the office of public prosecutor is established; and has not been adopted in France, which borrowed from England her system of Petit Juries in criminal cases. It is found in the metropolis of the Colony, where abuse of the authority of the public prosecutor is least likely to pass unnoticed or uncensured; and is not found in the country districts, where there is no weight of public opinion to control the public prosecutor, and where, if there were such, the public prosecutor is too distant to regard it. It deprives the Petit Jury list of the Cape Division of a number of gentlemen who would constitute its best members.

Believing that the Grand Jury system should, for the

sake of consistency, be either extended or abolished, your Committee, for the reasons given, recommend its abolition.

*Execution of Process.*

\* All summonses of the Supreme and Circuit Courts in civil and criminal cases, and all writs of execution in civil cases are served or executed by the Sheriff of the Colony, or his deputies.

The Sheriff receives a fixed salary, but his deputies in the country districts are paid by fees.

By a return which has been obtained from the Sheriff's office, and which will be found amongst the proceedings of your Committee, it will be seen that the amounts received by the Deputy-Sheriffs vary considerably, and that, in the aggregate, they amount to £4,846 17s 4d. per annum.

Circumstanced as this Colony is, we must seek the means of providing for new officers by consolidating the duties, and so reducing the number of the old.

It may, therefore, become worthy of the consideration of his Excellency and the Council, whether the Clerks of the resident Magistrates who are at present very poorly paid in the various districts, might not act as Deputy Sheriffs, receiving a fixed but increased salary, and paying over all fees into the Treasury.

In the performance of the duties of Deputy Sheriffs by the Magistrates' Clerks, the police force already mentioned, and which will be more particularly adverted to under the next succeeding head of this Report, might, perhaps, be made to afford efficient and, comparatively speaking, inexpensive aid.

It appears, however, to your Committee that no such change could be properly effected without relieving the Sheriff of the Colony from his responsibility for persons whom he had ceased to appoint, and without a guarantee, on the part of Government, for the due performance by its officers, of the duties to be imposed upon them.

As the matter now referred to was not made the subject of any examination of witnesses in the course of our inquiry, and as your Committee do not feel that they have sufficient information before them to entitle them to form any positive

opinion, they wish to be understood as merely suggesting, for further consideration, the plan which has now been indicated.

Your Committee are of opinion that the duty of summoning jurors and witnesses in criminal cases should be discharged by the police of the district. By this means it is conceived that the work will be at least as efficiently performed as at present, and that a saving will thereby be effected, which will materially contribute to the support of the police force, without diverting its members from any of the duties more immediately belonging to them as constables and conservators of the peace.

#### *Police in Country Districts.*

Your Committee conceive that the presence of a small but intelligent police force in each country district, would prove very useful.

The Constables should act under a Head, to be called Inspector; and the entire force should be placed under the orders of the resident Magistrate.

The number of policemen required would vary with the requirements of the various districts, but an average of four, including the Inspector, would seem, at least in the first instance, to be as many as it would be expedient to appoint. Should it be found that a larger number was required, and the means of maintaining it exist, an addition could readily be made. The Inspector and two Constables should be mounted.

It is conceived that competent Inspectors could be found who would, providing and keeping their own horses, serve for 100*l.* per annum. Constables might be had for 40*l.* per annum. The Inspector, it is believed, would provide and keep horses for such of these Constables as were to be mounted, for an annual allowance of 25*l.* for each horse.

If such a police were placed in each district it might become worthy of consideration, whether the number of Field Cornets and Assistant Field Cornets might not be reduced with advantage to the public service.

Your Committee are of opinion that the Inspector of Police might also act as Messenger of the Magistrate's

court, so as to effect a saving, should no change be made by which the duties of Messenger should be consolidated with those of Deputy Sheriff, and the whole be then performed by the resident Magistrates' Clerks, or by some other salaried officer.

*Trial by Jury in Civil Cases.*

Your Committee have now reached the last point to which, in the outset, they proposed to advert. It is one of great importance and acknowledged difficulty.

The benefit of trial by jury in criminal cases is almost universally admitted. Your Committee consider that it has in this Colony worked well. Cases very rarely occur here involving strong popular excitement amongst the classes of which the Juries are composed, and, consequently, there are as rarely-witnessed those blind convictions and those equally blind acquittals which, now and then, in other countries have tended to bring trial by Jury into disrepute amongst impartial men. It is believed that the instances in this Colony in which the presiding Judge has seen cause to be dissatisfied with the finding of the Jury have been very few indeed.

The advantages of the system are not confined to the delivery of true verdicts. Its indirect influence is very beneficial. It may be admitted that a Judge, whose education has been directed to legal objects, whom long practice has taught the art of eliciting evidence, and the mode of estimating its weight, is more likely to come to a right conclusion than an ordinary Juryman taken from his farm or his shop. But no Judge, however able or upright, is likely to decide criminal cases so correctly as a number of such Jurymen of opposite pursuits and habits of thinking, who are assisted by the professional views of the Judge, but who, at the same time, can correct that tendency to become too technical, which professional views occasionally exhibit, and who bring to the determination of the question, "guilty or not guilty," more sympathy with the sentiments of the society from which they are indifferently taken than could be secured in any other way. When to this are added the protection which, in general, the accused enjoys from trial

by Jury; the advantage of exercising the intellect, and increasing the information of the Jurors; and the importance of giving to our upper and middle classes themselves some knowledge of the laws which they are privileged to administer,—it will not appear surprising that trial by Jury should be popular in this Colony, and that an extension to civil cases of that mode of deciding questions of fact, should number many advocates.

It might at first sight appear that if trial by Jury in criminal cases be desirable, trial by Jury in civil cases must be desirable too. It may be urged, and with truth, that the questions of fact occurring in the one class of cases are not in general more difficult than those occurring in the other, and that the consequences of error are, for the most part, more serious in the cases which we try by a Jury than in those in which we try without it. But your Committee, while favorable to the plan of introducing trial by Jury in civil cases, cautiously and as an experiment, are yet of opinion that its fitness for criminal cases does not necessarily prove its fitness for civil cases; and that to introduce it generally, and at once, throughout the whole Colony, might be productive of serious inconvenience, not to say of positive injustice.

One very obvious difference between criminal and civil cases in regard to Jury trial arises from the difference in the principles by which, in each case respectively, the finding should be governed. When the public prosecutor is plaintiff, and the prisoner is defendant,—the law requires that the plaintiff should not have a finding in his favor so long as there exists a reasonable doubt of the defendant's guilt. In criminal actions the rule is otherwise. There the plaintiff is entitled to a verdict upon the bare preponderance of proof, and cannot without injustice be put out of court upon a mere doubt, however reasonable, of the defendant's liability. If Jurors in civil cases were always to find for the defendant when the evidence is in that state in which in a criminal case they would properly find for the prisoner—the consequences would be disastrous. Under these circumstances it is conceived that, in general, much less acumen is necessary to act as Juror in criminal than in civil proceedings, since it



is easier to see when evidence preponderates so overwhelmingly as to leave no reasonable doubt, than to see when it simply preponderates, and does no more. It certainly is difficult, in some cases, to define or determine what is a reasonable doubt. But in practice it is found that the same humane considerations which have led to the establishment of the rule itself, govern the application of it also, and that in almost all cases of a difficult nature the Jury relieve themselves from embarrassment by acquitting the accused.

Another, and perhaps more important, distinction between criminal and civil cases in regard to Jury trial in this Colony, arises from the smallness of our population, coupled with the difference which exists between the class of persons usually interested in criminal proceedings as contrasted with the class of persons usually interested in civil.

For the most part, prisoners are persons in the lower rank of life. They are either unknown to, or unconnected with, the persons who compose the Jury. The humanity of our Jurymen is a safeguard, in every case, against undue convictions. But, in most instances, there is nothing in the social position of the accused to prevent a conviction when justice calls for it. If, in any case, the ends of public justice shall not be fully secured by our Colonial Juries, it will not be by convictions of the innocent, but by acquittals of the guilty.

With suitors in civil cases the matter would be very different. There are few places in this Colony in which it would be possible to impanel a Jury to try any civil case of a certain importance arising in the district, who had not more or less prejudged the question, or who did not stand in some relation to one or other of the parties, inconsistent with complete indifference.

It is true, indeed, that cases may be supposed in which the Judge may be known to be on terms of intimacy with one or other of the parties. But when the Judge is non-resident, as our Circuit Judges are, those cases must be very rare. And if any such case do arise, the Judge's sense of undivided responsibility for his judgment,—to say nothing of more exalted motives, is a great safeguard against favouritism. The Judge, moreover, is constrained by a practice

which has become a principle, to give his reasons in open court. The Jury, on the other hand, give no reasons whatever; and, in the opinion of your Committee, the necessity of stating in the presence of an audience who have heard the evidence, the grounds upon which the Judge rests his judgment, affords a security for right decisions of which it would be difficult to over-estimate the value.

The time will probably come when trial by Jury in civil cases may with safety be introduced into the Circuit Courts and country districts. But your Committee are not prepared to recommend at present such a sweeping measure.

It is in the Supreme Court that the experiment may most conveniently be tried. The number of the population of Cape Town and its neighbourhood, and the other securities for impartiality which there exist, appear to your Committee to warrant the belief that Jury trial in civil cases may be introduced in the Supreme Court, with a reasonable prospect of success.

Every disputed question ought to be tried by a Jury, upon the application of either party, in all cases in which the court should be of opinion that the question in dispute was purely one of fact. Matter of law should be reserved for the decision of the court. Mixed questions of law and fact should, if possible, be separated so as to send the fact to the Jury, and leave the law for the court.

The nature of our jurisprudence, which does not divide law and equity into separate systems, much less administer law and equity in separate courts,—and the nature of our pleading, which does not necessarily end as pleading at common law in England for Jury purposes always does, namely, in the extrication of some fact or facts directly asserted on the one side and directly denied upon the other, will render some provisions necessary for determining clearly the question to be tried.

For this purpose, your Committee consider that the parties, under the direction of the court, should settle between them the issues for the Jury.

The Jury list in regard to civil suits should comprise only such persons as were by education and intelligence presumed to be qualified to act; and the principles upon which special

juries are struck in England should, in all cases, be applied.

Your Committee conceive that, under the circumstances now set forth, no evil can in any case be reasonably apprehended from the introduction of trial by Jury in civil cases; and they are of opinion, that in a certain class of cases the introduction of that form of trial would be of public benefit. If found unserviceable, the measure may be abandoned. Should it work well in Cape Town it may gradually be extended to other parts of the Colony.

Your Committee deem it to be their duty to recommend in regard to trial by Jury in civil cases, a cautious and gradual, rather than a sudden and general change. In criminal cases they consider Juries to be wholly indispensable, and they regard with just admiration that noble form of trial. But in reference to Jury trial in civil cases they cannot but recollect that great difference of practice and opinion prevails in Europe; that in France, while trial by Jury in criminal cases has existed since the revolution, it has never been admitted in civil cases; that the great majority of those numerous continental legislators and jurists who have, of late years, discussed the question, are adverse to the system; that in Scotland, the policy of the Act of 1815 which, for the first time, established a rather restricted system of Jury trial in civil cases, is still much questioned; that in England the opinions of jurists are much divided,—and that there seems to be an increasing disposition on the part of suitors there to resort to those courts which try without a Jury, rather than to those in which Jury trial prevails.

---

(I. p. 325.)

*Extract from Sir Peregrine Maitland's Despatch to Mr. Gladstone, No. 144, 10th September, 1846.*

In respect to the employment of convicts sent out by the Home Government, to aid in the construction of the breakwater, the Council are of opinion that, under certain conditions, such a supply of cheap or certain labour would be of the greatest advantage. The conditions I refer to are, that the convicts be placed under such restrictions as to

prevent their mixing up in any way with the community, and that none be set at liberty within the limits of the Colony.

Under such restrictions, which I believe to be in full accordance with the suggestion on this head contained in your despatch, both the Council and the inhabitants at large will consider such a supply of convict labour as a most valuable aid to the Colony in this arduous undertaking. In confirmation of this, I beg to refer you to the report of the Council, and the petition of the Commissioners and Wardmasters of the Cape Town Municipality.

Should Her Majesty's Government determine on sending out convicts, I have the satisfaction to inform you that there will be no occasion to station hulks in Table Bay; as, from the report of the Civil Engineer, I find that with little expense the Amsterdam Battery may be made capable of containing, in perfect security, a body of 300 convicts, a number which at first cannot be exceeded with advantage in carrying on the works connected with the breakwater. I will have this battery immediately prepared for the reception of the convicts, so that they may be sent here as quickly as you please after your receipt of this despatch.

---

*Extract of Sir H. Smith's Despatch to Earl Grey, 8th May, 1848.*

Another important suggestion was made in Mr. Gladstone's despatch, above alluded to, and was at once accepted by the Legislative Council of the Colony, viz.: that the work should be performed by English convicts to be sent to the Colony for that purpose. And in my predecessor Sir Peregrine Maitland's despatch, No. 144, of the 10th September, 1846, he proposed that 300 convicts should be sent out, whom he proposed to accommodate in the Amsterdam Battery. I am now, however, informed that this building could not be conveniently spared to receive the convicts; and that it would be advisable to construct temporary barracks for that purpose. I would therefore recommend that the number of convicts proposed by my predecessor, should be doubled, as work could easily be found for 600 men, and

from your Lordship's military despatch, No. 1, of 10th September, 1847, I conclude that no objection would be entertained to subjecting that number of convicts to the reformatory system of discipline employed in this Colony. By this means the time occupied in the construction of the breakwater would be very materially diminished, and the advantages to be derived from it would be rendered less distant.

---

Downing Street, 7th August, 1848.

Lieutenant-General Sir H. Smith, Bart.

SIR,—I have the honor to transmit to you the inclosed copy of a correspondence laid before Parliament in May last, on the subject of convict discipline and transportation. Many of these papers will probably not be without interest to you, but my immediate object in sending you the accompanying copy of them is to draw your attention to my despatch to the Lieutenant-Governor of Van Diemen's Land, No. 66, of the 27th of April last, in which you will find an exposition of the views of Her Majesty's Government respecting the future treatment of offenders who receive sentence of transportation.

You are doubtless aware that it has for some time past been resolved that all convicts should, in the first instance, undergo a period of separate imprisonment in this country, varying from six to eighteen months, followed by labour on public works, either here or at Bermuda or Gibraltar. By several of the accompanying papers, you will find that the effects of this discipline have as yet been very satisfactory. The letter from Mr. Kingsford, who has so zealously and efficiently performed his duties as chaplain at Gibraltar, and which is inclosed in my despatch above referred to, bears testimony to the good and apparently lasting impressions produced on the minds of the prisoners who have fallen under his notice at that station. At Port Philip, the despatches referred to in the margin will show with what rapidity the men, who have arrived there under the name of "exiles," have been engaged for the service of the resident proprietors. And similar information has since arrived



respecting a party of exiles, who landed so lately as December last at Port Philip. The settlers in that district have now for a considerable time had an opportunity of observing the character of men of this class, and although the demand for labour is unquestionably great, it is not to be supposed that they would have been so eager to obtain the services of such persons, if there had not been much which was satisfactory in the conduct of those who had fallen under their observation. Whilst such evidences in their favor have been received from Gibraltar, and Port Philip, I inclose for your information a despatch from the Governor of Bermuda, in which you will find that he gives the most gratifying account of a large party of men whom he had selected as deserving the indulgence of being sent to Van Diemen's Land with tickets of leave, and that he expresses a sanguine anticipation of improvement in their future conduct, and of the addition which they will make to the useful labor of the Colony.

Notwithstanding these encouraging circumstances, however, it is not the opinion of Her Majesty's Government that, either with a view to the preservation of good order, or to the infliction of an adequate amount of punishment, under their original sentences, the men ought to be set entirely at large on reaching the Colony to which they may be sent, after a certain period of good conduct. It is considered better that they should rather be allowed tickets of leave. These admit of restricting them to particular districts and of enforcing the punctual payment of moderate sums in return for the cost of their conveyance, but do not in other respects interfere with the freedom of the men to whom they are granted, nor diminish the ordinary motives to industry and good conduct.

You will further perceive that, while it is proposed to require from these persons repayment of the cost of their removal to the Colonies to which they may ultimately be sent, because it is conceived that they ought not to receive free passages, which cannot be granted to many of those unconvicted of crime who apply for that privilege, it is proposed that whatever sums are thus recovered from them should be applied, not to relieve this country from the charge

incurred on their account, but for the benefit of the Colonies which may receive them, either by sending out free emigrants to meet the great demand for labour which exists in most of these Colonies, or in any other manner which may be more suitable to the peculiar circumstances of others of them. Such being the system under which it is proposed hereafter to proceed, I think it right to point out to you that, if the inhabitants of the Cape of Good Hope should be willing to receive men with tickets of leave, they will obtain the advantage of a supply of labour, together with a probable addition to the funds applicable to general emigration, or some other public object of importance; while by the power which is to be reserved of dispersing those men in different districts, together with the reformatory nature of their previous punishment, there is good reason to hope that their presence in moderate numbers will not be found injurious to the general character of the community. Considering the urgent representations which are constantly received at this office of the want of an adequate supply of labor, it seems possible that if this system of convict discipline were well understood, the colonists might be desirous of receiving men upon the foregoing terms, in their last stage of punishment, and after they had earned a favorable character from the authorities under whose control they had been placed. I should be glad, therefore, if you would ascertain, in the manner which may appear to you best suited to the purpose, how far this would be the prevalent opinion in the Colony under your government, and if I should learn from you that the measure would be wished for I should be prepared to take the necessary steps for including the Cape in the places into which convicts holding tickets of leave may be introduced.

I have, &c.,  
GLEY.

---

(K. p. 326.)

*To His Excellency the Governor and the Members of the  
Legislative Council.*

The Memorial of the undersigned Commissioners and Ward-

masters of the Cape Town Municipality, in Common Council assembled:—

Humbly Showeth,—That your memorialists have observed with much pleasure, that the plan proposed by his Excellency the Governor for rendering Table Bay a safe harbour of refuge, by constructing a breakwater in the same, has been favourably received by Her Majesty's Government in England.

That the construction of such a harbour, so as to afford perfect shelter at all times and at all seasons, is, in the opinion of your memorialists, of great national importance, both as regards the political as well as the commercial interests of the empire.

That your memorialists are further of opinion, that this improvement will greatly increase the shipping of Table Bay, by inducing vessels to touch here, who have hitherto passed this port, for want of the necessary security in the winter season.

That your memorialists are satisfied, that this increase of shipping will tend to the further development of the internal resources of this Colony, by the readier means which will thus be afforded to find a market for colonial produce in Cape Town, and for the transhipment of the same to Europe or elsewhere.

That, as a natural consequence of the above, all classes of the community will be equally benefited, and the welfare of the Colony at large steadily improved.

That, however averse your memorialists may be against the introduction of convicts for general purposes, your memorialists see no objection, provided they be placed under proper restrictions and not liberated in this Colony, that such convicts be employed for the particular object above-mentioned.

And your memorialists therefore humbly pray, that it may please the Legislative Council to sanction the proposed plan of rendering Table Bay a safe harbour of refuge, and for the employment of convict labor, subject to the above condition, for executing that work.

And your memorialists, as in duty bound, will ever pray.

Signed \_\_\_\_\_

Cape Town, 26<sup>th</sup> August, 1846.

(L. p. 328.)

Government House, Cape of Good Hope,  
24th May, 1849.

The Right Honourable

The Secretary for the Colonies:

My Lord,—Adverting to your Lordship's despatch of the 7th August, 1848, in which you tender, as a boon to the Colony, exiles with tickets of leave from Bermuda, and desire me to ascertain the feelings of the inhabitants upon the subject, I have the honor to state that I laid that despatch before the Legislative Council in the month of November last, as has been already reported in my despatch, No. 211, of the 19th December, 1848. I, at the same time, and nearly in the following words, made it publicly known, "that the measure was not to be forced upon the colonists if they did not require that species of labor,—that I should be open to receive suggestions from the public on the subject,—that it was distinctly to be understood that it was a matter of profound free agency with the colonists whether they would receive the men or not,—and that I had it in my power to consent to the arrangement, or to state the objections which might be entertained by the inhabitants,"—which I have previously submitted to your Lordship.

2. The colonists were violently opposed to the introduction of these convicts, having ever been most strongly hostile to the Cape becoming a penal settlement in any shape,—a measure which they strenuously resisted in the time of Lord Stanley, and again in that of Lord John Russell, who both conceded the point to them. They relied with confidence, after your Lordship's offer to send out these men as a boon, that it was a step which would never, without their consent, be resorted to. Your Lordship, however, without waiting for a reply to this despatch, proceeded to carry out the proposition; and although almost immediately afterwards the adverse opinions of myself and of the colonists reached your Lordship—various addresses to Her Majesty, to your Lordship, and to myself, being at the same time forwarded—it appears that your Lordship is still resolved on enforcing this obnoxious measure, and that the "Neptune," transport, may shortly be expected to arrive in this Colony.



3. This, my Lord, places me in a most delicate and painful position, having pledged myself in the Legislative Council to the colonists upon the base of your Lordship's despatch of the 7th of August, 1848. They naturally look up to me to fulfil that pledge, which it is now out of my power to do; and they have consequently got up numerous memorials and addresses from every part of the Colony,—from the Lord Bishop of Cape Town, from the various ministers and congregations of the Dutch Reformed Church and its Synod, and indeed from every religious persuasion. My reply to that of the Lord Bishop of Cape Town I herewith inclose, marked No. 1; also that to a memorial from the inhabitants of Cape Town, signed by upwards of four thousand persons, marked No. 2; together with my general answer to the memorials marked No. 3. In fact, my Lord, the inhabitants of the whole Colony are so irritated and excited upon the subject, that they have resisted, and are resisting, this measure by every constitutional means within their power. They argue that although a ticketed exile may be a superior man among felons, when he is neither at liberty to commit error, nor placed in a situation to resist temptation, the ordeal of his reformation is a very negative one; and, although well conducted among the indisposed, that he would, when let loose upon an orderly and religious society, become a miserable member of it. They also advance that the Colony, once made a penal settlement, loses all future protection; for that although it may be your Lordship's intention to send out only men thus supposed to be reformed, a succeeding minister may take a different view of the subject, and inundate the Colony with malefactors of the worst character. They also comment most particularly upon your Lordship's remark in the House of Lords (if correctly reported) that, "as the mother country had so liberally bestowed £1,000,000 upon the Cape for the expenses of the Kafir war, she was entitled to require from it a service which might be rendered without injury to its interests." This was an argument which I equally resorted to in the Legislative Council, when I advocated the receipt of the Irish rebels, which I did most strenuously; for I was very desirous to meet the views of Government on this perplexing subject.



I, at the same time, stated that as the Colony had been so liberal in contributing its aid to the Irish during the melancholy famine, so was it now in duty bound to aid, by every practicable means, the mother country during the temporary difficulties and embarrassments of Her Majesty's Government; but that I was most strongly opposed to the Colony being made a penal settlement, under any circumstances, for ordinary felons. These two points, distinct in themselves, went abroad jumbled together in the most erroneous manner; I therefore dictated and caused to be published the Government Notice inclosed, marked No. 4. The colonists observe that the enormous expenditure during the war was neither judiciously nor economically incurred,—that thousands of the inhabitants from every part of the Colony, even from its capital, were called out to the field of action— or rather of inactivity, as regard us, and of exultation to the barbarians. The latter remark is scarcely a fair one, for so considerable a drought afflicted the land—a visitation which neither human foresight nor ability could obviate—that the most able commander might have been placed in a similarly inactive position.

4. In your Lordship's seat in the House of Lords, it is reported that you declared that "although you had lately received from the Government of the Cape of Good Hope the intimation that the announcement that the Government intended to send convicts to that place had excited very general dissatisfaction, your Lordship still intended to carry it out." Your Lordship is well aware of the state of the Colony when you sent me out to administer its government; you are equally aware of its present flourishing condition; and this, my Lord, I assure you, with great candour, I attribute to no exertion on my part, but to the general instructions and suggestions of your Lordship, and to the undeviating and uncompromising support and approbation which my every measure (some of them having been of a bold and decided line of policy, without precedent) has received at your Lordship's hands, for which I feel the pride and gratitude natural to all who desire to serve their sovereign and their country. I am now, my Lord, placed in that painful position which I did not anticipate, consequent upon

your Lordship's despatch of the 7th of August, 1848. I therefore hope, with some confidence, that your Lordship will, upon the receipt of this despatch and its numerous accompanying memorials and addresses, as per schedule annexed, marked No. 5, revoke a decision which renders this Colony a penal one.

5. Your Lordship has recently, with that liberal policy which binds the people of Great Britain to their native soil, conferred upon this Colony the inestimable boon of a free and representative government, the greatest blessing, in my mind, to mankind,—founded, as your Lordship states, upon the opinions I have submitted, together with my own, as to the facilities which now exist to obviate the difficulties set forth by Lord Stanley, in his despatch, No. 62, of the 15th April, 1842, when this important point was previously under discussion. It is unbecoming in me to point out to a statesman of your Lordship's ability and experience, how much the flourishing state of the Colony would be interrupted by the receipt at one and the same moment of this representative form of government, an event which, if unalloyed, would diffuse universal satisfaction, and of a body of convicts, the precursors of more, who would render it a penal settlement,—the rights and privileges of British subjects being upheld in the one case, and invaded in the other. I may here give an extract of a despatch from Lord Stanley to Lieutenant-Governor Sir John Franklin, conveying an Act for the government of New South Wales and Van Diemen's Land, dated Downing-street, 5th September, 1842, and which appears in the Blue-book, No. 400, containing "applications from various British Colonies, praying for representative governments." Lord Stanley says,—“you will perceive that the effect of this Act, so far as relates to Van Diemen's land, is to continue the Acts under which it is at present governed, although, as regards New South Wales, it provides for the constitution of a Legislative Council, partly on the principle of elective representation, and partly on that of Government nomination; a difference to which I advert for the purpose of explaining to you distinctly that the sole reason for which Her Majesty's Government have not felt justified in proposing to Parliament the extension to Van

Diemen's Land of a similar form of legislature is the incompatibility which they consider to exist between the grant of such a form of constitution and the continuance of transportation to the Colony.

6. I may now make the following observations:—The system of reform instituted upon our frontier has, as its general guide, the influence of morality and religion; any introduction, therefore, of white and sinful men would militate against its progress more than I can describe. I allude to the mass of Kafirs, Fingoes, Tambookies, &c., scattered over the extensive surface of the Colony. I have been lately able to form native locations of these tribes, each man paying an annual quit-rent for his land, and the whole being under the careful supervision of white men. This plan, so tending to remove vagrancy, has thus far been most successful (it does not, of course, extend to British Kaffraria); but much in experiments of the kind is owing to the force of example, and the native being able to regard his white neighbour with respect. It is much to be apprehended that the introduction of convicts, who would be scattered widely over the country, would seriously interrupt this progressive improvement among the natives, who, instead of being associated with men whom they could regard as their superiors, would come into contact with persons exhibiting only the worst side of human nature.

7. I must also draw your Lordship's attention to another very important fact in this Colony, that so extensive is its territory, so scattered its population, so few the number of magistrates we are able to entertain, so small the means at our disposal for the apprehension of criminals, and so difficult, in consequence, any appeal to the law, that were men of dissolute habits let loose within the Colony, months might elapse before they were apprehended in the commission of crime; vice would be disseminated; and, after all, the aggrieved persons would frequently be obliged to ride, as they now are, sixty to ninety miles, to the nearest magistrate, to seek legal redress.

8. To give your Lordship an example:—Some months ago, two convicts made their escape from New South Wales in a small trader, were landed in this Colony without

reference to the authorities, for which the captain was fined, in due course of law, 50*l.*; and, being enterprising and daring villains, have with great cunning and acuteness committed some of the most incredible and enormous excesses, some in Cape Town, some in the increasing village of Rondebosch, only five miles from it, where no one previously thought of ever fastening his window or his door. Up to this date these two villains have evaded apprehension, although they would be readily recognized by many whom they have robbed. They never took anything but money, of which they must have amassed a considerable sum. I am, therefore, induced to believe that they have escaped from the Colony. I record this anecdote to show the evils to which the scattered population of this Colony would be exposed, were numbers of men of doubtful character let loose among them.

9. It is unquestionable, as regards the moral condition of the Colony, that crime has been for some time past on the decrease. This is shown by the proceedings of every succeeding circuit judge, who has now to deal but rarely with offences of a very grave description; and an additional reason being thus afforded for not exposing to pernicious example and contamination a society which is thus clearly progressing in the scale of morality, at the very period, too, when a check to its present improving state might be irreparable.

10. I have now, my Lord, taken the liberty, candidly and without reserve, to point out to your Lordship the painful position in which I am individually placed, and the violent opposition on the part of the whole of the inhabitants of the Cape,—who regard their rights as British subjects invaded, after the previous protection they had received upon this point,—to the measure under discussion. But I cannot close this despatch without expressing the firm reliance which I place upon your Lordship's support, founded upon my minute observation of the interest and care which you invariably bestow upon the welfare of Her Majesty's Colonies, and upon none more than on the Cape of Good Hope; and I again venture, with every degree of confidence, to hope, that your Lordship's decision of rendering this Colony a Penal Settlement, so objectionable to myself and obnoxious to the inhabitants, may be revoked.

I have, &c. H. G. SMITH.

Schedule of the memorials against the introduction of convicts or exiles into the Colony of the Cape of Good Hope, addressed to Governor Sir H. Smith, and inclosed in his despatch to Earl Grey, No. 94, of the 24th May, 1849:—

1. From the Cape Town Municipality, 11th April, 1849.
2. „ Churchwardens of the Lutheran Church, Cape Town, 12th April, 1849.
3. „ Wesleyan congregation, Cape Town; no date; received 13th April, 1849.
4. „ Churchwardens of the Scotch Church, Cape Town, 10th April, 1849.
5. „ Inhabitants of Graham's Town, 16th April, 1849.
6. „ Ministers of religion in Cape Town and its vicinity, 16th April, 1849.
7. „ Churchwardens of the Dutch Reformed Church, Cape Town, 17th April, 1849.
8. „ Congregation of the South African Missionary Society's Chapel, Cape Town, 17th April, 1849.
9. „ Ministers, elders, and deacons of the Lutheran Congregation of St. Stephen's Church, Cape Town, 17th April, 1849.
10. „ Congregational Church, Cape Town, 19th April, 1849.
11. „ Directors and representatives of the London Missionary Society, 20th April, 1849.
12. „ Inhabitants of Port Elizabeth, April 21, 1849.
13. „ Ministers of the Dutch Reformed Church, Wynberg, 23rd April, 1849.
14. „ Congregation of St. Paul's Church, Rondebosch and Wynberg, 25th April, 1849.
15. „ Elders and deacons of the native independent congregations connected with the London Missionary Society, at Kat River, 25th April, 1849.
16. „ Inhabitants of Fort Beaufort; no date; received 25th April, 1849.
17. „ Inhabitants of Sidbury, 26th April, 1849.
18. „ Municipality and churchwardens of Swellendam, 26th April, 1849.



19. From the Congregation of the Orphan House Chapel, Cape Town, 26th April, 1849.
20. „ Churchwardens and others, Colesberg, 28th April, 1849.
21. „ Malay priests and members of their congregations, Cape Town; no date; received May, 1849.
22. „ Churchwardens of St. Stephen's Church, Cape Town, 1st May, 1849.
23. „ Inhabitants of Stellenbosch; no date; received 2nd May, 1849.
24. „ Congregation of Trinity Church, Cape Town; no date; received 5th May, 1849.
25. „ Municipality of Beaufort; no date; received 9th May, 1849.
26. „ Congregation of Union Chapel, Port Elizabeth, May, 1849.
27. „ Ministers and congregation of St. Frances' Church, Simon's Town, 18th May, 1849.
28. „ Minister and congregation of the Wesleyan Church. Somerset (West), 18th May, 1849.
29. „ Lord Bishop of Cape Town and the Clergy, May, 1849.
30. „ Inhabitants of Wellington and Wagon-makers' Valley, 18th May, 1849.
31. „ Ministers and congregation of St. George's Church, Cape Town: no date.
32. „ Consistory of the Dutch Reformed Church at the Paarl, May, 1849.
33. „ Inhabitants of Uitenhage, 22nd May, 1849.
34. „ Roman Catholic Bishop and clergy of the Western Province of the Colony, 28th May, 1849.
35. „ Consistory and other inhabitants of Worcester, 28th May, 1849.
36. „ Inhabitants of the division of George, 26th May, 1849.
37. „ Inhabitants of Cape Town, 19th May, 1849.

(L.\* p. 238.)

*Sir Henry Smith to Earl Grey.*Government House, Cape of Good Hope,  
19th December, 1848.

The Right Hon. the Earl Grey.

MY LORD,—I have the honor to inclose, for your Lordship's information, two numerous signed petitions from the inhabitants of Cape Town, one addressed to Her Majesty, the other to your Lordship, against the introduction of convicts into the Colony.

I also inclose a petition to the same effect, addressed to your Lordship by the Commissioners of the Municipality of Graham's Town.

Immediately upon the receipt of your Lordship's despatch, No. 172, of 7th August last, desiring me to ascertain whether the introduction of convicts with tickets of leave, after having undergone a certain amount of punishment either in England or at Bermuda or Gibraltar, would be agreeable to the people of this Colony, I laid the despatch before the Legislative Council, and caused it to be printed in the "Government Gazette" for general information. Finding that an erroneous impression had gone abroad relative to the class of offenders whom it was proposed to introduce into this Colony, I also ordered the publication of the Government Notice, of which I now inclose a copy.

The inclosed petitions are the only expressions of opinion on the subject, which have reached me; but I will not conceal from your Lordship that the opposition on the part of the population of this Colony to the introduction of the common class of criminals with tickets of leave is likely to be very strong, as was the case when a similar proposition, but to a much more limited extent, was made by Lord Stanley in 1842.

I have, &amp;c.

H. G. SMITH.

(M. p. 330.)

Downing Street, 19th March, 1849.

Lieutenant-General Sir H. Smith,

&amp;c.            &amp;c.            &amp;c.

SIR,—I have noticed, with much regret, the apprehen-

sions which have been excited at the Cape of Good Hope, by the proposal to introduce a moderate number of persons who had received the sentence of transportation. If it were contemplated to send out such persons indiscriminately, at an early period after they had been convicted of the commission of crime, or to send them out in sufficient numbers to exercise an influence on the general character of the community, a feeling of reluctance would be only natural and honorable to the society in which it arose. But I cannot help hoping, that when the true character of the measure which the Government have had in view is better understood, any just alarm of this nature will be dissipated; and I propose, therefore, to commence this despatch by stating, somewhat more fully than before, the general views of the Government in sending convicts to the colonies. I will afterwards explain under what circumstances a small number of such men has been ordered to be despatched to the Cape, and what is the condition in which they are to be placed.

2. Nothing can be further from the intention of the Government than to send out convicts indiscriminately, at an early period after receiving their sentence of transportation. Both with a view to deterring from crime, and also to the reformation of the offender, it is considered that every convict should, in the first instance, undergo a term of that separate confinement which would appear, by recent experience, to have a power which had not before been fully appreciated, for subduing the refractory, and producing feelings of contrition, and of submission to authority. Afterwards, it is proposed that ordinary offenders should go through a period of penal labor on public works, and that their removal to the colonies should only take place at that period of their punishment when strictly penal restraint may be properly exchanged for a state of comparative freedom. The inclosed printed notice will explain the system to be pursued with regard to these successive stages of punishment.

3. Experience has given reason to believe, that criminals who have undergone punishment under a judicious system, though too frequently driven back into crime by the difficulty of obtaining an honest livelihood if they remain in a country

likely to pursue a different course, if, while encouraged to look to industry for their support by a demand for their labor, they are at the same time removed from the temptation of returning to their old haunts and associates. The considerable proportion of convicts who ultimately became industrious and well-conducted in Australia, even under the former system of assignment, objectionable as it was in many respects, affords good ground for anticipating still better results under the present course of convict discipline. It will comprise the same advantage of dispersing the convicts, instead of keeping them collected in large gangs, which has been considered the recommendation of the assignment system, while it affords no room for the numerous evasions, collusions, and inequalities, which attended the condition of binding the convicts in servitude to private masters.

4. Even with all these qualifications, however, there are obvious reasons for wishing to avoid introducing convicts into any one colony in sufficient numbers to bear a large proportion to the population. It is precisely in order to avoid that evil, that Her Majesty's Government are anxious to disperse them, in comparatively small numbers, in several colonies. But after such a preparatory course of discipline as is above described, and sent out only in moderate numbers, it hardly seems too much to hope that persons of the class above described may, with advantage to all parties, be introduced into colonies suffering from deficiency of laborers, for the purpose at once of supplying that deficiency, of relieving this country of persons who could not have the same chance here of persevering in a reformed life, and of giving the convicts themselves the best chance which existing circumstances will allow of being permanently established as useful members of society.

5. There remains also a special class of convicts to whom I think you have very justly adverted in a Proclamation, which I observe that you issued, as distinct from ordinary convicts. I mean those who have been sentenced for various kinds of political offences. Serious as are many crimes of this nature, on account of the danger to society which they involve, and of the injury which they inflict on peaceful and loyal members of the community, it must at the same time

be admitted, that their commission does not necessarily, or even ordinarily, imply moral debasement of the same kind with that which renders association with common criminals an object of just apprehension to those who regard the well-being of society.

6. With these preliminary remarks, I proceed to explain the circumstances under which the Government have ordered a party of about 300 convicts to be sent to the Cape of Good Hope.

7. Since the time I addressed to you the inquiries contained in my circular despatch of the 7th August last, I received from the Governor of Bermuda a despatch, of which I inclose an extract, containing all that bears upon the present subject, strongly recommending to favorable consideration a considerable number of Irish convicts, most of whom appeared to have been convicted of agrarian offences, and whose conduct in Bermuda was represented to have been harmless and satisfactory. I was unwilling to lose so favorable an opportunity of trying the experiment whether the Cape might not with advantage receive a supply of labor of this description. The ship "Neptune," therefore, which is on her way to Bermuda, for the reception of those convicts who may have been selected by a board of officers as deserving of the indulgence of tickets-of-leave, is under engagement to proceed from thence to the Cape of Good Hope.

8. Considering the efforts and the sacrifices made by the people of Great Britain for the defence of the Colony, it seems reasonable to expect that when the nature of the measures now in contemplation is understood, the inhabitants will no longer feel unwilling to take their share in a policy which places it in their power, without injury to the Cape, to render an important service to the mother country.

9. Next is to be considered the condition in which the men so introduced are to be placed. It is proposed, as you are aware, that they should all have what are technically styled "Tickets-of-Leave."

10. The characteristics of the tickets-of-leave are, that instead of keeping the convict at labor for the Government, he is left free to work on his own account, but must reside within such district as may be prescribed to him by



the Governor, must also muster before the local magistrate at any period which may be appointed for that purpose, and finally that he remains liable, in case of misconduct, to be remanded to the condition of an ordinary convict subject to all the powers of control and coercion which attach to that situation. These are all the restrictions which should affect the ticket-of-leave man.

11. None of them perhaps is more important to the success of the plan than the one which enables the Colonial Government to allot particular districts to the convicts, so that they should be dispersed, instead of remaining in close association, and above all that they can be prevented from loitering in the chief towns, and living there by irregular means.

12. In considering any local regulations which may be requisite for defining and carrying them into effect, I have no doubt that you will find much aid from the long experience which Mr. Montagu, the Colonial Secretary, had in Van Dieman's Land. Those regulations should be as simple as possible, and should avoid any unnecessary interference with the holder of the ticket-of-leave, the object being that he should enjoy all the essential privileges of a free laborer, and all the moral training which that condition implies, subject only to the wholesome power of bringing him again under strict control in case of serious misconduct.

13. Except in cases of a very special nature, which must be reported for the consideration of the Secretary of State, the convicts are not to be recommended for a conditional pardon, unless they may have repaid to the Government the cost of their conveyance, which is to be assumed for this purpose at the sum of 15%.; and you will take care that they are made distinctly aware that this is a condition to be fulfilled, independently of any evidence required of their good conduct, before they can obtain a conditional pardon; although I need scarcely observe that any regulation of this kind is merely to be viewed as part of convict discipline, and cannot be of any force after the expiration of the sentence. These repayments, as you are aware, will be available as an addition to the emigration fund of the Colony.

I have, &c. GREY.

(N. p. 379.)

## THE NEW CONSTITUTION.

## REPORT OF GOVERNMENT COMMISSIONERS.

I. We, the undersigned, nominated by your Excellency to act as a Board of Commissioners for the purpose of resuming and completing the consideration of the several subjects which were before the Committee of the Legislative Council, appointed to inquire into and report upon the proposed Constitution for the future government of the Colony, at the time when the proceedings of the Committee were interrupted by the retirement of the four Members of the Council who recently resigned, — have investigated the matters to us referred, and have agreed to the following report:—

II. By your Excellency's letter, appointing us to act, we observe that your purpose is to transmit our report with your own remarks, and any petitions from the colonists, to the Right Honorable the Secretary of State, "in order that Her Majesty's Government may be in a position to determine upon the course which it shall be fitting to adopt in regard to the establishment of Representative Institutions at the Cape." From this it follows that the course of legislating upon the subject by Ordinance, as prescribed by Her Majesty's Letters Patent of the 23rd of May, 1850, having become, in fact, impracticable for the present, has been abandoned by your Excellency; and as this unavoidable change of plan will necessarily require the recall of those Letters Patent, and the issue either of other Letters Patent or of an Order in Council, we shall not, in this report, regard the provisions contained in the existing Letters Patent as necessarily withdrawn from our consideration.

III. The Letters Patent, of the 23rd May, 1850, established the following points:—

1st. That the Colonial Legislature should consist of a Governor, a Legislative Council, and a House of Assembly; both Chambers to be entirely elective, except as to one person, viz.,—the President of the Legislative Council.

2ndly. That the Chief Justice of the Colony for the

time being should, *ex officio*, be the President of the Legislative Council.

3rdly. That both Chambers might be dissolved together, should the Governor think fit, or the Assembly be dissolved without the Legislative Council.

IV. We believe that the expediency of a Second Chamber is not now questioned by any influential portion of the colonists, and we consider it unnecessary to dwell upon a subject on which there exists, it is believed, little or no diversity of opinion.

V. In regard to that provision of the existing Letters Patent which constitutes the Chief Justice President of the Legislative Council, the case is very different. This subject was discussed in the Committee of the Legislative Council, and the Members were unanimously of opinion that Her Majesty should be humbly solicited to rescind a provision which seemed to bring the head of the Supreme Court into a connexion with the general business of the Legislature too close to consist with the preservation of that degree of respect, from all parties, which so high a Magistrate should at all times command, and which, by combining in one person the distinct duties of making and of expounding the law, must tend to lessen the confidence of the public that they will be sure to receive from the Chief Justice, in his judicial capacity, interpretations of the law which shall be wholly free from any previous bias arising from opinions given by him in his capacity as a member of the Legislative Council. We believe that the inconveniences likely to be felt from requiring the high functionary in question to descend from the bench of justice into the arena of colonial politics, would far outweigh all the advantages which could be expected to result from such a measure. And we, therefore, venture to express our hope that Her Majesty, taking into consideration the universal repugnance which exists to risking in such a way the future character of the administration of justice in this Colony, will be pleased to rescind the provision upon which we are observing, and to leave to the Legislative Council the election of its own President.

VI. The powers conferred upon the Governor by the Letters Patent in regard to the dissolution of both Houses

together, or the House of Assembly separately, we view as being extremely salutary.

We are aware that very many of the public, taking, as we conceive, defective views of the objects, uses, and advantages of a Second Chamber, and desiring to place the whole power of the Colony in the hands of the Assembly, are prepared to insist that the Assembly shall, in no case, be dissolved unless the Legislative Council be dissolved at the same time. It is probable, indeed, that a large numerical majority of the inhabitants will be found to advocate this restriction upon the right of dissolution. We cannot, however, hesitate to say that we should regard such a restriction as shortsighted and mischievous. It appears to us that the one main end of a Second Chamber is, to moderate the action of popular excitement, and if, in every case of dissolution, the members of both Houses are to be elected at the very same time, this main end must be, almost necessarily, sacrificed. No reason can, we think, be given for establishing a qualification, as regards age or property, for the members of the Upper House different from that required for members of the Lower House, or, indeed, for establishing an Upper House at all, which will not be a reason for rejecting the principle that at the very moment when popular excitement will be, presumably, most violent, the members of both Houses shall be chosen under the same impulse. Persons who would arrange the duration of both Houses, under ordinary circumstances, so as to have the elections for both contemporaneous, might yet, most rationally, and consistently, make an exception in the peculiar case of dissolution. But how persons who think that there is a reason, under ordinary circumstances, for arranging the duration of the two Houses, so as to have the elections for both at different times, can rationally and consistently maintain that in the peculiar case of a dissolution, the elections for both Houses shall, for once, be simultaneous, we do not understand. We therefore humbly recommend, that the provision of the existing Letters Patent relative to the right of dissolution be retained in any other instrument by which the New Constitution may be finally established.

VII. We shall now proceed to submit to your Excel-

lency the several points considered and provisionally agreed upon by the Committee of the Legislative Council, previous to the interruption to its labors already mentioned:—

1. That the Parliament ought to consist of a Governor and two Houses, a Legislative Council and a House of Assembly,—was, as we have already stated, unanimously resolved.
2. It was unanimously resolved,—that the Members of the Assembly should be chosen for three years.
3. It was unanimously resolved,—that every person, not subject to any special disqualification, who should have occupied for his own use and benefit, within the limits of any electoral division, for twelve calendar months, fixed property of the value of 25*l.*, should be entitled to be registered as a voter, and to vote, in that division, for Members of Assembly.
4. It was unanimously resolved,—that the twenty existing fiscal divisions of the Colony, should be, respectively, electoral divisions, returning each two Members to the Assembly; that the Municipalities of Cape Town and Green Point, voting as one electoral division should return four Members,—and that the Municipality of Graham's Town, as another electoral division, should return two Members;—making in all, a House of Assembly of forty-six Members.
5. It was unanimously resolved,—that any person qualified to be registered as a voter, and to vote for Members of Assembly, in any electoral division, might be himself elected a Member of Assembly for any electoral division.
6. It was unanimously resolved,—that the Legislative Council should consist of fifteen Members.
7. It was unanimously resolved,—that Members of both Houses should receive from the Colonial revenue a daily allowance for expenses whilst attending their legislative duties, and also travelling expenses upon the principle of mileage.
8. It was resolved, by a majority,—that the qualifica-



tion of the electors for both Houses should be the same.

9. It was resolved, by a majority,—that no person under thirty years of age should be competent to be elected a Member of the Legislative Council.
10. It was resolved, by a majority,—that no person should be competent to be elected a Member of the Legislative Council, who should not be the owner of fixed property, within the Colony, to the value of 2,000*l.* above all registered incumbrances thereon, or the owner of fixed property to the value of 2,000*l.* who should be worth 4,000*l.* above all debts.
11. It was resolved, by a majority,—that of the Members of the Legislative Council first chosen, seven should, by lot, vacate their seats at the end of five years, and the remaining eight at the end of ten years, in such manner, that, except in cases of dissolution, there should be elections of seven Members and of eight Members alternately, every five years, so that each Member, after those first elected, should sit for ten years.
12. It was resolved, by a majority,—that for the purpose of every election of Members of the Legislative Council, the twenty-two electoral divisions before alluded to should each, by a majority of votes, choose a number of candidates equal to the whole number of Members then to be elected, and that the required number of Members should be those candidates for whom the greatest number of electoral divisions should be found to have voted.
13. It was unanimously resolved,—that no person holding any office of profit under Her Majesty within the Colony should be eligible to be elected as a Member of either of the two Chambers, and that any Member of either Chamber accepting any such office should *ipso facto* vacate his seat.

VIII. The foregoing are, we conceive, the only points of any importance which were provisionally agreed upon in the Committee of the Legislative Council, and in order to place your Excellency in a position to judge of the balance of

opinion amongst the Members of the Committee upon those points in regard to which they were not unanimous,—we attach to this report a copy of the minutes, signed by the Clerk of the Council.

IX. Fully recognizing the value of a suggestion contained in your Excellency's letter appointing us to act, we are desirous not to depart, unless upon the clearest grounds, from any of the conclusions at which the Committee of the Legislative Council had arrived. It would, however, be wrong to conceal from your Excellency that some difference of opinion exists amongst us regarding the proposed qualification, as well for the electors as for the Members of the Legislative Council. Whether these matters should remain as already fixed, or whether a higher property qualification should not be required for electors of the Council than for electors of the Assembly, and the property qualification of Members of Council, as voted in Committee, be, in that event, reduced, are important questions upon which our opinions are not in unison, and upon which the sense of the Colony at large has not yet been ascertained. Regarding it as important that the two Houses of Parliament should, respectively, be so constituted as to exhibit as many diversities as may consist with ultimate agreement and substantial sameness of origin and objects, we can discern no quality by which the Council can be distinguished from the Assembly, more marked, or more salutary, or more calculated to secure independence of action, than that of representing, in a peculiar manner, the property of the Colony, and with it those qualities, intellectual and moral, which the possession of property, generally speaking, implies. But the manner and degree in which this beneficial principle should be acted on are matters of much difficulty, and your Excellency will not, we think, be in a position to determine them conclusively until the sentiments of the public shall have been more generally declared.

X. The mode of conducting business adopted in the Committee of the Legislative Council was to read and consider the report of the Right Honorable the Committee of Council for Trade and Plantations of the 19th January, 1850, paragraph by paragraph, and upon our assembling, as

a Board of Commissioners, under your Excellency's authority, we deemed it advisable to continue the same course. Pursuing this system, we resumed the subject matter of that report at section 31, the clause at which the Committee of the Council left off when rising for the last time.

XI. We are humbly of opinion that it will be preferable, at least in the first instance, to abstain from all legislation regarding the right of any members of Government to take part in the discussions of either House of Parliament. It appears to be a grave departure from the principle of withdrawing all officers of Government from party contests, to force any of those officers in the position of discussing questions, in either House, which can scarcely fail to involve them, more or less, in party contests. So far as the principle of non-interference is concerned, we can perceive little difference between speaking and voting as Members, and speaking without voting as officers, except that officers who attend *ex officio* are perhaps more likely to become politically and personally obnoxious than officers entitled to sit and vote as Members popularly elected. Should either of the Houses require information which any officer of Government is supposed to be capable of affording, that officer will, of course, upon application to the Governor, be directed to attend and give all the information in his power. And if it should hereafter be found that the public interests suffer from the want of some officers of Government to explain and support Government measures in both Houses,—the Parliament will, when the evil shall have been practically experienced, be in a position to devise and apply the safest remedy.

XII. Connected with the subject just observed upon is another, which, though it can scarcely enter into the formal legislation necessary for establishing the new Constitution, is, nevertheless, so much akin to the principle of making the officers of Government entirely non-political, that those of us whom it most immediately concerns desire to bring it under your Excellency's notice. We allude to the constitution and functions of the Executive Council. At present, the Members of the Executive Council are all officers of Government, By the Royal Instructions they are enjoined

to advise the Governor upon all matters which he shall bring before them; and he, in turn, is enjoined to call for their advice upon all matters of importance. But if certain officers of Government are to advise his Excellency in regard to what measures he should propose to the Parliament;—in regard to what measures of the Parliament he should amend and return;—and, more than all, in regard to what measures of the Parliament he should wholly disallow;—it will, we fear, be impossible to preserve those officers from being mixed up,—or, at least, from being supposed to be mixed up,—with those party contests from which it is intended to withdraw them. It is to be feared that should they at any time feel constrained to offer advice opposed to the impulse of the hour, there will be turned against them, as a clique of secret advisers, a tide of popular indignation stronger by far than any which they could have encountered had they, in one or other of the Chambers, been privileged, as Members, amongst their fellow Members, to urge their reasons in open and fair debate. Those of us who belong to the Executive Council, whilst prepared to take upon us any responsibility which Her Majesty shall be pleased to impose, feel it to be our duty to bring this subject, through your Excellency, under the notice of Her Majesty's Government and the colonial public.

XIII. Proceeding to the important subject of a "Civil List," we observe that the Right Honorable the Committee of Trade and Plantations appear to recommend the adoption of the following principles;—

- 1st. That the fixed (as contradistinguished from the unfixed) expenditure, should, before the summoning of a Parliament, be provided for by law.
- 2nd. That the remainder of the public revenue should, be appropriated, annually or otherwise, by the Parliament, as the Parliament should think fit.
- 3rd. That it should be competent for the Parliament, by any Act duly passed, to provide as it should think expedient, for alterations in that fixed expenditure which, until so altered, would remain, as already stated, under the sanction of a law.
- 4th. That Her Majesty would be graciously pleased so



to exercise her powers, as at all times to confirm, without hesitation, all laws passed, with a *bond fide* view of reducing expãnditure, in case they were consistent with a due regard to the claims of individuals on the public faith, with, however, two exceptions, that is to say, first, laws lowering the salary of the Governor, and secondly, laws diminishing "the appropriations now made, from the Colonial revenue for the maintenance of the establishments required for the preservation of order and the spread of civilization amongst the border tribes." From laws coming within either of these two exceptions it seems to be intimated that Her Majesty's sanction might be properly withheld, although no claims of individuals were therein involved.

XIV. We have given this delicate and difficult question the fullest consideration in our power; and we have come to the conclusion that, subject to the preservation of the public faith in regard to any existing rights now vested in particular individuals, the entire revenue of the Colony should be at the disposal of the Parliament.

XV. That any portion of the public now harbours the design of subjecting all existing salaries to the pleasure of the future Assembly and Legislative Council, with a view of removing from office, or reducing the income of such public officers as may not chance to be popular with those bodies—we should be sorry to believe. It is our impression that few would, at present, be found to dispute the justice of the sentiment contained in the following extract from the report of the Right Honorable the Committee of Trade and Plantations:—"Men who have abandoned other prospects for the purpose of accepting colonial employment, which they had reason to expect would be permanent, and who have grounds of public faith, and on contracts which on their side have hitherto been strictly fulfilled, ought to retain their present salaries, so long as they conduct themselves properly, or to receive adequate compensation for their loss." Acting upon this view, we should propose that the reasonable rights of



we think they will, of affording this protection,—the provision in that behalf will meet general acceptance; and if the majority of the inhabitants, having ulterior views, should unfortunately disapprove of what would appear to be but an act of justice,—we submit that the protection recommended will, on that account, be only the more necessary.

XVI. His Excellency will not, we trust, understand us as meaning to say that all existing salaries are to be unconditionally guaranteed. We are aware that all existing public servants have not the same claim to consideration, and we have no desire to fetter, in regard to any public servant, Her Majesty's royal pleasure. We only mean to submit that the Parliament should take over all Her Majesty's existing contracts, as well those with public servants as with all other people, in the plight and condition in which they stand. We therefore recommend a clause to the effect that all persons holding office under Her Majesty at the time of the coming into operation of the new Constitution, should continue to receive their salaries during their term of office, without reduction, unless Her Majesty should otherwise determine.

XVII. In thus offering our humble opinion that no permanent civil list should be reserved by law, but merely existing individual rights preserved, so that when this temporary arrangement should gradually cease to operate, by offices successively becoming vacant, the entire Colonial revenue should be subject, without exception, to the power of the Parliament,—we would not be understood as thinking it expedient that the whole of the public establishments should be at all times provided for by annual vote. It would not, we think, be either wise or proper to leave all salaries and services, of whatever nature, to be the subject of annual agitation and, perhaps, contention. But our conviction is, that whilst in regard to certain services an appropriation more permanent than annual will be highly expedient, the power of making what more permanent appropriation cannot be withdrawn from the Parliament without a sacrifice of the great principles upon which a Parliament is granted, and without occasioning throughout the Colony deep and general discontent. If at this moment no equity existed in favor of

particular individuals, growing out of Her Majesty's previous arrangements,—we cannot see how the granting of representative institutions at all could be defended upon any grounds which would not be also grounds for leaving to the representatives, when chosen, the right of fixing the scale of remuneration to be paid for services in which, as the Report of the Committee of Trade truly observes, “the colonists alone are interested.” Should Her Majesty be pleased to provide that officers appointed by Her Majesty, previously to her gracious grant of representative institutions, shall not have their position essentially altered by the fact that she has been moved to make that gracious grant, few persons, it is hoped, will object to such a provision. But further than this, it will, we think, be unadvisable to go, until the Parliament shall be assembled, and the course of removing from the precarious class of annual grants certain kinds of expenditure, not admitting of, or not requiring, annual revision, shall have been by the Parliament considered and adopted.

XVIII. The principles by which we propose to regulate the salaries of existing civil servants will equally apply to the salaries of the existing clergy of the several denominations which receive Government aid,—and to all pensions and retiring allowances; and, it would also seem that all public servants now in office should have their claims to future pensions (estimated according to the principles applicable to such claims at the time when they respectively entered office,) recognized and secured.

XIX. We shall now advert to a few points, more or less important, which, though not arising directly out of the Report of the Board of Trade, seem to require notice.

XX. We are of opinion that the following general disqualifications should be established in regard to membership of either House of Parliament, in addition to any other disqualification already mentioned:—

1. Persons under twenty-one years of age.
2. Persons not born in this Colony, and not being natural-born subjects of the Queen.

We consider that Naturalization Acts should not qualify persons (alien born. By the statute law of England no Naturalization Act can be introduced which does not contain

a clause disabling the party from sitting in Parliament, and although in rare instances of great rank or splendid services this statutory prohibition has been through courtesy repealed, it never, we believe, occurs that any parties naturalized by Act of Parliament become members of either House.

3. Uncertificated insolvents.
4. Persons of unsound mind.
5. Persons convicted of treason, murder, rape, fraud, perjury, or falsity.
6. Persons holding office of profit under Her Majesty within the Colony, and persons in the military or naval service of the Crown, and in active employment.
7. Contractors with the Government.

XXI. We are of opinion that the same general disqualifications which we have just enumerated in regard to membership should also destroy the right of voting, with the two exceptions, that aliens naturalized by either the Imperial or Colonial Parliament and contractors with the Government, should be competent to be registered as electors and to vote, in conformity with the law of England on these heads.

XXII. We are of opinion that provision should be made, in whatever instrument shall be issued for establishing the new Constitution, for registering the electors of the Colony, in their several field-cornets or municipal wards, so as to frame an accurate divisional list for each electoral division; since by no other means could even the first election be conducted, without great confusion and unavoidable irregularity.

XXIII. We are of opinion that provision should be made requiring that all Bills, directly or by construction, imposing any burthen or charge upon the inhabitants of the Colony, or any of them, should originate in the Assembly, but be capable of being returned by the Legislative Council, or the Governor, with amendments. And we are also of opinion that it should not be lawful for either the Assembly or the Council to pass, or for the Governor to assent to, any Bill, appropriating any part of the Colonial revenue, unless the Governor, on Her Majesty's behalf, shall first have recommended to the Assembly to make provision for the specific

purpose contemplated by such appropriation. This, we may observe, is in keeping with an old and inflexible rule of the British House of Commons, from the practice of which it has been introduced into most Colonial legislatures, and its wisdom is too apparent to require any comment. Should either House desire an expenditure for any purpose which the Governor, of his own motion, does not bring forward for consideration, an address to his Excellency, requesting him to recommend to the Assembly to make provision for the object in view, will scarcely fail of success, unless there be something in the state of the revenue, or the nature of the service proposed to be provided for, which renders a compliance with the address impracticable.

XXIV. Should your Excellency, after considering the several matters contained in this Report, deem it advisable that they should be put into the form of a draft law, so as to be connected with the various details which they necessarily require, it will be competent for your Excellency to direct the Attorney-General to prepare for publication in the Colony, and, after due publication, transmission to England, such a draft instrument as shall seem to him best calculated to meet the end in view.

XXV. We have, in conclusion, to lay before your Excellency a document drawn up by the two last undersigned, for the purpose of being attached to this Report, and treating of the form of Government alleged to be necessary for, and to be demanded by, the inhabitants of the eastern districts of this Colony. Not considering that the subject of this document falls within the scope of our commission, we abstain from making any observations thereupon.

(Signed) JOHN MONTAGU, Sec. to Government.

HARRY RIVERS, Treasurer-General

WM. HOPE, Auditor-General.

WM. PORTER, Attorney-General.

W. FIELD, Collector of H.M.'s Customs.

W. COCK, Member of Legislative Council.

R. GODLONTON, Member of Legislative Council.

---

*Draft of the Retiring Members of Council.*

Article 1. The Legislative Powers of this Settlement

shall be vested in a Governor and a Legislative Council, and a House of Assembly, both of which shall be composed of members elected by the inhabitants, and shall be called "The Parliament of the Cape of Good Hope."

Article 2. The Council shall consist of fifteen members, chosen for four years, of which no less than six shall form a quorum. The Assembly shall consist of forty-six members, chosen for three years, of which fifteen members shall form a quorum.

Article 3. The present fiscal divisions of this settlement shall be electoral divisions, and shall choose for the first Assembly the number of members herein placed against their names, respectively, until further provisions be made by the Parliament, as follows:—

Cape Town and Green Point . . . . .	4
Cape Division . . . . .	2
Malmesbury . . . . .	2
Stellenbosch . . . . .	2
Paarl . . . . .	2
Worcester . . . . .	2
Clanwilliam . . . . .	2
Swellendam . . . . .	2
Caledon . . . . .	2
George . . . . .	2
Beaufort . . . . .	2
Uitenhage . . . . .	2
Port Elizabeth . . . . .	2
Graham's Town . . . . .	2
Albany . . . . .	2
Fort Beaufort . . . . .	2
Somerset (East) . . . . .	2
Craddock . . . . .	2
Graaff-Reinet . . . . .	2
Colesberg . . . . .	2
Albert . . . . .	2
Victoria . . . . .	2

Article 4. The election of the members of the Council shall be intrusted to the constituency of the entire settlement, who shall record their votes in the several electoral divisions



in which they possess, at the time of election, the right of voting for the election of members of the Assembly.

Article 5. Every male inhabitant, of the full age of twenty-one years, who shall have occupied fixed property for his own use and benefit of the value of 25*l.* for twelve calendar months next preceding the registration and time of voting, within the limits of an electoral division, shall be entitled to vote for members of Assembly to represent that division and for members of Council.

Article 6. Every male inhabitant entitled to vote for members of Assembly, shall be eligible for election to a seat in the House of Assembly; and every male inhabitant of the age of thirty years, who shall have resided in the Colony during three years preceding the registration and time of voting, and who shall be the proprietor of landed property, situate within the Colony, of the value of not less than 1000*l.*, shall be eligible for election to a seat in the Legislative Council.

Article 7. No person shall be entitled to vote at any election of members of either House of Parliament, or to be elected a member thereof, who shall not be either a natural-born subject of the Queen, or shall have been naturalized by law passed by the Imperial Parliament, or shall not have obtained a deed of burghership, or shall not be naturalized by Act of the Parliament of the Cape of Good Hope, or who shall be undergoing punishment and restraint under a judicial sentence for any crime, or who shall hold any contract under the Government, or who shall be in active employment in the civil service of Her Majesty's Government; and any member accepting an office in the service of the Government as above, or entering into any such contract, shall thereby vacate his seat in either House.

Article 8. The Secretary to Government, the Attorney-General, and the Treasurer-General, shall have the privilege of taking part in the discussion of both branches of the Legislature, so far as may be necessary for the explanation of any measures proposed by the Government, but without being entitled to vote.

Article 9. The House of Assembly shall choose its own Speaker and appoint its own officers, and the Legislative

Council shall also choose its own Speaker and appoint its own officers.

Article 10. The members of both Houses shall receive a pecuniary allowance, to be fixed by law, for expenses incurred by attendance.

Article 11. The Governor shall call together a Parliament once at least in every year, so that a period of twelve calendar months shall not intervene between the last sitting of the Parliament in one session, and the first sitting of the next session.

Article 12. The Governor may introduce Bills in either House of Parliament, or return Bills submitted to him with amendments, for reconsideration, with the exception of money bills, which shall be introduced first in the Assembly. Any other Bill may originate in either House of Parliament.

Article 13. The election of members for the Legislative Council shall take place by the person entitled to vote delivering in person to the officer presiding at such election a list, signed by him, and containing not more than the names of fifteen persons, and for the Assembly, by each voter giving, *viva voce* and in public, to the officer presiding at such election, the names of the person or persons for whom he votes.

Article 14. The Governor shall have the power to dissolve the Parliament at any time, but he shall not have the power to dissolve one House or Chamber without at the same time dissolving the other.

Article 15. The Queen and the two Chambers of Parliament shall be supreme within the Colony, as the Queen and the two Houses of Parliament are supreme in Great Britain, the Queen acting immediately in her own person, or in the person of her representative, the Governor.

Article 16. The Legislative Council and House of Assembly shall, respectively, have the power to frame and determine their own rules of order, and all voting therein shall be *viva voce*, and all subjects and questions be decided by a majority of votes, the respective speakers, or presiding members, having a casting vote, in case on any point the votes shall be equal.

(O. p. 424.)

*Letter from Dr. Bright to the Bishop of Cape Town.*

Dr. Bright presents his compliments to the Bishop of Cape Town, and begs to state, that he saw Mr. Montagu very shortly after his return from the Cape, and that he was then laboring under symptoms which depended entirely on the labors and anxieties of his official duties; and as far as he can judge, the long train of distressing symptoms which has continued with little intermission till the hour of his death, arose from the same cause, and was but a part of the same disease.

11, Saville Row, November 7, 1853.

*Letter from Dr. Bickersteth to the same.*

London, 31, Gower Street,  
November 7, 1853.

MY DEAR LORD BISHOP,—I have very little hesitation in stating it to be my opinion that poor Mr. Montagu's illness originated in mental causes connected with the responsible public position he occupied as Secretary to Government at the Cape of Good Hope during very troublous and momentous periods in the history of the Colony.

Mr. Montagu's constitution was naturally good, and had never been tried so far as I am cognizant by any want of care or indiscretion on his own part, but gave way, I sincerely believe, under the pressure of anxieties and perplexities connected with the discharge of his public duties.

Believe me, &c.

(Signed) HENRY BICKERSTETH.

*Letter from Dr. Squibb.*

11, Montagu Place, Bryanstone Square,  
October, 1854.

DEAR SIR,—I have not been unmindful of your request to furnish you with some of the details of the last illness of our excellent and lamented friend, Mr. Montagu.

He came first under my care upon June 18, 1852. I then found that he had been sent home from the Cape by his medical advisers, with a written statement that proved how much he had suffered from over fatigue of mind and

body, and that indeed they had feared some paralysis of brain had he continued at his post. Mr. Montagu was in a most shattered condition of nerve; the slightest word or thought would act upon the nerves of emotion, and produce tears; it was painful indeed to witness so powerful a mind thus prostrated. Fortunately, however, there was no absolute organic affection of the brain; and by great care and attention, aided by mental and bodily repose, I had the satisfaction of finding him recover; and by the termination of the year he had regained, I may venture to say, his health and spirits to a considerable degree.

Unhappily, however, in the early part of 1853, Mr. Montagu had an attack of the influenza catarrh, then very prevalent in London, which was, if I recollect clearly, added to by the circumstance of his removal from his residence in Chester-street to Brompton, in very inclement weather. From this attack, by appropriate remedies and treatment, he was fast rallying, when unfortunately, upon the 1st of April, he had gone to see some old friends, and was induced to walk home up Piccadilly rather lightly clad; the day had become overcast and cold upon his return home, and he was seized with a severe pain at the lower part of his chest; this so much increased towards night, that he sent for me, who had left him in the morning doing well. I found him laboring under most severe pain at the lower part of the chest; and he then mentioned the fact to which I have just adverted, that he was sensible at the moment of having received a chill upon that particular spot; the immediate severity of the pain and fever was relieved, but he never entirely lost the sensation of weight and discomfort. And therefore, upon the 18th of April, Dr. Bright was joined with me in a consultation. From that period we had a most singular train of symptoms succeeding each other; the chest having been in a considerable degree relieved, there supervened a swelling of the leg and thigh upon the right side. This continued for some time, despite the remedies employed, proving that all the larger vessels of that side were congested, and were in the condition termed medically "phlebites;" this extended up the limbs as far as the iliac artery. When this condition of the lower extremity became relieved, another

train of symptoms commenced, indicating that the lungs and organs of the chest were suffering. Dyspnoea or difficulty of breathing, with general oppression and distress, now somewhat lessened, again increasing, occasioned Mr. Montagu at this period days and nights of restlessness and suffering.

About this time, also, symptoms of general dropsy commenced. Aided, however, by a constitution naturally good, and by the most anxious and unwearyed care and nursing by those around him, he appeared to have rallied; the symptoms lessened, and Mr. Montagu having become now most desirous of change of air and scene, upon August the 17th he went to Brighton. He bore his journey well, and appeared, from what I heard, to have for a season benefited. After a time these favorable circumstances changed, symptoms of his former ailments returned, and upon the 16th of October I was again summoned to see him with Dr. Bright. We found him materially worse; the general dropsy was now accompanied with increasing indications of water on the chest, or effusion into the lungs; his strength failing him daily, and his sufferings extreme. Up to this period, and during the whole of this sad and afflicted illness, the brain had never been affected; but shortly previous to the termination of this melancholy suffering, Mr. Montagu was seized one morning early with a violent convulsion, with pressure upon the brain. Immediate aid was obtained; and as it was evident that congestion of the brain existed to a considerable extent, I had him cupped at once, and he recovered entirely his recollection and power of mind, which never left him till the last moment. After this attack, Mr. Montagu continued to sink rapidly under the more immediate increase of the effusion of water into the chest, and upon the 3rd of November he sank exhausted. The *post mortem* examination proved how much he must have suffered, and, I may say, the correctness of the diagnosis during life.

On the *post mortem* examination, there was found considerable emaciation; no disease or enlargement of the liver; the kidneys, although somewhat congested, still with no marked disease; the heart somewhat enlarged, with fluid in the pericardium; but there was a considerable quantity of discolored serum in both pleural cavities, with the remains



of the old or former inflammation of the posterior lobe of the lung.

Having thus far detailed the medical history of Mr. Montagu's illness, I cannot permit myself to close this letter without bearing my testimony to the unwearied and most affectionate care and attention which our late excellent and much lamented friend received from the devotedly attached wife, and all around him, and which, as far as we may be permitted to say, in all probability prolonged his life. Nor must I omit to speak of the Christian fortitude, resignation, and patience, evinced by Mr. Montagu throughout the whole of this protracted and painful illness, from the many opportunities that I unfortunately had of witnessing him in great suffering and much prostration of strength; and although, fully aware of the immense importance of his life to his family, I can truly aver that I never heard a murmur of impatience, but, on the contrary, a perfect resignation to the Divine will.

I remain, dear Sir,

Yours faithfully,

GEO. JAS. SQUIBB.

---

(P. p. 438.)

Knowsley, November 14, 1853.

MR. LORD—I have had the honor of receiving your Lordship's letter of the 10th instant, announcing to me the melancholy intelligence of the death of Mr. John Montagu. I had already seen the announcement of the event in the daily papers; and I saw it without surprise, though with deep regret, as the last time I saw Mr. Montagu, last year in Downing-street; I feared that his health was irrecoverably broken, and that his life would not be much prolonged. It would afford me sincere satisfaction if any testimony of mine could obtain for his widow and family any substantial relief from the pecuniary difficulties in which his death has left them; for I can conscientiously say, that I know of no public servant who has more faithfully, or more ably discharged his duties to the Crown, and having been Colonial Secretary at the time when it was necessary to remove him from Van Diemen's Land, I had great satisfaction in being

able to appoint him to a similar situation at the Cape, and watched his course with great interest. I can bear witness, of my own knowledge, to the important services which he rendered to that Colony, especially in bringing to bear the experience of convict management which he had gained in Van Diemen's Land, and opening, through the instrumentality of convict labor, most important lines of internal communication. I believe his services, while acting as *de facto* Governor at Cape Town, to have been highly valuable, but of them I can speak with less certainty. I always looked upon him as a most able, faithful, and zealous public servant, and deeply regret the state of pecuniary embarrassment in which he has left his family. I regret it the more, because I much fear, that however well disposed the Duke of Newcastle may be, there is no fund, British or Colonial, at his disposal, out of which he has the means of bestowing any pension upon his widow and children. The absence of such a fund, and the absolute repugnance of the Colonial Legislatures to grant any sums for such purposes, is much to be lamented, and within my own knowledge has been productive of many cases of grievous hardship. If I should be mistaken, and there should be such a fund available in any quarter, I shall always be most happy to bear my testimony, if it can be of any service to the family, to the signal merits of Mr. Montagu.

I have the honor to be,

My Lord Bishop,

Your obedient servant,

(Signed) DERBY.

The Lord Bishop of Cape Town.

---

Westwood Park, Droitswich,  
November 12th, 1853.

MY DEAR LORD BISHOP,—I have to thank your Lordship for your kind letter of the 10th instant, intimating to me the melancholy intelligence of the death of Mr. Montagu. I was aware of his hopeless state, and am glad to learn from you that his end was peace.

My short personal acquaintance with him gave me a high opinion both of his ability and his integrity; and I

believe him to have been one of the most honorable, as well as one of the most able of colonial servants of the Crown.

I am truly sorry to hear of the circumstances in which his widow and family are left, and I hope that the appeal which you have so kindly made to the Government will be successful.

I beg to remain,

My dear Lord Bishop,

Very faithfully yours,

(Signed) JOHN S. PAKINGTON.

The Lord Bishop of Cape Town.

(Q. p. 443.)

*To his Grace the Duke of Newcastle, Her Majesty's Secretary of State for the Colonies, &c.*

The Memorial of the Merchants and others connected with the Cape of Good Hope.

Humbly Sheweth,

That Memorialists deeply lament the death of Mr. John Montagu, late Secretary to the Government of the Cape of Good Hope, by which melancholy event the public is deprived of services of a highly exalted character in military, as well as civil capacities, which are therefore respectfully recommended to the special consideration of Her Majesty's Government.

That Mr. Montagu's administrative career was conspicuous for vigor, singleness of purpose, unbending integrity, and a fixed regard for the public interest, and that unceasing devotion to his duties which has cost him his life.

That all obstacles to internal improvement yielded to his untiring zeal; roads were constructed, sand drifts arrested, rivers bridged, and the most productive cereal districts opened to the markets and seaports of the Colony.

That many stupendous works conceived and executed under Mr. Montagu's administration must for ever stand as imperishable monuments to the memory of the man who raised the Cape Colony from financial difficulties to healthful prosperity, by liquidating a long standing and doubtful debt of considerable amount to the Imperial Treasury; and who, in a moment of great peril, by promptitude of action

rescued the Colony and Her Majesty's troops from impending danger.

That in opposition to the earnest remonstrances of medical men and friends, he continued to struggle against sickness, rather than relinquish his post in times of war and tumult, when his absence would have embarrassed the Government and the Colony.

It is with unfeigned sorrow that Memorialists find the anticipations of the late Mr. Montagu's medical advisers so soon verified. Warnings were unheeded — sickness was endured—but the hand of death he could not resist, and has fallen a victim, to the service of his Queen and country, leaving a widow and three children wholly unprovided for.

That Memorialists therefore most earnestly appeal to the Crown for the protection of the bereaved widow and children, and venture respectfully to remind Her Majesty's Government, that if the late Mr. Montagu had adopted the advice so urgently impressed upon him, and applied for leave of absence two years ago, he might, in all human probability, have preserved his health, and been spared to claim and enjoy for many years the pension of 1,000*l.* or 1,200*l.* to which his length of service would entitle him.

Memorialists humbly pray that such provision may be made, either by royal bounty, or grant from Parliament, as shall conjointly with any pension that may be authorized by the Colonial Legislature of the Cape, place the family in such a position as is befitting the station of the widow and children of so distinguished a man, and faithful a servant of his Sovereign and his country, and so prominent an example of real worth as the late Mr. Montagu.

And your Memorialists, as in duty bound, will ever pray.  
London, 12th December, 1853.

[Signed by twenty-nine London Merchants].

(B. p. 443.)

OPINIONS OF THE CAPE PRESS,  
ON THE LATE HON. JOHN MONTAGU, ESQ., SECRETARY TO  
GOVERNMENT.

(From the "Graham's Town Journal.")

The mail, which came in yesterday, brought the mournful

intelligence of the death of the Hon. John Montagu, Esq., Secretary to the Government of this Colony. This sad and unexpected event, at the very moment of his expected return, is a calamity to the whole Colony, and especially at this important juncture of its affairs, when men of mature intellect, of high principle, of large experience, and of active habits are so much needed. No man, we think, can have known John Montagu, without speedily arriving at the conclusion that he was no ordinary man, even when classed with men of liberal endowments and of experience in official life. That he had his opponents—his political adversaries—only goes to show that he was honest in his opinions, and decided in his course of procedure. A trimmer may glide down the stream of public life without much difficulty. But not so John Montagu,—he had his opinions, and he maintained them, and that manfully. This made him unpopular when the current of public opinion ran counter to what he conceived to be inflexible principle, from which he was not to be turned aside by any considerations of expediency. It is only to admit the correctness of the truism, that “to err is human,” when we say that we do not affirm that John Montagu was perfect as a public man; but while we refrain from going so far, we do not hesitate to declare our conviction; that “take him for all in all,” he was the ablest administrative officer this Colony ever had. It will not be forgotten that Mr. Montagu found this Colony a chaos; that he carried reform into every department—that he recruited its finances—relieved it of debt—systematized every branch of the civil service—carried out gigantic public improvements—and raised it to the eminence of a model Colony. Unfortunately for its welfare, the Home Government inconsiderately marred all that he had done, set lit up a flame of dissension from the effects of which we are yet suffering, and to which in part may be attributed the loss we now lament. We need not say we refer to the Anti-Convict struggle. Mr. Montagu’s part in that stormy contest is matter of history, as well as the course he pursued in the subsequent one respecting the Constitution. Suffice it to say, that to the continual wear upon the mind, the incessant demand upon all his mental powers, is to be attributed



that physical disorganization which speedily resulted in DEATH. The tension was too great, and the silver cord of life snapped in the experiment. We believe every word of eulogy that we have advanced could be supported by reference to the published opinions of his political adversaries. All have borne testimony to his ability, activity, and integrity,—and all, we believe, will feel that the Colony has lost in him a master mind, and the Government one of its ablest officers. In private life John to be known to be esteemed. Attentive to all the conventional forms of society, he was affable and unassuming to all about him. With vast powers of intellect, and a highly cultivated understanding, he never assumed superiority over those with whom he was on terms of friendly intercourse. He had the happy art of acquiring their high esteem and their perfect confidence. He died, it may almost be said, in harness. The Anti-Convict struggle, the Constitution discussions, and the Kafir war happened almost simultaneously. The latter took the Governor beyond the Colony, and the chief administrative duties then devolved upon Mr. Montagu, with this great disadvantage, that his opinions were liable to be overruled, and his measures to be set aside by the Governor, thus adding immensely to the difficulties of his position, and increasing in the same ratio that harassment of mind under which he ultimately sunk. We have at present no particulars of the event we now deplore: all we know is, that he was preparing to return, but that Providence willed it otherwise. He died suddenly on the 4th of November, a day which will be remembered with sorrow by all acquainted with the deceased, and who, making allowance for human frailty, can estimate the value of an honest and upright man devoting all the energies of his mind and body to the service of his country.

The following extract from a private letter from London will be read with deep interest:—

“ You will mourn with me over the loss of our dear Mr. Montagu. I buried him on Tuesday. It has been a great satisfaction to me to be able to minister to him in his last days. He died as a Christian should die,—humble, and believing in the mercies of God through Jesus Christ. It

was a beautiful and affecting sight to see that noble man, with his head bowed down, and his limbs stretched out, gasping for breath from day to day, yet patient, meek, and submissive to an extraordinary degree, with his mind as clear and unmoved as in the days of his strength. During his illness he was most gentle, thoughtful, and considerate for others."

Previous to the intelligence of the death of Mr. Montagu reaching Graham's Town, an address anticipatory of his return, congratulating him on his resumption of office had been prepared and was in course of signature when the news came in of his unexpected demise. This document will now be forwarded to his bereaved family—as a memento of the estimation in which the deceased was held by the people of this neighbourhood.

(From the "Port Elizabeth Telegraph.")

The news of the death of the Hon. John Montagu, Secretary to the Government of the Cape of Good Hope, has been received with a feeling of universal sadness in Port Elizabeth. Not one but expresses deep regret that a public servant, so eminently fitted to shine in the service of the Colony, should have been cut off in the prime and vigor of life, at the very moment when his presence seemed most required at the helm of State. While it cannot be denied that the lamented Secretary to Government, had, like all public men, his enemies and detractors, it may be safely affirmed that few men have borne themselves more nobly, through good report and ill report, in the struggle to accomplish, what he considered, most beneficial to that Government, of which he was the honored servant. The death of Mr. Montagu, the ablest Secretary to Government the Colony ever had, is indeed, and in truth, an irreparable loss, and we mourn it with feelings of sorrow, heightened by the recollection of his private worth, and of his unostentatious desire to fulfil his duty, unshaken by the frowns of his opponents, and not too tenacious of the smiles of his friends. The late Hon. John Montagu, was, in the noblest sense of the word, an Englishman—honest, clear-headed, and courageous, he never feared the truth, nor hesitated to declare it. If one fact speaks more than another in favor of the departed, it is that he was



respected by the whole body of officials over which he presided; the Civil Service of this Colony, who will as one man deplore his loss, having by their close official connection with him, had the best opportunity afforded them of becoming acquainted with his private worth, and his singular aptitude for public business. By some it has been objected, that the system which he established was too absolute and despotic; but when it is recollected out of what an abyss of confusion Mr. Montagu rescued the administration of the civil affairs of this Colony, we may well afford to be grateful for anything approximating to order and discipline, more especially when, from these, resulted a degree of promptitude and regularity in the public service, never known before his time. It is seldom that so much grasp of mind, sound judgment, and ready talent and energy for carrying out projected designs, are found combined in one person, as were seen exhibited in Mr. Montagu, and it is now that this lamented official has departed this life that the Colony will discover to its cost, how rare was the combination to which we allude. His unwearied attention to the public business, it is to be feared, shortened the span of his existence, and brought him more rapidly to that bourne whence no traveller hath returned. The sincerest sympathy of the Colony waits upon the family of the departed, claiming to share with them, a part, at least, of this sudden and general bereavement. There is still the proud reflection remaining to the friends of the deceased, that while the thread of human existence has been suddenly snapped asunder, the entire public system, of which the late Secretary to Government was the projector and architect, survives as an enduring memorial of his unwearied exertions in the service of the Colony. A better public servant, and one more faithful to his charge, this Colony has never had occasion to mourn the loss of.

(From the "Port Elizabeth Mercury.")

We have this week to perform the melancholy task of recording the mournful intelligence brought by the English mail of the death of the Hon. John Montagu, Secretary to the Government of this Colony. He expired suddenly on the 4th of November, just as he was preparing to embark to resume his labors in this Colony, in the 57th year of his



age. During the many years he labored as the servant of the Colony, he brought to bear upon the discharge of his duties an energy of will and a determination of purpose, united with talents of no common order, before which difficulties, which would have frightened other men, vanished into ordinary work. These gifts naturally attached to him a large circle of friends, whilst they made him a formidable opponent to those who could not see eye to eye with him in the political struggle, through which this Colony lately passed. We cannot close these remarks without expressing our deep sympathy with the family in the irreparable loss they have sustained by this sudden bereavement.

(From the "Eastern Province News.")

Of the intelligence brought by the "Indiana" mail-steamer, the incident of all-absorbing and most mournful intelligence to the Cape Colony at present is, that of the death of Mr. John Montagu, late Secretary to Government. This event happened in London on the 4th ultimo, and will fill the land with mourning for the loss of one of the ablest executive officers, who ever held power in the Cape Colony. Mr. Montagu, it must be admitted, had many bitter political opponents among us, but even these were always prepared to admit great merits in him as a public officer, and the differences which existed between them and him on certain questions of political interest, will serve now, instead of enabling them to receive with callousness and indifference the news of his death, to give poignancy to their grief at the mournful event. With the bereaved family the keenest sympathy for their irreparable loss will be felt.

(From the "Frontier Times.")

The unlooked for announcement of the death of Mr. Montagu, will be received with grief and sympathy throughout the Colony. All will mourn his decease, and perhaps none more than his late political opponents.

(From the "South African Commercial Advertiser, and Cape Town Mail.")

The interest of all other news, received yesterday from east and west, was absorbed in the painful feelings produced by the death of Mr. Montagu, who expired in London on



the 4th of November last, in the 57th year of his age. This gentleman's abilities, devotion to the business of his office, and the great services which he rendered to this Colony, in promoting public works of the highest utility, are well known, and sincerely acknowledged by all. Differences of opinion, and political opposition on some affairs of importance, for the last two or three years, caused some estrangement between him and others, equally ardent in the maintenance of their own views of public good. But the scene is closed, and every sentiment vanishes but those of respect for the talents and virtues he possessed, and of profound sympathy with his most estimable family for their irretrievable loss.

(From the "South African Church Magazine," Jan. 1854.)

We cannot pass over without notice the loss the Colony has sustained in the death of the Hon. J. Montagu, Secretary to Government. A sense of duty kept Mr. Montagu in the Colony at a time when his medical advisers recommended rest, and his visit to England proved too late to be of any benefit to his failing health. In his last illness he was constantly attended by the Bishop of Cape Town; and we have the satisfaction of knowing that his mind was prepared for death, by a humble trust that his sins were forgiven, for Christ's sake.

Had he been guided through life by a less stern sense of duty, Mr. Montagu might have obtained a larger share of popular favor, but he could not have gained so completely the respect and admiration of those who knew him best,—or left behind him such abiding memorials of his labors in the improvement of all things committed to his charge. We trust that a grateful remembrance of his name will be long cherished in this Colony.

(From the "Graaff Reinet Herald.")

In our last number we announced the decease of the Hon. John Montagu, at the age of 57 years, on the 4th of November last. Mr. Montagu, overwhelmed by the pressure of public duties, which he discharged with an assiduity and ability never before known in a Secretary to the Government of this Colony, had gone to England, in the hope of reno-



vating his shattered frame by the change of climate and of scene; but it was too late, and he there breathed his last. He had fulfilled the duties of his office, under three Governors—Sir G. Napier, Sir P. Maitland, and Sir H. Smith; and had he returned, would have resumed them under his Excellency. He had the experience of nine years of official life in this Colony, and this during some of its most momentous periods. He found the affairs of the Colony in a chaotic state; but his ability, activity, and perseverance overcame by Herculean efforts the difficulties of his position, and the financial and other departments of the Government were brought by his skill into a state of order. The labor of the convicts, which he found frittered away in attendance on the caprice of under officials, was made by him available for the public benefit by a well-ordered system of employment on the public roads. Under his direction gigantic public works were planned and executed, the Colony relieved of an accumulated debt, and the finger of reform touched and benefited every part of the Civil Department. To lose such a man at so early an age, must be felt as a public calamity, and can be met with calmness only in the hope that another may be raised up to perform the duties he has been called from, and who will be as competent as he was to meet the present exigencies of the Colony.

(From the "Cape Monitor," December 31.)

Amongst the events of 1853 in which the Cape is more immediately concerned, the cessation of hostilities with the Kafirs, the introduction of the new Constitution, and the death of Mr. Montagu, are by far the most important. As regards the first, we hope the peace which has been proclaimed may be lasting. During the progress of the Constitution we expressed honestly, fearlessly, and independently, our own sentiments and views, as well as those of a very large proportion of the public, regarding the effects which we conceived its introduction was likely to produce upon this Country. The progress of events up to this time has developed nothing to shake the opinions which we so freely expressed, while the provisions of that important measure remained open to amendment or improvement. The Constitution, however, such as it is, has become law, and there-



fore as good citizens and loyal subjects we are bound to carry it out and make the best of it. We have already noticed the death of Mr. Montagu, but something more is due to his memory than the passing tribute to which we were limited in our last number, and something more than we can yet accomplish in the present. And here we cannot refrain from remarking, in reference to the Constitution to which we have just alluded, that whatever might have been Mr. Montagu's views regarding that measure, or however much he might have been conscientiously opposed to it, so long as opposition could have been of any service in improving it, yet after its final settlement and adoption by the home Government, no man would have carried it into effect with more honesty, skill, prudence, and ability than himself. Nor would it have been possible to find any statesman more capable of guiding the helm, or in whom the public would have placed more confidence, amidst the dangers and difficulties which must be expected under the new form of government—none with so much fertility of resource in adapting our financial affairs to the new burdens which must be laid upon them.

In Van Diemen's Land, where his services are well known, Mr. Montagu rose from being Private Secretary to the Governor to Secretary to Government, and was universally respected in that Colony. But in consequence of his suspension from office,—he appealed to the home Government—the suspension was at once disallowed,—and had he then consulted only the interests of himself and his family he might have returned to that country. But in order to meet the views of the home Government, he consented to come out here to take office. This he did at the particular request of the then Secretary of State for the Colonies, Lord Stanley—now Earl Derby.

Mr. Montagu arrived here in 1843, and his career in this country is well known. With the most perfect singleness of purpose—with an honest and ardent desire for the public welfare, and with abilities of the first order, he devoted himself with an energy which never flagged, and a public spirit and determination which nothing could damp or subdue, to the highest interests of the Colony. His success was not



unworthy of his efforts. Within the short period of eight or nine years he accomplished infinitely more than all that had been previously attempted, since the establishment of the Colony.

He reduced our financial affairs to a state of perfect order and simplicity. Without imposing any burdensome taxes, he paid off all the Government debts amounting to not less than 200,000*l.* He reduced unnecessary expenditure, and abolished useless offices to the extent of 10,000*l.* a-year, and he increased the revenue by 10,000*l.* a-year, without additional taxation. He established institutions for the purpose of making and improving roads, constructing bridges, opening mountain passes, and executing other public works, calculated to open up the resources of the Colony and to improve its physical and moral condition. This measure alone would have entitled Mr. Montagu to the lasting gratitude of the colonists. He established an excellent system of immigration, which was, and might have continued to be, of the greatest utility to the Colony. The convict system introduced by him commands the admiration of all who have observed its working and practical effects.

The great benefit of his admirable postal arrangements, are now enjoyed by the whole mercantile community as well as by every man in business. He projected a break-water in Table Bay, a work which might now have been in operation, and he suggested and initiated many other harbour improvements. He discovered a method of arresting the drifting sand, and thereby freeing the hard road across the Cape Flats, from an obstruction which previously rendered it all but impassable at certain seasons. The method which he introduced has been found perfectly successful. He improved the judicial system of the Colony, and extended the number of resident Magistrates in the country districts. He enlarged the liberty of the press, and left it as free as it is in any country in Europe, and he was the author of many other improvements which it would be impossible to enumerate at present. In addition to all this, it must be borne in mind that during Mr. Montagu's residence here, he really performed the duties of Governor. In particular for four years—during the disturbances on the Eastern frontier in

1845, the K. fir war of 1846 and 1847, and again of 1851 and 1852—al the civil business was left to him by the several Governors under whom he acted.

It is impossible, within the compass of an article like this, to give anything like an adequate idea of the prodigious amount of business which he transacted, and of the immensity of labor which he performed in the prosecution of those public works and improvements, as well as in the transaction of the ordinary business of the Colony. To his over exertion in the cause of this country, we must trace the seeds of that disease, or complication of diseases, which cut him off in the midst of a career of usefulness, and long before that measure of life was exhausted, which might have been expected from a constitution like his under proper care. *He has, there can be no doubt, fallen a victim to his devotion to the welfare of the Colony.* The character of Mr. Montagu is so admirable, and so accurately described in the following words spoken by an eminent statesman of Sir Robert Peel, that we cannot do better than transcribe them here, simply requesting our readers, as they proceed, to substitute the name of Mr. Montagu for that of Sir Robert Peel:—

“It is easy to speak of his ability, of his sagacity, of his indefatigable industry; but great as were the intellectual powers of Sir R. Peel, if you will allow me, as one who may call myself his pupil and his follower in politics, to bear my witness, this I must say, that there was something greater still in Sir Robert Peel,—something yet more admirable than the immense intellectual endowments with which it had pleased the Almighty to gift him—and that was his sense of public virtue—it was his purity of conscience—it was his determination to follow the public good—it was that disposition in him which when he had to choose between personal ease and enjoyment, or again, on the other hand, between political power and distinction, and what he knew to be the welfare of the nation, his choice was made at once; and when his choice was once made, no man ever saw him hesitate—no man ever saw him hold back from that which was necessary to give it effect. \* \* \* In discharging those functions which appertain to us as citizens, let us discharge them in the spirit of that great man,—the spirit and the

determination to allow no difficulty, no obstacle, to stand between him and the performance of his duty,—relying upon it that duty in this country is the road to fame—that if public men do not reap their reward, as in barbarous times they may have sought it, from immense and extensive possessions measured upon the surface of the earth, they reap it in a form far more precious, when, like Sir Robert Peel, they bequeath a name which is the property not only of their own family,—not only of their own descendants, but of every man who calls himself an Englishman—a part of our common wealth—something that helps to endear us to our common country—something that makes us feel that England is indeed a country that it is a blessing to belong to—a country that has a great and beneficial part to play in the designs of Providence, for the improvement and advancement of mankind.”

In consequence of the pecuniary sacrifices which Mr. Montagu made, in not returning to Van Diemen's Land, and of his perfect disinterestedness in all that concerned himself personally, it is well known that his affairs were very far from affluent at the time of his death, and that he has left his family in circumstances which cannot be considered otherwise than destitute. A stronger or juster claim upon Her Majesty's Government never existed, than that which the widow and the fatherless possess in this instance; and considering the great services rendered, and the sacrifices made by so eminent a public officer as her late husband, considering his abilities, his disinterestedness, his firmness in the hour of trial, his devotedness to the interests of the service, and to his Queen and country, and taking into account the fatal cause of his untimely end—an exertion beyond his physical strength in the public service—we do hope and trust Her Majesty's Government will mark their sense of what is due to his memory—due to justice—and due to public feeling, in a way at once worthy of themselves, of the services rendered, of the virtue and talent displayed, and of the position and circumstances of his bereaved family.

Mr. Montagu himself requires no

“Storied urn or animated bust”



to perpetuate his fame in this country. He will

“ A mightier monument command.”

The stupendous mountain passes and other great public works throughout the Colony, will bear a nobler testimony to his memory, to the value of his services, and the character of his genius, than all that could be accomplished by bronze or marble. But we cannot believe that the claims of those he has left behind will be neglected by Her Majesty's present advisers. If such should unfortunately be the case, we are sure the public will AT ONCE come forward in some way worthy of the subject.

Numerous addresses to Mr. Montagu, congratulating him upon his return were, we are informed, in course of signature in many parts of the Colony, when the account of his death reached the Colony by the last steamer. We think it would be well that all these documents should be sent to Cape Town, in order that they might be used, to show the feeling of the public towards Mr. Montagu in the country districts, and to strengthen any application which it may be necessary to make to the home Government on the subject of a suitable provision for his family.

*To the Honorable John Montagu, Esq., Secretary to  
Government, &c. &c. &c.*

The Address of the Undersigned, Merchants and other  
Inhabitants of Cape Town, Cape of Good Hope.

SIR,—We have the honor to convey to you our hearty congratulations on your return to this Colony, and we rejoice to learn that your health, which had been so seriously impaired by an unremitting application to the duties of your department, has been benefitted by your visit to England.

When we compare the circumstances of the Colony, at the period of your first arrival in April 1843, with those in which you left it in May 1852, we cannot but feel strongly impressed with the value of your public services. For the *improvement in our financial policy*, by which a considerable surplus revenue was rendered available for Colonial purposes, —for the *improved postal arrangements*, by which increased facilities of communication have been afforded to all parts of

the land,—for the excellent *system* for the *discipline and management of the convicts*, their humane treatment, their moral and religious instruction, and profitable employment of their labor,—for the *formation of roads and bridges*,—and for the *opening of formidable mountain passes*, which have rendered available the productions of so many fertile tracts, which were previously debarred by natural obstacles from access to a market;—for these and other improvements in the Colony, whatever share of merit may be justly ascribed to others in rendering them effective, we are sensible, we are mainly indebted to you for their origin.

Feeling grateful to you, Sir, for so many and such important services, we are naturally anxious for the re-establishment of your health, and sincerely hope, by God's blessing, it may speedily be restored, and that you may be soon enabled to resume the duties of your office, with the same vigor and judgment, which have ever marked your official career.

We have the honor to be,

Sir,

Your obedient humble Servants.

(Signed by 134 of the clergy, merchants,  
and others, of Cape Town.)

The same Address was adopted at Swellendam, Graaff Reinet, Somerset East, Somerset West, and Caledon, and obtained numerous signatures.

*To the Honorable John Montagu, Esq. Secretary to  
Government, &c. &c. &c.*

The Address of the 'Undersigned Merchants and other inhabitants of Graham's Town and District of Albany.

SIR,—We beg leave to assure you, that we have been much gratified at hearing that your health, which had been so seriously impaired by your great attention to the duties of your office, has been much improved by your visit to your native country; and we beg to offer you our hearty congratulations upon your return to the Colony.

Feeling grateful to you on account of your past exertions,



we are naturally anxious for the re-establishment of your health, sincerely hoping that by God's blessing it may be speedily restored, and that you may soon be enabled to resume the duties of your office with the same vigor and judgment which have always marked your official career.

We have the honor to be,

Sir,

Your obedient humble servants.

(Signed by 60 merchants and others.)

---

*To the Honorable John Montagu, Secretary to Government.*

Port Elizabeth, December 31, 1853.

SIR,—We, the undersigned inhabitants of Port Elizabeth and its vicinity, have the honour to present to you our sincere congratulations on your return to this Colony, and on your reported restoration to the enjoyment of health, so seriously interrupted by your unflagging devotion to the public interests of this settlement. We see foreshadowed in your adherence to the office which you have so long and so honorably filled, the promise that the great public designs embodied by you in your past official career will be carried out to completion. In various portions of this Colony, and at various times, we have had occasion to recognize the salutary influence of your practical talents and skill in adapting the means to the end. One only source of regret is, that from the extent of this Colony, your ability to improve should have been somewhat circumscribed, and that hitherto the Eastern Province should have reaped less than its share of public attention;—still, in all general measures, among which we may class our postal regulations, the discipline and humane management of convicts, and the useful application of their labor to public works, our finances, and the initiation and supervision of all great public improvements,—we recognize a spirit of fairness and enlarged sympathy creditable alike to yourself and conducive to the public benefit. The rumour which fixes on you, Sir, as the future chief representative of Her Majesty in this province, only requires confirmation to secure our hearty approval.

We have long seen the necessity existing for a strong Executive Government in this province, and we shall experi-



ence much satisfaction if Her Majesty see fit to reward your past honorable exertions with so important a post, and one in every way so adapted to your talents, as that of Lieutenant-Governor of the Eastern Division.

We beg to reiterate our congratulations on your return to this Colony, and have the honor to subscribe ourselves your obedient servants.

(Signed by 178 merchants and others.)

*To the Honorable John Montagu, Esq., Secretary to Government.*

George Town, December 20, 1853.

SIR,—We beg to tender you our sincere and heartfelt congratulations on your return to the Colony, after an absence of nearly two years, for the restoration of your health, necessitated by your long and untiring exertions for the public good; trusting that you are so far restored as to be able to continue for many years services which have hitherto proved so eminently beneficial to the community, and for which we feel that the Colony owes you a deep and lasting debt of gratitude.

In resuming the important duties of your office, we trust that it will be a satisfaction to you to have the assurance of our warmest wishes for your health and welfare.

(Signed by 78 clergy, merchants,  
and others.)

