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# THE CONSTITUTIONAL AND ADMINISTRATIVE DEVELOPMENT OF SOUTH AUSTRALIA FROM RESPONSIBLE GOVERNMENT TO STRANGWAYS' ACT OF 1868.

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PART II.

## CHAPTER 6.

## THE THIRD PARLIAMENT
### (1863 and 1864)

The elections held at the end of 1862 for the Third Parliament since the grant of Responsible Government call for little comment. The leading questions under discussion were the changing of the Constitution and the retention of the bible in State-schools, and, as always, the tariff. The verdict of the electors showed that they were satisfied with the Constitution as it was(1) and with the status quo in education. On the tariff and the method of raising the revenue of the state, it cannot be said that any very definite mandate was given to the new Parliament. Most of the old members went back, with a rather stronger conservative admixture of newer members. It was a period when there was a lull between the storms of immigration stoppage in 1860 and squatter restraint in 1865.

The placid waters of the political sea were troubled only by the actions of the Supreme Court and of Fisher, the President of the Legislative Council, ever

alert for invalidity. His concern this time was over the legality of the acts performed by Governor MacDonnell after the appointment in England of his successor. He maintained that MacDonnell's powers as Governor of South Australia were abrogated when Letters Patent were issued to Sir Dominick Daly, even though the latter could not immediately take over the office. The opinion of the Attorney-General, R.I.Stow, was adverse to this view, and the Secretary of State, when informed of Fisher's doubts, was able to point to an Imperial Statute, 9 & 10 Vict. c.91, covering the case. To quieten any fears, the British Parliament passed a special Act in July, 1863, 26 & 27 Vict.c.76, for determining the time at which Letters Patent were to take effect in the Colonies. They were not to be effective until published or acted on, and appointments by Letters Patent were to be void, unless published within 9 months.(2)

A further problem which the Ministry found necessary to submit to the Home authorities was the declaration by Boothby and Gwynne of the invalidity of a Registration of Deeds Act, passed in October 1862. The Act abolished the old Registry Office and declared that all registration of deeds of property or of leases or liens was to be through the Real Property Office. It was the Supreme Court again which had made this Act necessary,

owing to a decision, on October 7, of Gwynne that a person having land under the Real Property Act could register it also under the old system of registration.[1] Thus, said Stow, parties might obtain two titles to land, and "it was almost impossible to exaggerate the difficulties which would arise". The effect of doing away with the old office was practically to make the Real Property Act compulsory, for only by coming under its provisions could leaseholders now have their leases registered. This compulsion the opponents of the Act claimed to be the breaking of a pledge given at the time of the passing of the Real Property Act in 1857, but they had only their champions on the bench of the Supreme Court to blame. Fisher, in the Legislative Council, raised first the Constitutional objection that was to be the ground of the Supreme Court decision of the invalidity of the Registration of Deeds Act, given in the case of Driffield v. Torrens on December 16, 1862.(3) One of the qualifications of an elector for the Legislative Council was that he should hold property or a lease of a certain value, a memorial of his title to which should be registered in the office for the registration of deeds. If this office were to be abolished, he declared that no-one could qualify in future. Hence the Act, he claimed, was an alteration to the Constitution Act, and as such would

require to be passed by absolute majorities in each House and reserved. These it did not obtain. As the "Register" pointed out, the Thistle Act or the Dog Act could equally be claimed as altering the Constitution, or any Act, for that matter, which displeased the lawyers and moneylenders whose profits were threatened. This Registration Act enabled men seeking a mortgage to dispense with a solicitor, thus applying the cheapness and simplicity associated with the Real Property Act to liens and mortgages on personal property.(4)

Along with the Supreme Court decision of invalidity, Daly had to acquaint Newcastle of Fisher's questioning of the 1861 Electoral Act, because he doubted if it had been passed by absolute majorities at its second and third readings. The journals of the Houses had no record of the number of members present. The Governor, therefore, suggested an Imperial Act stating all the legislation of the South Australian parliament to be, and to have been, valid since the Constitution Act. The result was a Validating Act, 26 & 27 Vict. c.84, stating that all laws of any colonial legislature passed with the intention of altering the Constitution of such legislature should be deemed to have possessed validity from the time of passing, whatever formalities or prescribed conditions might have been omitted. The Colonial Office,

forwarding it, added a rebuke to the South Australian Legislature for cluttering up the Imperial Statute book with enactments

> "required to extricate Colonial Governments and Legislatures from the consequences of their own irregularity or inadvertence."(5)

This was hardly fair. The removal of Boothby, vetoed by Downing St., would have gone far towards preventing the quibbling objections of invalidity that were the daily stock-in-trade of the Supreme Court.

There was little of note in the early part of the session of 1865. On May 13, Captain Hart moved "that it is not expedient that the Attorney-General should have a seat in the House". This proposition had been carried in the last session by a majority of 9. Hart maintained that the Attorney-General, Stow, was at present the leader of the House, as Hanson had been, and that his legal position was subsidiary to his political. The arguments of those opposed to the motion were better marshalled than they had been previously. In England, declared Milne, not only the Attorney-General, but also the Solicitor-General, had every opportunity of defending his policy in Parliament, so why not the same here? Stow said it was an attempted blow at Responsible Government. They must have someone to take responsibility. If the Attorney-General were a non-political officer, the

Chief Secretary would cast any blame on to him, and the House would not be able to oust the Ministry, nor would the Ministry be able to dismiss the Attorney-General. Bakewell added that the office of Attorney-General out of the House would be a sinecure, as the work would devolve on the Crown Solicitor. The Attorney-General, as the one responsible for the wording of Bills, and having important duties in the administration of Justice and in the appointment of Judges, J.P's., and subordinate officers, should have a seat in the House and meet the members face to face. After long discussion, the motion was lost by a majority of 12.(6)

The next business of importance was the announcement of the uniform tariff agreed upon by the delegates from the Legislatures of South Australia, Victoria. New South Wales, Queensland and Tasmania at a conference in Melbourne earlier in the year. The South Australian delegates were Ayers, A. Blyth and Glyde. South Australia had initiated the move for a unification of the tariff between the Australian colonies. In 1860, there had been tentative discussion of a Zollverein on the model of the German States,(7) but it was only in 1862 that the Waterhouse Government sent to the other colonies a request for a conference.(8) Victoria, as ever, was eager to discuss Federation, but Tasmania alone responded. The

The South Australian delegates, as also those from New South Wales, were given no mandate for its discussion.[9] Consequently the Conference restricted itself to the discussion of a common tariff, and achieved agreement on a schedule of charges. There was to be the strictest secrecy on this schedule until an appointed day, June 2.[10] Of federal feeling at this time, the newspapers supply little or no trace. The causes of jealousy and distrust between the colonies had widened, if anything, since 1857. There was the Ocean Postal grievance of South Australia, for one thing, the mail being carried past her doors at the wish of the Victorian Chamber of Commerce.

The tariff was announced in the South Australian Parliament on June 2, as had been agreed upon. On spirits, ale and beer, manufactured tobacco, cigars, sheep-wash, tobacco and wine in wood it was unaltered from that already in vogue in South Australia. Tea, coffee and sugar were raised considerably. Rice, dried fruits, almonds, candles, oils and salt were all to be taxed, the last three for the first time in the colonies. The South Australian delegates had tried to obtain a free exchange of colonial wines between the colonies, but the objection which was to stand till 1870, namely, that it would be ultra vires to enact differential duties, was raised. The tariff, as it stood, was a compromise between the states,

and it will be seen that it was a rejection of the ad valorem principle. The Treasurer, Blyth, asked the Assembly to adopt it, for the sake of the River Murray traffic as well as for other reasons of intercolonial amity. The House proceeded to discussion, and were still engaged on it when the news came by wire that the Victorian Government, although Parliament was in session, had made no mention of the new duties on June 2. This meant that it would be quixotic for the other colonies to adopt them, and the South Australian Government immediately dropped the new arrangement. Further than that, they asked the Legislature on the 5th of June to agree to a tariff framed on the ad valorem principle - the very principle condemned in the scheme they had advocated a few days before. People naturally asked, "Where is their consistency?" The Advertiser very truly remarked

> "Intercolonial conferences have received a heavy blow and a sore discouragement."(11)

The Chamber of Commerce rejected by a large majority the reimposition of the ad valorem duties. Discussion proceeded in the Assembly, with the logical solution of the difficulty - direct taxation - being sidestepped all the time.(12) By June 16, the new tariff had been accepted, with 5% ad valorem duties, 1d. off coffee, 6d. off tobacco, 1d. on tea, 10/- per cwt. on dried fruits (for the good of Victoria, remarked the Advertiser), and a discriminating

duty on timber. Then there was a free list, on which there was to be no duty. It included living animals, the baggage of passengers, corn-sacks, ore bags and wool packs, books, bullion and coin, coal and other fuel, corn and flour, fresh fruits, manures, plants and trees, seeds and roots, skins and hides, tallow, wool and unsmelted ores. A large number of the items on the free list strike one as pointless, because they are primary products. Evidently they were included in imitation of the English free trade list. Why would anyone, for instance, want to bring in skins and hides to such a place as South Australia? It is an illustration of the lack of understanding by politicians of the economic principles that they discuss so confidently. Another view of the free list is that put forth in a colloquial letter, addressed to the "Advertiser" by "John Smith". It pointed out that

> "you must not tax a rich man's race horses nor cart stallions nor Durham bulls because he gets them for the good of the country ..... But you mustn't tax the corn sacks for fear you should ruin the millers, and you mustn't tax the wool packs because of hurting the poor sheep farmers, and the mine owners would be sewn up if you was to put an extra penny on their ore bags."(13)

What was clearly evident was the weakness of the Ministry. Duffield was near the truth when he declared that they had not the courage, in spite of their protestations of favouring a direct tax, to impose it, fearing

lest the House might turn them out. There had not been a Ministry that had acted boldly since Torrens left the House. "He was a man, who, when he enunciated a view, would adhere to it," added Duffield. The inevitable crisis came on June 30. Dutton then moved a censure of the Government because £7,500, unexpended in the previous year from the immigration vote, had been carried over and included in the general revenue for the coming year. The House would not allow the Treasurer to proceed with the Estimates and the Ministry resigned. On the same day, Ayers censured them in the Legislative Council over the conduct of the tariff. He said that he did not call for direct taxation, but considered that the new tariff was too hard on the working man.

Dutton formed a ministry which lasted four days. The reason for his failure was that he could get no-one in the Legislative Council to accept office. The best he could do was to include Ayers in his Cabinet, as Executive Councillor without portfolio. This caused offence to the Legislative Council, which expected to have at least one member as a responsible minister in any Ministry that was formed. It announced that it would follow Ayers if he were a responsible minister, then adjourned for a fortnight to see what the Assembly would do. Dutton realized that he had no chance of permanency, and resigned.

Ayers became Chief Secretary, with three of the same ministers as Dutton had included in his Cabinet. The ministry, which was to hold office for just over a year, from July 15, 1863 to July 22, 1864 comprised:-

Chief Secretary - H. Ayers.
Attorney-General - R. B. Andrews.
Treasurer - - J. Hart.
Commissioner of Crown Lands - L. Glyde.
Commissioner of Public Works - P. Santo. (14)

They announced that they would accept the Tariff Bill, in spite of the hardships of the working man on which Ayers had expatiated on June 30. So shaky was the ministry that Hart, when moving on July 23 that the House adjourn till 2 o'clock next day (instead of 1.30), stated that if the House consented to meet at 2, it would be taken as a vote of confidence in the Ministry, but if at 1.30, as a mark of non-confidence.

On August 26, Stow moved that the power to make appointments in the Volunteers could not be constitutionally exercised by the Governor, unless with the advice and consent of His Responsible Advisers. These appointments were in a different category from those of the regular forces. The Colonial Parliament had the right to pass laws for the Volunteers; the Ministers of that Parliament should. therefore, be responsible for their organization.

All this arose from a discussion on August 21, when it was asked if Finniss had offered to take command of the force (Major Blyth now having left) without pay. The answer of the Treasurer was "yes", but there was doubt as to whether that would be wise, and the appointment was left in the Governor's hands, who appointed an inferior officer, Captain Biggs. The Ministry supported the Governor's power of appointing on his own responsibility, quoting the Volunteer Act. This was, of course, an evasion, as the Constitution Act said that all appointments under the Governor in the colony were to be made by and with the consent and advice of the Executive Council. It was a bad mistake for Andrews, the Attorney-General, to support such a view, and Stow, whom he had displaced, was not slow to say so. He referred to Hallam's Constitutional History to show that the use of the King's or Queen's name as a shield by the Ministry was entirely unconstitutional. Just as the King could make no appointment in the Imperial forces without the advice of the Ministry, so could not the Governor appoint to the colonial forces without the sanction of the Ministry. To this the House agreed.

People were asking if the Volunteers should not be reorganized. Some wanted to do away with them altogether, and trust to the regulars. As against this, there was the likelihood that the regulars would be withdrawn for active service elsewhere, as actually happened

in October, when they were ordered to New Zealand. It became necessary for the Volunteers to supplement the guard at Yatala - 4 men only were required - and a police guard took up duties at Government House. The suggestion that the Volunteers would take to the hills if an invasion occurred was resented:-

"It is a new idea to impute cowardice to Britons." Strangways thought that payment would bring them along to drill. He advanced 3 main reasons for non-attendance - (1) the inefficiency of many officers, (2) new recruits were mixed up with those who were efficient at drill and thus confused them, (3) those willing to be volunteers were not able to give up time without compensation. He suggested 2/6d. a day, and moved in the Assembly that the force be reorganised. The Government staved off the question by stating that they were considering new regulations, and the motion was lost.(15)

One further piece of legislation for 1863 remains to be considered, the Act for the settlement of the Northern Territory. The other Acts of the session embraced "subjects of a useful if not important character", to quote the Governor's words.(16) At the end of 1862, Stuart had returned after crossing the continent. Even before that, Sir Dominick wrote on November 26, recommending the annexation of the Northern Territory to South Australia.

From the colony's exertions in exploration and from its geographical position, it appeared natural that the new land should be her prize. Another despatch on December 23, 1862, announced Stuart's success and requested again the annexation of the new territory. South Australia was a little intoxicated with the possibilities of the overland route and the well-watered country in Arnhem Land. The Gawler "Bunyip" likened her to a little boy who had already been given a large slice of cake (the Western extension of 1861) by his mother and cried for more. Great festivities were held in Adelaide on January 21, 1863, in honour of Stuart. "A vast multitude assembled, many from distant parts of the country."[18] Squatters were early in the field for leases in the most favourable areas. On January 27, for instance, there was talk of Waterhouse, Levi and Co. organizing an expedition to drive 10,000 ewes to the Victoria River country.[19] However, nothing could be done until word was received of the intentions of the Home Government. This arrived in September, with a supplementary commission annexing the Northern Territory to South Australia and giving permission to dispose of the lands as seemed best to the colonial Parliament.[20] A number of the leading men of the colony formed the Great Northern Australian Company for the exploitation of the region,[21] and the Legislature devoted its attention to the best means

of selling the lands and obtaining an income for the administration of the Territory. It was decided to keep the funds so obtained separate from the ordinary revenue of South Australia. 500,000 acres of country land and 1,562 town lots were to be sold, half in Adelaide and half in London, and the price was to be 7/6d. an acre for the first 250,000 acres of country land and 781 town lots. When these were sold, the remaining half of the town and country lots were to be sold, but for 12/- an acre. A land order would entitle the purchaser to select his land within 5 years. For every 160 country acres of the first 250,000 surveyed, a person would be entitled to select 1 town lot. The Governor and the Executive Council were to make rules and regulations, and were to appoint a Government Resident. (22) The stress was on selling, not on leasing land to squatters, which may explain some of the opposition of Angas and Baker to the Bill. All the same, events proved the correctness of their forecasts of failure for the utopian scheme of agricultural development. Waterhouse, too, considered that the Home Government merely intended the land to be a vast sheep run. Angas declared -

> "Year's of thought and study were spent before this colony was founded . . . Now he confessed it did appear to him to be a presumptuous undertaking to attempt without any means of money or men to settle a new colony. If the home authorities could get South Australia to bear the burden of settling the land, they would do so - that was just what they wanted. If, however, it were successful, then the

> English Government would make a separate colony of it, the policy of the Home Government being to divide and conquer . . . Companies had been started to colonize other places, and they had generally failed. £200,000 had been wasted in Western Australia, and £500,000 in New Zealand upon this object; and feeling that the attempt would be a great failure, he could not agree to the measure. If he had his way in the matter, he would encourage the settlement of the land by squatters, form a joint-stock company at home for producing tropical fruits, etc. This in time would extend trade to the shores and gradually improve the place. The idea of selling land was quite utopian, and as there wss no provision for the introduction of labour, the scheme he thought, would be unsuccessful."(23)

Baker spoke in the same strain, saying that the history of Australian expansion proved that the pastoralist always led the way. Let them be liberal to squatters. He suggested an acre a sheep up to 100,000. Ayers, in reply, explained that the Bill ~~was~~ aimed at preventing the giving away of large areas for practically nothing, and allowing large joint-stock companies to obtain a virtual monopoly. Hence it merely stated that the Governor and his Council might make regulations for the issue of pastoral leases when the time was opportune.

The session ended on a stormy note. The Government had shown a pitiful lack of decision over the Registration of Deeds Act. First they set out to repeal it, then they announced that it would stand, reassured by the Validating Act, and uncertain whether they would now require absolute majorities even to repeal it; then they brought in the repealing bill again and dropped it. On

November 10 they announced that they would carry into full effect the Registration Act of 1862, only to shift ground two days later and declare that the old Registry Office would, after all, remain open, as a case was pending before the Supreme Court and it would decide whether the Act of 1862 was valid or not. The Legislative Council were occupied in moving a vote of want of confidence when the Governor arrived, resulting in Parliament being prorogued with the Ministry still ensconced.(24)

> "The session of 1863 is now matter of history, but it forms by no means a glorious chapter. Struggles for place and pay are its leading characteristics; contradictions, recantations, and inconsistencies disfigure it from almost the commencement to quite the close . . . Never before in one session have Ministries eaten so much dirt; never have the Legislature been dragged through so much mire. It is a black chapter in the annals of Responsible Government."(25)

Thus the "Advertiser". It is highly coloured writing, and possibly too strong, if we make due allowance for the uncertainty into which the vagaries of Boothby and Gwynne and the lack of sympathy from Downing St. must have thrown the Cabinet. Still, the conduct of the tariff was not creditable to either the Waterhouse or the Ayers Ministry. As regards the struggle for place, it was probably no more intense than at other times - only the lack of party cohesion, the members having no very pressing problems to settle, showed more strikingly than usual.

South Australia was at the peak of her prosperity, and social life was assuming a more expansive tone. We read of the Philharmonic Society, the Institute with its affiliations in the suburbs and the country, lectures on various topics, the Philosophical Society, the Royal Geographical Society and the visits of entertainments like Burton's Circus, an Opera Company now and again, and frequent theatrical troupes. One reads, too, of bands. The Volunteers formed a regimental band in 1863, which added zest to their manoeuvres, diverting, at other times, the strollers on North Terrace.[26] With the squatting fracas in 1864, journalism took on a new note of realism. Where motives had previously been barely hinted at, they were now openly analysed. The leading papers, the "Advertiser" and the "Register", took sides, the former, ably edited by Barrow, against, and the latter, under the direction of Forster, for the squatters. As yet there was no warning of the severe drought which was to set back the colony to such an extent. The Counties of Gawler, Light and Stanley, in which a large proportion of land was freshly devoted to agriculture, had increased their cultivation by one-third, since the year 1861-2. Agriculture was moving north. There was even a drop of 14% in the acreage under the plough in the Counties of Adelaide and Hindmarsh, as the rainfall was found too high for wheat-

growing.(27) The face of the land was being changed, also, by the very rapid spread of fencing. Within the next few years, the settled districts were to be fenced in. Much of the leased land was also being fenced; so that the number of shepherds was soon to be reduced. For a few years they would find work, but, after that, many of them would not be required. The fencing of the runs was a contributing cause, along with the drought, of so much unemployment in the coming four or five years.

The Validating Act was not the solvent of all difficulties that some had hoped it would be. It declared the validity of all Constitutional and Electoral Acts of the Parliament, but not of particular Acts, such as the Real Property Act, and it was at individual Acts, on the score of repugnancy, that the obstructionists now set their fire. The Government had asked Downing St. for an Act validating all the past legislation of the South Australian Parliament. This it was unwilling to grant, though it was forced to do so finally in the Colonial Laws Validity Act of 1865.
In the Legislative Council, during 1863, one might have witnessed the curious spectacle of the President, J. H. Fisher, objecting to the Act for the Marriage with a deceased wife's sister and the Primogeniture Abolition Act because he maintained they were repugnant to English law, and of the House refusing to allow his protest to be entered

on the official record of the proceedings because they held that the President, in delivering a formal ruling, was supposed to speak the opinion of the House.(28) Nor were the opinions of the English Law officers, sent in reply to the Addresses for the removal of Boothby, enough for the Supreme Court. The Judges were advised, therein, that they would do well to avoid scrutinizing legislation too closely for possible invalidity because of supposed repugnancy, and were informed that it was all but certain that a Governor's Instructions could not invalidate his consent unless he gave it in a case where he clearly ought to have reserved, as in the case of Bills relating to the Constitution. There was no reason to doubt, the Law Officers said, the power of the South Australian Legislature to constitute courts of Justice. Yet all these matters, of repugnancy, of the effect on the validity of Bills of reservation clauses in the Governor's Instructions, and of the power of the Parliament to constitute courts, had to be covered by the comprehensive Colonial Laws Validity Act. Nothing but an Imperial Act would convince Gwynne, and even that did not mean anything to Boothby. In Auld v. Murray, November, 1863, after the arrival of the Validating Act, he held that all the South Australian legislation since 1856 was invalid, since there had been no lawful Parliaments in that time. The reasoning which led him to this con-

clusion was, as Hanson pointed out on the spot and the Imperial Law Officers declared later in their opinion of 1864, fallacious.(29) He held that the Constitution Act, No.2 of 1855-6, was invalidated by reason of the repeal then of the Ordinance No.1 of 1851, which created the Legislative Council by which the Constitution Act was passed. Thus he denied in the conclusion that which he assumed in the premises.

The Chief Justice, Hanson, had all along held himself aloof from the hair-splitting. For instance, regarding the registration of a lease for voting rights, he affirmed that registering it according to the new Act, without registering it also in the General Registry Office which was to be abolished, was sufficient. At the beginning of 1864, he wrote to Sir Dominick requesting a settlement of the question of what was repugnancy. He pointed out that the Australian colonies and Cape Colony were not included under the Imperial Act 3&4 Vict. c.35, s.3, which forbade the North American colonies to pass any law repugnant to any Imperial Act made applicable to those colonies. He personally did not desire any legislation to be obtained from the Imperial Parliament and he thought that the real effect of the law as it existed was substantially the same as it would be if an Imperial Act were obtained. He favoured legislation enacting that any Act assented to by the Governor when by law he should have reserved it

should be valid if Her Majesty were pleased to leave it to its operation. The Executive Council considered the whole matter on Jan. 4, 1864, with the result that it was remitted for the opinion of the English Law Officers.(30) In his despatches of May 23 and 24, 1864, the Governor expressed his alarm at the tendencies revealed by Boothby in his recent judgments, enclosing, as proof, newspaper extracts containing Boothby's opinions as delivered in Open Court regarding the legal existence of the Chief Justice, the Third Judge (Gwynne) and the Attorney-General. In June, also, Boothby and Gwynne agreed in "Re Ware: ex parte Bayne" that the Validating Act had not given validity to the Registration Act of 1862, since the latter had not been passed with the purpose of changing the Constitution, and the Validating Act was intended to apply to Acts passed "with the object of declaring or altering the Constitution." That is, they still maintained that the Registration Act had changed the Constitution, but that it had done so inadvertently, and cases of this kind were not provided for by the Validating Act. Their opinion of the motives of the House was correct, for the majority of the members thought, when passing the Act, that the Supreme Court would hardly perpetrate such an "outrage on common sense" as to hold that it did affect the Constitution. In this decision, it seems to the writer, casuistry reached its climax. So

it must have appeared to South Australians at large, for both Houses proceeded to appoint Select Committees to prepare Addresses to the Queen complaining of the inconveniences and evils that had resulted from the doubts as to the validity of South Australian legislation. Boothby's attitude to the abolition of the Grand Jury was mentioned at some length in the Address of the Assembly, which differed from that of the Council in its wording. The two Houses, however, were united in their desire for an Imperial enactment which would conclusively assert the pre-eminence of the Legislature over the Judiciary in South Australia, and to that end they enclosed with the Addresses the draft of an Act which they requested should be laid before the Imperial Parliament.(31)

Back came a Confidential Despatch of October 26 from Downing Street, conveying the Law Officers' opinions on the questions raised by Hanson at the beginning of the year. They recommended applying the same Imperial Act to the Australian colonies as applied to the North American Possessions in regard to the powers of the Legislature. They advised that the Governor's assent to Bills which his Instructions directed him to reserve should be ratified, unless it should have been clearly stated by an Act of the Imperial Parliament or of the Colonial Legislature that such Bills should be reserved. They thought that if an

Act should have been reserved for Her Majesty's assent and had not been so reserved, or if it had not been passed by the requisite majorities, it was void in toto. They did not approve of the Chief Justice's suggestion of making the Queen's assent retrospective to such Bills as were required to be reserved, and to which the Governor had given his assent. The Registration Act did not alter the Constitution Act of 1855, they said, and Boothby's reasoning on the Legislature repealing itself out of existence resulted in "repugnant and absurd conclusions". The use of the word "repugnant" by the Colonial Office was a shrewd blow at the great exponent of repugnancy, but, like all other demonstrations of his errors, it failed to shake his self-assurance. The draft Bill on the validity of the laws was returned to South Australia with alterations in December 1864. It was discussed in Executive Council on December 22. In some respects the Council were not satisfied with it, but they thanked the Secretary of State for his efforts.[32] It now remained to wait for the Imperial Act.

The subject which aroused most discussion early in 1864 was that of transportation to Western Australia. For over a year past, the public mind had been disturbed over the recommendation of a Commission in England to continue transportation. Since 1850, there had been no transportation to any of the Australian colonies except

Western Australia, which had asked for it as a solution of the shortage of labour. The continuation of transportation to Western Australia was always a sore point with the other colonies, for time-expired convicts found their way eastward, where they added to the problems of the police. More obnoxious still was the system of conditional pardons, by which those whose sentences were only partly served received a pardon on condition of quitting Western Australia. South Australia had never gone the length of Victoria and New Zealand in excluding the expirees. The Convicts' Prevention Bill of 1857 simply prevented the entrance of anyone serving a sentence of penal servitude, that is, conditional-pardon men. It was considered that an Act to exclude those who had finished their sentence and were free to go elsewhere in the Empire would be an Act trenching on the royal prerogative or the rights of British subjects not residing in the colony.

The continuance of transportation was the subject of a united protest from the 1863 Conference in Melbourne. The Legislatures of the several colonies also addressed the Home Government for a consideration of their wishes.[33] The British Government replied evasively that it had no intention of extending transportation.[34] Later, it declared that the conditional-pardon system would be abolished. The colonies were still not satisfied. Meetings, like that in White's Rooms in Adelaide on February

19, 1864, sent petitions to the Imperial Parliament against the continuance of transportation.(35) The Victorian Government circularized the other colonies to sound them out on a plan of ending the mail contract unless steamers ceased calling at Western Australian ports.(36) For this, McCulloch's Government was censured later in a despatch from the Colonial Office, which declared that the results of such discontinuance would have been more severe on the colonies than on the mother country, and that the circular was a violation of the principles of constitutional government.(37) South Australia was sufficiently aroused to pass an amended Convicts' Prevention Act, incorporating the stringent clauses of the Victorian law. The former reluctance to include these was stigmatized as

> "a childish apprehension of exceeding their powers - powers laid down and defined by Mr. Justice Boothby and no-one else."(38)

If the exclusion of time-expired men had been assented to in the case of Victoria and New Zealand, it was clear that South Australia would not be denied. The Act, reserved by Governor Daly, was given the Royal Assent, though by that time the remonstrances of the colonies had had their effect, and the Home Government had announced their intention of discontinuing transportation after three years.(39) A transportation conference had been held in Melbourne while the despatch conveying this news was on the way, and

achieved at least the agreement among the delegates that conditional pardons should not be continued by any of the Australian Governments themselves.(40)

When the office opened on March 1, 1864, for the sale in Adelaide of lands in the Northern Territory, about half the land available was immediately taken up. B. T. Finniss was appointed Resident Commissioner for the Northern Territory on March 4 at £1,000 a year. When the land sales concluded on March 30, 117,280 acres of the 125,000 offered for sale had been disposed of. The Northern Australian Company under the presidency of Captain Hart applied for 25,000 of these. It hoped to have a paid-up capital of at least £20,000 in 2,000 shares and to send sheep and horses overland. On the Committee were Ayers, Hart, T. Elder, Levi, Tomkinson, A. Blyth and Graves. An amusing side-light on the Northern Territory Act of the previous year appeared with Boothby's declaration of its invalidity because it extended the Flinders electorate, thus altering the Constitution Act. It should therefore have been passed by absolute majorities and reserved!

The expedition for the survey of the new land was soon prepared. Its members, who were enrolled as Volunteers for 3 years, were sworn in by Finniss as their commanding officer, and were entertained by the Governor at luncheon and also by the Ministry. On April 26, the

"Henry Ellis", bearing the hopes of South Australia for the new venture, was towed to the lightship. The "Yatala", with mail and stores, left on May 17, after which there was no further word from the expedition until October 12. Finniss had clear instructions from the Ministry. He was to proceed to Adam Bay, the estuary of the Adelaide River in Clarence St., and see if it offered a secure port and a healthy site for a capital. He might inspect Port Darwin if Adam Bay was unsuitable, or Port Paterson. When he was established, he was to send off the "Henry Ellis", keeping the "Yatala". The Surgeon, F.E.Goldsmith, was to be the Protector of Aborigines, but the Resident was to be always on the watch against attack from the natives. As Stipendiary Magistrate, he was to administer the laws, and as Resident Commissioner he was to make such regulations as he deemed necessary. His adviser was to be Captain Hutchison of the naval survey ship, the "Beatrice". As soon as possible, he was to proceed with the surveys. The second-in-command was J.T.Manton, an experienced surveyor. Instructions were also issued to E.Ward, the Clerk-in-charge, who was also Accountant and Postmaster. He was to take care of all monies belonging to the Northern Territory or to be collected there. It will be seen that the division of authority, and the multiplication of offices, including such an anomaly as that

of Protector of Aborigines, was calculated to weaken the authority of the Resident. There was too much of pomp and circumstance attached to what was only a surveying expedition, whatever might be its later possibilities.

The Northern Territory lands offered for sale in London were all sold by the time that the office closed, but it could not be said that they were taken up with any great alacrity. At the time Lancashire was hard hit for cotton, due to the American Civil War, and the expectations of a supply from the new settlement helped to boost the sales.(41)

Early in the session of 1864, the Legislative Council made a protest, on John Baker's motion, against the continued practice of the Assembly of authorizing Supply by resolution, and without seeking the concurrence of the Council. This practice was unconstitutional, thought the majority of the Council, and they voiced their complaints in an address to the Governor. The result was a Supply Bill, concerning which Ayers, the Chief Secretary, stated in the Legislative Council that

> "in future Bills of Supply would be introduced when necessary so as to bring their practice more into accordance with constitutional usages; and the present Bill was for that purpose, authorizing the payment of £110,000. It had been framed as nearly as possible, after allowing for the peculiar circumstances of the colony, in accordance with similar Bills passed by the British Parliament ever since the commencement of responsible government. and in the colony of Victoria. It was only a

> temporary measure. When the Appropriation Bill came before them, it would contain the items of expenditure and when that Bill had been passed the present measure would become a dead letter."(42)

Baker was not satisfied, saying that they were asked to vote money with their eyes shut, but the Bill went through.

About this period in South Australian history, one is struck by the number of Bills which, though passed, were apparently not put into practice or failed of their purpose. The Registration Act was one of these. Towards the end of 1863, there was indignation in the Council at the continued suspension of that Act, not by the Supreme Court, but by the Government. What right had they, asked Waterhouse, to suspend the laws of the land?(43) From indications in the debates of 1864, it appears that the Act of the previous year to set up an appeal tribunal in connection with the Assessment of Stock was also not operative.(44) After two Bills on the road question had failed in this year, one aimed at abolishing the Central Road Board and the other intended to borrow money for making the main roads, which were then to be maintained by a rate levied on landed property,(45) an Act was finally passed to raise, by a loan on the general revenue, £250,000 for the construction of main roads. This, also, was never put into operation and was repealed in the session of 1866-7. The railways were by many considered as a burden. Hence a Bill passed offering them for sale. It had no

more success than the Bills of 1862 and 1864 which offered land to any company willing to build a railway north from Port Augusta into the pastoral and mineral-bearing lands along the Flinders Range. The 1862 Act offered two square miles of land for every mile of railway constructed. Early in 1864, the firm of Harris and Lane in England showed an interest in the project, on condition that South Australia gave more liberal terms, e.g. 4 square miles instead of 2 for every mile of line, land for quays at Port Augusta and assistance for the passage out of the people to work for the Company.[46] The result was Act 20 of 1864, offering 60 square miles on the completion of every 25 miles of railway. Nothing ever came of it, although J.T.Bagot appeared likely to negotiate, early in 1865, an agreement with English capitalists for a line 120 miles north of Port Augusta.[47] With the desertion of the area in the drought, all idea of getting the line built was abandoned. There were many, besides, who opposed the alienation of large areas bordering the railways, from the hurt to the public interest that might ensue. The 1864 Act was therefore repealed in 1867.

A measure which passed in this session with very little notice, but which was to have tremendous significance in the future, was the Industrial and Provident Societies' Bill, giving protection to the funds of unions. It was

brought forward on July 15 by Bakewell in the Assembly. It would apply the principle of limited liability, he said, which had a few minutes before been discussed with regard to Joint-Stock Companies, to small enterprises by working men.

> "There were no facilities by which working men could combine in this manner. The Bill had been extensively made use of in England, and with considerable advantage."

The measure was further discussed on September 30, when Bakewell pointed out that a few shillings would enable a company to register. There was no reason why working men should not combine for trade, agriculture or mining. The Bill seems to have had its second reading straight away, with no discussion, which makes it evident that there was little perception by the Conservatives of the powers which it would ultimately give the labouring man. Only the previous year, a rather harsh "Masters and Servants Act" imposed penalties for servants not fulfilling their duties. Servants were to be bound by their contracts for a year, after which they were to be free on repaying to their masters the money spent for conveying them to the colony. Undoubtedly it was necessary to protect those who engaged servants on the agreement that they should be assisted to emigrate, just as it was desirable to put a check on assisted migrants who purposed pushing straight on to Victoria. The following case, however, was different.

The "Advertiser" of January 24, 1863, contained an account of the proceedings by a certain Smedley against a servant-girl whom he engaged from the Servants' Home, and who within 48 hours absented herself for 4 days in town. She was fined 10/- and costs by the magistrate. Were it not written in apparent indignation, one would think that the editor's comment on the need for a society for the protection of masters and mistresses was meant to be ironical.(48)

Other useful Acts of 1864 were those extending the water supply at Port Adelaide and Port Augusta, amending the Law of Aliens so as to give naturalization here to persons naturalized elsewhere in the British possessions, making provision for the arrest of offenders escaping into South Australia from any of the Australian colonies, and amending the Marine Board Act of 1860. The Masters' and Mates' Certificates issued by the South Australian Marine Board as a result of the 1860 Act could not be recognised by the Board of Trade in England, through an infringement of the extra-territorial principle.(49) The Act of 1864 was itself disallowed, and had to be rectified in 1867. The trouble was that the 6th section referring to the mooring and unmooring of vessels at Port Adelaide, gave certain privileges to vessels registered in the colony,

which it was thought would affect treaties between England and other powers.(50) Another Act was intended to prevent the destruction of wild and acclimatized birds and animals. Penalties were imposed for killing them out of season, the aborigines not being included in this prohibition, nor in that forbidding trespassing in pursuit of game. The imported animals to be protected included rabbits and hares, while sparrows, blackbirds and starlings also appeared on the list!

The Volunteering movement had by now lost all life. The papers continued solemnly to chronicle accounts of battalion drill with 40 or 50 men present, when the rolls showed about 1400 Volunteers in the colony. The Government Gazette gave up printing the numbers attending parade, and liberal refreshments had to be supplied in the Exhibition Building on May 24 in order to secure a reasonable attendance at the review for the Queen's birthday. Charge and counter-charge flew in the Assembly between Strangways and Kingston regarding their respective zeal in the military world. In July, it was announced that the Nuriootpa, Greenock and Meadows Rifles were to be disbanded

> "as the members thereof have ceased to attend to their duties as volunteers."

The only hopeful sign was a meeting to raise a Highland Corps, which would wear the kilts. Baker said that there

were frequent complaints by the men of the difficulty of replacing worn-out clothing. At the review on the Queen's birthday, for instance, many men could not appear through their want of clothing. Some were measured six months before, but when they applied were told that there were no funds, although they were entitled to new clothing every third year. This last statement was disputed by the Chief Secretary, Ayers, who held that no such regulation existed. Taking into account the infrequency of their attendance at drill, the volunteers were better supplied with clothing than the Imperial soldiers.(51) In the middle of the year, came a Russian war scare, as the result of a letter from Governor Darling of Victoria to the Government of South Australia.(52) Later on, it transpired that the only practical thing done by the Government at the time was to authorize the formation of a Volunteer company at Wallaroo, the revelation being greeted with shouts of derisive laughter in the Assembly.(53) Something, however, was done regarding defence late in the session. £20,000 was voted, some of which was to go towards the construction of a military road from the Port to Glenelg.(54) The Governor and the Executive Council continued throughout the year to press the Home Government to restore the Imperial troops. The Australian colonies were now voting, at the request of the Imperial Government, £40 a man per year for the support of the Imperial soldiers as long as they

were stationed in the colonies concerned. This they did not much mind paying, as they had not yet accustomed themselves to the idea of doing without the troops. Besides, the commanding officer was the Lieutenant-Governor in each colony. Two companies was the quota for South Australia, which would have much preferred a half-battery of artillery in place of one of these, but was never able to obtain it.[55]

The session was progressing normally when it became apparent in July that R.I.Stow was making repeated efforts to dislodge the Ministry. Twice he failed,[56] but on the third attempt he secured a majority of 5 for his motion of censure.[57] The Ministry, he declared, had shown ignorance in answering legal questions, and they had vacillated on the Registration Act, as well as on other matters. Hewitt, speaking in defence of the Ministry, contended that their inability to carry on business was the result of the factiousness of the Opposition. Stung by the censure of the House, Glyde, the Commissioner for Crown Lands for the past year, blamed the Pastoral Association for the move against the Ministry, as wanting to turn South Australia into one vast sheepwalk by getting a Ministry favourable to them. Most of the squatters' leases were to fall in on June 30, 1865, and on being renewed, they were to be revalued according to the terms of the 1858 Assessment of Stock Act. Goyder, the Valuator of Runs, was already engaged on the task, and it is likely

that the Association had word of the greatly increased assessment that he thought their runs were now able to bear. They had never submitted to assessment with a good grace; in fact, they had been extracting concessions gradually for the last couple of years, in the way of re-classification and remissions of assessment in some cases.

> "There can be no doubt that the squatters have for many years had the grass lands of the Colony on very easy terms, and although they were the pioneers of settlement, and were subjected to some fluctuations in their pursuits, they have, as a class, been very prosperous, and have been enabled, in many instances, to purchase large estates at £1 an acre, for which they had paid less than 1d. per acre for many years previously."(58)

It was not the outlying stations that were to bear the brunt of the new Assessment, but those principally in the area of good rainfall, later to be so clearly marked off by Goyder's famous line of rainfall. These areas should rightly be wheat-growing, it was maintained, and the sheep farmers should pay heavily for the use of this good land until such time as the progress of settlement resumed it. The instances of easy fortunes made from squatting were patent. Most noteworthy was that of Hawker, the Speaker of the Assembly, who was all the time consolidating his position at Bungaree, just out of Clare, by buying up large areas of his lease on the strength of his pastoral gains.(59) If only to prevent the squatters from accumulating enough to buy all the good land, it was thought desirable to tax

them heavily. Thus the assessment of stock was meant to assist in the policy of settling the small man on the land as an agriculturist.

The accusations of Glyde were shown to have good foundation by the composition of the Ministry which returned on July 22. Instead of R.B.Andrews, Stow was Attorney-General, and W.Milne replaced Glyde as Commissioner of Crown Lands. Of the old Ministry, Ayers, Hart and Santo occupied their former positions. Stow had been unable to form a Ministry, it was said, and Ayers had agreed to lead this one. Immediately, Milne's post as the Commissioner of Crown Lands came under criticism, as he had squatting interests. There was no reason why Glyde should have been displaced. Stow's attack had been aimed at Andrews principally, but the whole Ministry were collectively responsible. And for Stow to join the very band against which he had fulminated several days previously was regarded as foreign to all the rules of constitutional behaviour. On July 27, he was well abused in both Houses for his tactics, as was the squatting community generally. Milne felt himself obliged to resign as Commissioner of Crown Lands, although the "Register" complacently remarked,

> "There is no grievance as to the occupancy of the Crown lands which our local Gracchi can possibly base an anti-squatting cry upon." (60)

On the previous day, however, Barrow's motion in the Council

for a resolution declaring one having a squatting interest being ineligible to hold the office of Commissioner of Crown Lands was negatived by but one vote. At a Public Meeting that same evening, called by the Mayor at the Norfolk Arms Hotel in compliance with a requisition, J.P. Boucaut moved a resolution condemning the appointment of a squatter as Commissioner of Crown Lands. He accused Milne of intriguing with Stow to get rid of Glyde in the pastoral interest. Reynolds spoke of the principle of a leaseholder being able to value his own lease as a violation of responsible government, and accused the "Register" and Forster of being financially interested in the renewal of the leases. Bryan proposed

> "That this meeting is of opinion that in the recent Ministerial changes the interests of the public have been made subservient to class and personal interests."

(It must be to this resolution that Hodder refers in his history when he speaks of a meeting in 1864 censuring the scramble for office in the Assembly. If so, he has not done it justice, for it was aimed at a section only of the Parliament, not the body as a whole, as Hodder would lead one to imagine.)[61]

-elled the author Kudos.

Barrow spoke with moderation, but favouring the trend of the meeting. C. Bonney did likewise, and, as he was one who had long been connected intimately with land policy in South Australia, his words had weight. He

favoured putting up for auction the most southerly runs, maintaining that those further out could not bear much increased assessment, but that some of the inner runs were worth 20 times their present rent.

The Ministry, faced with this criticism, resigned on July 30. On August 4, a new Ministry was announced by Arthur Blyth. It was as follows:-

Chief Secretary - H. Ayers.
Attorney-General - R. I. Stow.
Treasurer - - J. Hart.
Commissioner of Crown Lands - A. Blyth.
Commissioner of Public Works - W. Milne.

All that had been done was to omit Santo, give his portfolio to Milne, and include Blyth. The popular party thereupon began to clamour for a dissolution. In this, the "Advertiser" took the lead - "shaking a red flag in the face of his readers", said the "Register". Strangways failed to carry a non-confidence motion on August 9; so that there was reason for the fears out of the House that the squatting element was strong enough in Parliament to sway policy. The Assembly having asked to see Goyder's Valuations, it found, sure enough, that the proposed assessment was seven times what it had previously been. Faced with such an unexpected impost, the squatters could hardly be blamed for their efforts to fight it, if only the means

they took had been less objectionable.(62)

Reports were coming in of drought conditions in-land. A correspondent, writing to the "Register" from Kanyaka, said that no rain had fallen, the fleeces were poor, and there was disease among the working cattle. As much as £10 a ton was said to have been paid for the cart-age of wool to Port Augusta.(63) These reports were regarded at the time as nothing more than an attempt of the squatters to throw dust in the eyes of the country in an effort to evade the new valuations. The Ministerial statement on the Annual Leases in the Hundreds excited further distrust. It declared that the Annual Leases would not be put up for sale, but instead granted to lessees as before, with a right of renewal annually.(64) In opposition to this and in support of Goyder's Valuations, there were public meetings all over the country during August and September.(65) Meanwhile, Goyder was finishing his Valuations, and the colony awaited the statement of the Ministry on their policy in regard to them. On September 20, they announced that they would accept them in their entirety.(66) They could hardly do anything else, in view of the indignant tone of the public. Indeed, the treatment of the expiring leases had "become a matter of such absorbing interest as to retard all other legislative business."(67)

As compensation for the squatters, a Bill was brought in to allow the valuator of runs to take into account improvements, and make deductions for them. Such might be fences or buildings or wells. There was little call to make deductions, as the fencing of runs increased the lessees' profits, seeing that they were thus managed at less expense, carried one third more stock, no losses occurred, and the sheep did better than when shepherded. The cost of the fencing was thus repaid in a couple of years.(68) Townsend desired to exclude from voting on this Bill those financially interested, but he failed. Baker was making great efforts in the Legislative Council to halt the Governor's consent to Goyder's Valuations until those considering themselves aggrieved had an opportunity of obtaining redress. The Council assented to his motion, just as the Assembly passed the Assessment Act allowing a reduction for improvements. Goyder had recommended this reduction, the fraction being one fifth.(69)

On November 18, Glyde moved resolutions implying distrust of the Ministry. He wanted the Assembly to enact that the upset price for the selling of the leases of those who refused to accept Goyder's Valuations be fixed by the regulations, not by the Commissioner of Crown Lands, and that the lands in the Annual Leases falling in on June 30, 1865, be subdivided and sold at auction. He claimed that

the Ministry would sell out the country to their pastoral friends. The motion was defeated on the casting vote of the Speaker - "the lessee of Bungaree and Anama", as the "Advertiser" was careful to point out to its readers. The effect of the Speaker's casting vote was, therefore, that the policy of the Ministry should not be declared in the regulations. Again, on November 29, Glyde moved, this time simply that the House did not approve of the proposed Waste Lands Regulations, and the motion was carried. Even the squatters, the Lindsay brothers, Williams and Watts, voted with Glyde. The Government tendered their resignation, but Sir Dominick Daly would not accept it, and announced that he was going to dissolve the Assembly as soon as the Appropriation Bill was passed. This, however, the Assembly was unwilling to grant until the Government amended the obnoxious regulations. They refused to do so, and the House was left with the fear that, if it passed an Appropriation Bill, the Executive might not call it together until after June 30 of the next year, the date of expiration of the leases. So it passed another Supply Bill, to carry the country along to March 31, 1865.

A fresh piece of political chicanery was revealed on December 7. The declaration of the new Hundreds of Andrews and Hart, north of Clare, had been applied for by the squatters. Their purpose was to obtain by this means

commonage there at half the price they would have to pay under Goyder's Valuations. The usual six months' notice of resumption had not been given, as the lessees were satisfied to waive it to obtain commonage. At any other time, their complaints would have been clearly audible at being denied notice. The whole affair was done furtively, as Strangways pointed out. Even the papers giving the Parliament the statutory 14 days' notice of the declaration of the Hundreds were laid on the table by the Commissioner of Crown Lands without a word as the members were filing out.

Parliament was prorogued on December 19, bringing to a close a very stormy session and a very discreditable one as far as some of its leading members were concerned. As regards the rest of the community, it showed the determination of the people of South Australia to manage the public domain for the greatest good of the country, and to ensure the stability of the state by giving as many as possible a stake in the heritage of its better lands. "Unlock the lands" was henceforth to be the cry for the next four years. It was raised by Strangways at an election meeting at West Torrens, and from thence it spread over the countryside to be the slogan of the elections in the new year.(70)

The news from the Northern Territory which arrived in October was not altogether reassuring. The

expedition arrived at Adam Bay on June 21, after adverse winds had held back the "Henry Ellis" longer than had been expected. The site pleased Finniss, who purposed making Adam Bay an outer and the mouth of the Adelaide river an inner harbour. Their difficulties, he thought, were "already vanquished". He found it necessary, however. to report unfavourably of the conduct of some of his officers. Disagreements had apparently broken out even before the expedition left, due, partly, as it later transpired, to Finniss' overbearing, suspicious manner and partly to the insubordination of those under him. The natives had carried off some stores from a depot 40 miles up the river. These stores had been left unguarded, through the fault of the men in charge of them. A small party of four whites attempted to recover them from a large body of natives, and one native was killed in the encounter. The quarrel which had been smouldering between Finniss and his two subordinates, the Protector of Aborigines, F.E.Goldsmith, and the Clerk and Accountant, E.Ward, thereupon burst into flame. Goldsmith held an inquest over the body of the native and censured Finniss, unjustifiably, for placing the camp in an unsuitable position. As mentioned before, it was the neglect of those in the camp that caused the loss of the stores. Finniss, however, was to blame in sending a punitive expedition after the natives, not merely to recover the stolen property, but to destroy the natives'

belongings in order to teach them a lesson. The Executive Council, in considering the matter, decided on December 22 that they could not agree with him that this act

> "was calculated to teach the natives the value of property."

They regretted, too, that the command of the party was given to one so young as Frank Finniss, the Resident's son, who was unable to check the men under him. There were older officers in the camp who could have been put in charge, among them the Protector of Aborigines, who was not allowed to accompany the party.

> "But nothing can justify the conduct of that officer, when such permission was refused, in the language used by him."

A relieving expedition was immediately decided on, forty men were obtained for it without difficulty, and it set off in the steamer "South Australian" at the end of October, with orders that Ward be dismissed and any others who were dissatisfied. Grave doubts of success, however, were aroused by the return of the "Beatrice" on December 15, with contradictory letters from the opposing parties, all showing the disunity, inactivity and squabbling that were ruining the enterprise. The opponents of the Resident made all the capital they could of the swamps lying behind Escape Cliffs, as the site of the settlement was called. The men resented the pettifogging ways of Finniss, including his setting them to march up and down

on sentry-duty before his tent, to the amusement of the natives, who imitated them with sticks over their shoulders.

> "And even here, it seems quite hard
> He should require a bodyguard,
> Who were from useful work debarred,
> To form an Exhibition."

His general orders further irritated them - "full of bombast, bunkum and bad English", Jefferson Stow later wrote. All that the colony could do was to wait for the return of the "South Australian", in hopes that the new blood would put sufficient life into the expedition to enable it to push on with the surveys, not a peg of which had yet been driven.(71)

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# CHAPTER 7.

## THE COLONIAL LAWS VALIDITY ACT AND CONCESSIONS TO THE SQUATTERS BEYOND GOYDER'S LINE

(January 1, 1865 to April 30, 1866)

The steamer "South Australian" returned from Adam Bay on January 1, 1865, with several members of the first party on board, including Ward. The latter published a long defence of his conduct, alleging that Finniss insulted him by saying, when going off on one occasion, that he hoped he would not pry into his letters while holding them till his return.(1) The expedition had been greatly relieved to receive provisions by the "South Australian" on December 11, as they had been subsisting for a month previously on damper, sago, rice and lizards. Idleness and disobedience had continued. Perhaps the weather was to blame, it being now the hot season. There was as yet no garden, nor any surveys. Another native had been shot, and for this the committee of the Aborigines' Friends' Association were soon up in arms, and presented a petition to the Governor on January 13 asking for an enquiry. The grumblers at Adam Bay stated, in their letters criticising Finniss, that there was no stone for

building at Escape Cliffs, no lime, and no building timber. The nearest good land was 20 miles away, and as for the harbour, - it had a mud flat to seaward and beyond that a coral reef. All combined to inspire doubts of the fitness of Finniss, and of his "energy and decision of character"(2) A meeting of Northern Territory land-order holders met on January 10, 70 or 80 being present, and decided, on the motion of Strangways, to memorialize the Government not to allow the site of the capital to be decided until a complete examination of the country had been made and the best position had been approved of by the Government. To this the Ministry was not yet prepared to consent. They refitted, instead, the "Beatrice", which, with a surveying party, they despatched on February 18. They also chartered a Swedish barque, the "Bengal", of 300 tons, which sailed early in March with livestock and provisions. The Government schooner, "Yatala", had been lost while undergoing repairs at Timor, "a loss at this time that cannot readily be supplied", the Governor wrote.(3)

The election campaign afforded plenty of excitement in January. Of course, the squatting valuations figured most prominently. Candidates were obliged to pledge themselves to their preservation intact. It is true that J. B. Hughes, an ex-squatter, pointed out discrepancies in them at a Hindmarsh meeting, for example, the charge of 1/8 per sheep for the Bundaleer run, which was

near the fat lamb and wool markets and had running creeks, while Kanyaka, Coonatto and Mt. Arden, 100 miles further on, and with wells only, were assessed, 2 at 1/6 a sheep and the other at 1/8¼.(4) The country, however, was not in a mood to analyse these differences dispassionately. The tactics of the squatting party in the last session had aroused such distrust of their genuineness that two years of drought were needful before there could be any talk of disturbing Goyder's Valuations. It had yet to be realized that the marginal lands were subject to periodical droughts, which made them unable to bear the same assessment as the more favoured country later to be included in Goyder's line of rainfall.

The "Border Watch", at Mount Gambier, raised the cry for local representatives, instead of the two former squatting members, R. I. Stow and G. C. Hawker. A. L. Gordon and J. Riddock were put forward. Gordon, the poet and horseman, stated that he would give no pledges and reserve the right to change his opinion. He had no interest in squatting, and thought, besides, that it was not fair to appoint one man only as valuator.(5) In a retrospect of the last year, Glyde, speaking at Salisbury to his constituents of Yatala, accused the Government of holding back the proposed land regulations as long as they could, viz., for two months, until forced to lay them on

the table. He told further how, in June, he was waited upon by a deputation of squatters wanting their annual leases renewed. He obtained legal opinion, which said that they had no claim at all to have their leases in the Hundreds renewed. No objection was raised to Goyder, he declared, until the valuations were laid on the table. These he had previously been careful to keep locked up in his office. In 1863, when the Assessment Tribunal was appointed, the squatters were perfectly satisfied to abide rather by Goyder's decisions, trusting to his known ability and integrity. Clyde had praise for Ayers, but not for the rest of the Ministry, who were vacillating and trying to serve two masters. He maintained that the four squatters who voted with him early in December voted for the amendment made by Kingston (viz., to save the ministry) and not for his motion, which was carried without a division.(6)

The effect of the Victorian move towards protection of native industries was reflected in the various discussions of the tariff. Reynolds contended that they could now do away with the customs altogether. To retain them for protection was robbing the many for the benefit of the few manufacturers. In any case, the 5% ad valorem duty was not high enough to be effective as a protective duty. The income of the colony was so great by this

time, he held, that they could afford to relieve all classes. As proof, he pointed to the unexpended balances of votes in recent years for various public works. Talk of this kind naturally made a great appeal to the unthinking among his hearers, who looked to the present, and gave no thought to the question of whence the revenue was to be derived after the unexpended balances were spent.(7) The plain fact was, as Ayers demonstrated at an election meeting in White's Rooms, that 25/10 was the rate of taxation per head in South Australia. In New South Wales it was 35/3; while in Victoria it was 48/9, a much higher figure.(8) The protectionists had an ally in John Clark, who spoke on behalf of J. P. Boucaut's candidature and the retention of the ad valorem duties, which he had wished to abolish in 1860.

The elections were a rout of the pro-squatting party. In the Legislative Council, to the joy of the "Advertiser", Ayers topped the poll, with English, Bonney, Tuxford and Morphett following him, all pledged to support the valuations. The former Council had a majority of pro-squatters, the new one was predominantly non-squatting. Stow was defeated, and Hawker did not seek re-election for Victoria. Squatters were displaced in the electorates of Barossa, Stanley, West Torrens and Encounter Bay.(9) Stow's defeat meant that the Ministry had to find a fresh Attorney-General. None of the three lawyers in Parliament,

Strangways, Andrews and Boucaut, would serve with them, so the Ministry were forced to resign.

> "Nothing can demonstrate more forcibly the objectionable state of the law in this respect," wrote Daly to the Secretary of State, "than that a combination of three or any number of lawyers that may obtain seats in Parliament can upset any ministry."(10)

He accordingly sent for Reynolds, who had to admit after five days that he could not form a Ministry. F.S.Dutton was more successful, and on March 22, he announced the following Ministry:-

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| Chief Secretary | - | H. Ayers. |
| Attorney-General | - | R. B. Andrews. |
| Treasurer | - - | T. Reynolds. |
| Commissioner of Crown Lands | - | H.B.T.Strangways. |
| Commissioner of Public Works | - | F. S. Dutton. |

This Ministry was warmly approved by the press. One finds it difficult to agree with Daly in his complaint to the Secretary of State, regarding the ministerial crisis, that

> "the unfortunately frequent recurrence of similar embarrassments deprives them of the interest of novelty and they are for the most part occasioned by trivial circumstances to which it is difficult to trace events of so much greater magnitude and importance."

He must have been a poor observer of the political situation if he could not realize that the country had lost confidence in the previous Ministry, which could not have survived many weeks after the meeting of Parliament, even if it had been able to co-opt an Attorney-General Nor was it a "trivial"

matter that the disposition of the public lands should be decided on just principles. This was not the only occasion on which Daly betrayed an anti-popular bias. A few months after his arrival, he wrote that he had not met a man here who favoured payment of Members,(11) which statement is understandable only on the supposition that he mixed with a very limited circle.

At the opening of Parliament, the Government announced that they were returning to the old form of the financial year, ending on December 31, to enable the Legislature to pass the votes for the various services before the expenditure was required, thereby rendering Bills of Supply or temporary votes of credit unnecessary. This would entail a second session in the second half of the year. The Governor's Address included an expression of sympathy for the pastoralists suffering in the Far North, who had not had rain for over 18 months. The "Advertiser" contended that hardly any of these came under Goyder's Valuations, and that most were paying 10/- a square mile and no assessment. This statement was later disproved, since the drought affected all the country from Mt. Remarkable north along the Flinders Range, as well as the parts towards Lake Torrens. Most of the runs in that area were paying assessment, for instance, Kanyaka, Wilpena, Pinda, etc. The last harvest, even in the agricultural districts, was

441,056 bushels less than the previous one, the biggest falling off being in the County of Light, where the average fell from 14½ to 10½ bushels per acre. Still, credit was firm, the Governor could speak in his Address of an "altogether unprecedented demand for land", and the revenue expected for the year was £800,000, as much as the colony's national debt. The farmers, in spite of the reduced yield, had done well, owing to the great demand for export wheat and the consequent high prices. The copper market was, however, not bright, resulting in the Burra Co. being unable to declare a dividend at its previous half-yearly meeting.(12)

With so much revenue expected, Duffield moved on April 12 for a large increase in the vote for immigration. The motion was carried, the amount being, in fact, doubled. Arthur Blyth asked on May 9 when the proportion of nationalities in immigration would be adjusted, to admit of the issue of certificates for assisted passages from Ireland. Strangways, the Commissioner of Crown Lands, replied that if it were assumed that up to the resumption of immigration in 1862 the requirements of the 1857 Act had been complied with, the reissue of certificates for Irish assisted immigrants might possibly commence after the June mail. If the House decided upon adjusting the disproportion of nationalities that occurred previous to 1862, the

reissue could not take place for a long time, perhaps for some years. On May 12, Blyth moved that the calculation should date from the 1857 Act. In spite of strenuous efforts by Sutherland, the motion was lost. Strangways therefore stated on July 12 that the balancing of nationalities would take place from 1862. It is evident that the employers of labour were anxious for all the help they could get, and realised that they would not fill their two ships a month with English and Scotch migrants alone.

The Assembly assented to a motion for leasing the railways as soon as possible. The Act for selling them, it was feared, had not been sufficiently publicized in England, and no-one in the colony was financial enough to put down the £100,000 security required. Although most members favoured getting rid of the railways, they had little hope of doing so. The present motion called for immediate steps to be taken for letting the lines, and for tenders to be called for selling them.(13)

The inevitable Road Bill came in at the end of May. Again it was aimed at the abolition of the Central Road Board as an elective body, since the principle was still being advocated at some country meetings that the Board members were responsible only to those who elected them, viz., the District Councils. There were 1,500 miles on the schedule of Main Roads by this time, a fact which seemed to point to the necessity of the Government

taking over the extensive work of building and caring for them. Once more, however, the Bill was withdrawn after opposition in Parliament and out of it. A Main Roads Act supplanted it, extending the Main Roads to Mount Remarkable and Kapunda from their old termini at Redruth (Burra) and the River Light. £5,000 was granted for much-needed repairs to the North Road. In the South-East, funds were provided for the road from Mount Gambier to MacDonnell Bay. Riddock, in asking for the £10,000 required, claimed that the South East had not ten miles of made road in it, although it had contributed half a million to the colony. Likewise, on July 12, the Assembly advanced £7,000 for the Penola road. In the course of the year, Port Augusta received its water supply, after paying for the last few years 9/- and more per 50 gallons. By 1868, it was to have the telegraph, a gaol, improved roads through the Pichi Richi and Horrocks passes, and its own Local Road Board.(14)

A correspondent, writing to the "Advertiser" at the beginning of the year, had some interesting observations to make on the land question. For years past, he said, the Government had been selling the best lands when they were not required for agriculture, or when they were isolated, with no roads made to them. These surveys were carried out either to keep up the revenue by forcing

those to buy (the squatters) who were known to have the means, or, more frequently, on the application of the squatter himself. In the South-East, for example, the squatters had as much bought land in the hundreds as the farmers put together. Consequently, he condemned the system of extending surveys from various isolated points, e.g. Mt.Gambier, Penola, Mt.Schanck, Glencoe. Similarly, it was injudicious to sell land north of the Burra while there was an intervening space of land unsold. At a land sale the week before he wrote, in the Hundred of Ayers, above Clare, of 50 sections sold, only one was bought by a person who could possibly be mistaken for a farmer. All except 15 sections went at the upset price. On the same day, at Mudla Wirra, near Gawler, and at places ten miles from Mt. Gambier, 30/- to £3 an acre was given for land which he claimed was not half as good. If, then, the northern land were held longer, it would bring a higher price.

> "The farmers want land and want it badly, but they don't want it at Booborowie, Canowie or the Mosquito Plains (Naracoorte) at present, and when they do want it, it will all be gone."(15)

In the light of these statements, the contention made on P.254 of Roberts' "History of Australian Land Settlement" - that the squatters were refused the right of purchase - is open to question. It is proved quite erroneous by the accounts of purchases in the newspapers. At the land

sale of May 25, 1865, F. S. Dutton purchased 2201 acres of his run at Julia Creek at £3/6/6 an acre. Others secured 1811 acres of it at £3/14/- an acre. Hawker bought 1455 acres of his run near Clare at £1/8/2 an acre, while others got 1465 at £1/11/4. Bowman bought the whole of his run near Port Wakefield at £1/1/4. A witness, speaking before Goode's Select Committee later in the year, recalled that he was given £20 not to bid at the sale of Dutton's run.(16) On June 8, the squatters once more got most of their runs. The Government, pursuing the popular policy, offered the Annual Leases in the Hundreds for sale, in spite of the declarations of Baker and Davenport in the Legislative Council that the 1858 Act gave to the holders of Annual Leases a right of renewal as much as to those holding 14 years' leases. On June 15, the sale of these Annual Leases took place, and once again they were nearly all bought by their former occupiers.(17) S. Way, then a young lawyer, was hired to protest as each lot was put up for sale. After a time, the auctioneer disregarded him, but he continued to fulfil his commission to the end of the sale.

It was all very well to boast of the stability of the South Australian system of land disposal, in contrast with the various efforts of New South Wales and Victoria to cope with the problem. The colony might have prospered under it, but the question was whether a better

could not be found. Those opposing change constantly reiterated that South Australia's system had been commended by the other colonies. If so, it was asked, why did not the other colonies follow it? Stopping sales and swamping the market had both been tried as expedients, but both were inefficacious. On May 12, C. H. Goode moved in the Assembly for a Select Committee on the disposal of Crown Lands. The area suited for agriculture in the colony, he declared, was limited. There was none beyond Mt. Remarkable, and a little only around Port Lincoln. (Yorke Peninsula he did not mention.) Under wool-growing, land might be expected to produce £80 a year per square mile. Under agriculture, £1,280 per square mile was about the yield. It was therefore important to place the land under the latter. The existing system of selling at the upset price of £1 an acre did not obtain the full value of the land, and failed to settle it with the right class of people. Large sums were paid to land agents to prevent their bidding at sales; the auction system had failed. For a long time it had answered well, but with the large accumulations of capital now in the colony it did not do so. It was the squatters who paid agents to prevent them from bidding, 8 to 12 of them at a time being paid from 6d. to 15/- an acre. If one agent were retained, then the whole rest of them had to be also, as it was

considered a matter of honour amongst them not to bid against each other. Thus they were netting large incomes from money which should go to the public purse. The whole business was, in short, a disgrace to the colony. Continuing the debate on the 18th, Santo opposed the motion, stating that all the efforts to give land to men with little money had failed in the other colonies, and he could not see how putting up the price of land, as had been suggested, would help the poor to get it. The Select Committee was agreed to without a division, but the members who were ballotted in, A. Blyth, Duffield, Santo, Glyde, Williams, Strangways and Goode were all opposed to change except Goode, the mover.

In the progress of the hearings, two Government clerks, Needham and O'Halloran, refused to tell the Committee the names of those taking bribes for sales of crown lands, also whether any members of Parliament were implicated. The question was regarded as one of privilege, because the Act of 1858 defining the privileges of Parliament had made it an offence to refuse to answer legitimate questions put by a Select Committee. The two men were accordingly called to the Bar of the House.(18) O'Halloran appeared. Needham, it was said, was out of town. He had, in fact, gone to the South East, ready to slip across into Victoria if an order were issued for his

arrest. O'Halloran read from a written paper his reasons for not replying, which amounted to a statement that he had not sufficient knowledge "to enable me to specify, with any degree of certainty, any one particular circumstance or person". He said he could bear testimony to no facts, but could only relate suspicions. On this, Townsend very reasonably remarked that "if he had answered the Select Committee in this way in the first place, nothing like this would have happened". Goode maintained that he had then "given the impression of knowing names well enough" but of being unwilling to reply. Other members, such as Hart and Boucaut, felt that the privileges of the House were at stake and that he should be committed for contempt. The Ministry, however, doubted if any judge would convict in the case, and O'Halloran was therefore discharged. Nothing thereafter was ever done as regarded Needham. Whether or not the task undertaken by the Assembly on this occasion was beyond their power may be doubted; certainly they lacked the courage necessary for its successful performance.[19]

The Report of the Committee was brought up on July 25.[20] It recommended no change in the system of selling the land, although it admitted the evils of combinations and the forcing of bonuses by opposition to intending buyers. Its only affirmative recommendations were (1) That the demand for land should be carefully watched

and land only be offered for sale as required; (2) That the plan for some time past adopted of surveying and selling land only within the Hundreds be strictly adhered to; (3) That in all future surveys of land a continuous line of sections should be reserved adjacent to main roads, to enable persons to bring stock to market; (4) That when it was decided to offer lands in any particular district, such a quantity should be offered at one sale as would ensure a larger attendance of buyers than if a small number of sections were offered for sale in different parts of the colony.

It was rumoured that the draft report prepared by the Chairman (Goode) had been mutilated by the removal of its main facts and recommendations, and that the Report in its final shape was a mere ghost of the original.

Goyder's evidence before the Committee is of great interest. He told the members that about one half of the available agricultural lands of South Australia had been sold. In this estimate, he did not include Yorke Peninsula, as he thought it too unreliable for wheat. Nor did he include Eyre Peninsula, where he said the best land was in the aboriginal reserve at Poonindie, 10 miles north of Lincoln. He made the claim to be able to fix the line of reliable rainfall, starting from Mt. Browne, coming South, then South-East, spreading out Westward and dropping down South again. He said that the squatters themselves were the greatest applicants for land to be put up for sale,

and it was not correct to speak of them as being "killed". He believed the agricultural land would eventually pass into the hands of the farmers, but only after it had been bought first by the squatters, and sold by them at four or five times the price at which it had been obtained in the first place from the Government. To obtain the best return for the State from the sale of its lands, he favoured varying the upset price according to the estimated value of the land. Finally, he opposed deferred payments.

Following the lines recommended by Goyder, Goode moved in the next session, on December 13, 1865, that instead of land being offered at the upset price of £1 an acre, a classification should be made, the upset price being graduated in accordance with the value of the land. If combinations were to prevent farmers from getting good land at £1 an acre, the Government might as well put up the price and let the revenue benefit. If leasehold lands were classified, why not the freehold? Town lands, also, had the upset price varied. The motion was negatived by a majority of four, and the matter was allowed to drop, as had happened a week previously in the Legislative Council.

Meanwhile the drought continued. A correspondent from Mt. Deception, at the end of April, recounted that no rain had fallen and that the sheep were dying at the rate of 8 or 10 a day. Worse still, the lambs would have to be

killed immediately they were born unless feed in the meantime sprang up.[21] Early in May the lessees of the North addressed a memorial to the Government praying for a Commission to report upon their district with a view to such an alteration of the waste lands regulations as would afford them some relief - the method favoured taking the form of longer leases.[22] The answer of Ayers, the Chief Secretary, was that the Government had not the power to grant any concessions.[23] The Legislative Council, on May 16, voted for a Commission to enquire into the Northern leases, with Ayers again opposing the motion. All knew about the drought, he said, and the northern squatters had already submitted a petition for the consideration of the Government. It was therefore no surprise when the Council were informed on May 25 that the Ministry declined to appoint a Commission, because of the difficulties in the way of properly conducting such an enquiry.

Throughout the winter a keen watch was kept day by day for the expected rain. Still it held off in the North. The Willochra plain was in such a bad state that dust flew at the least wind. At Kanyaka and Wirriandra it was even worse. At length on July 7, the Assembly assented to the desired Commission. Its members, who were to travel through the North during the approaching recess, and to be ready to report to Parliament when it

met again,[24] were appointed by Executive Council on August 9. They were C. Bonney, M.L.C., G.J.Valentine, the Chief Inspector of Sheep, and W.Cavenagh, of the House of Assembly.

The events which had the greatest constitutional importance in 1865 remain to be chronicled. On May 29, Mr. Justice Gwynne reserved for the consideration of the Full Court a case in which a certain Neville was charged with horse-stealing. A count in the indictment stated that he had been previously convicted in the Local Court of Willunga of felony. The judge thereupon deferred sentence and reserved for the consideration of the Full Court the question of whether the power assumed to be given by the Legislature to Local Courts to try cases of felony up to a certain amount was repugnant to the law of England. The powers of the Local Courts, where justice was dispensed by Stipendiary Magistrates and Justices of the Peace, had been extended in 1861 to enable the hearing, without juries, of felonies in cases not involving more than £20. One of the reasons for the extension of the jurisdiction of Local Courts was the obstruction of justice in the Supreme Court by Gwynne and Boothby. It is therefore understandable that the powers of magistrates in the Local Courts were a sore point with the Judges, especially as many of these magistrates had not a legal training.

Indeed, the volume of business handled by the Local Courts was such as to leave the Supreme Court comparatively little to do.

R. I. Stow, the Attorney-General in 1861 when the Local Courts Act was passed, now appeared for Neville and pleaded the invalidity of the Act on the grounds that the Parliament of South Australia had no power to constitute courts of law. He claimed in addition that the powers of summary imprisonment by the magistrates in Local Courts without the aid of a jury were repugnant to English law. On the latter ground, Boothby and Gwynne declared invalid such parts of the Local Courts Act as purported to give them criminal jurisdiction.[25] The action of Stow in thus pleading the invalidity of an Act to which he had advised the Governor to assent revealed a deplorable lack of principle, for which his later defiance of Boothby could hardly atone. The "Register" remarked, on July 9 -

> "Now that he is excluded" - (from Parliament) - "he turns round and savagely attacks the Legislature of which he is no longer a member."

Less than a month later, in the case Dawes v. Quarrell, the Full Court vetoed the rest of the Local Courts Act, that part referring to civil cases, since, said Boothby and Gwynne, the Legislature had no power to erect courts. The Australian Colonies Government Act, passed by the Imperial Parliament in 1850, had omitted the provision

enabling the erection of courts, which had been expressly set out in earlier Acts relating to South Australia. As we have seen above, they had already declared the criminal part of the Act invalid on the score of repugnancy. "Another grand smash!" wrote the Advertiser, and - "the latest triumph of the repugnants."(26) The opinion of the English Law Officers that South Australia had power to erect courts meant nothing to these two men, who were fully aware that an Act to decide the point was under consideration by the Imperial Parliament.

> "We believe that their honours are jealous of the powers of the Parliament; that they are struggling to aggrandize their own authority; and that, like many other men in high positions, they are desirous of making themselves absolute."

So wrote the "Register" on July 19th. The stricture had much of truth in it, for a similar struggle was going on at the same time in Victoria, where the Judges showed a disposition to sneer at the political institutions of the country and to make the Supreme Court a court of political appeal.(27) Colonial Judges, at the moment, were neither above nor below the Legislatures. The Constitutions did not provide, as did that of the United States of America, that the Supreme Court should have power to pronounce upon questions of validity. The only remedy would be an Act of the Imperial Parliament declaring either the powers which Colonial Legislatures possessed or the place which Judges held in respect of Parliament.

The decisions of the Supreme Court cast the administration of justice into absolute confusion, for, as Daly wrote home,

> "It is said and not altogether unreasonably that no-one can tell under what laws he is living or what will in any given instance be the decision of the Supreme Court, if after a series of years during which certain laws have been reputed to be valid, acted upon as valid by the Supreme Court, and made the foundation of their proceedings in innumerable cases with a full knowledge on the part of the individual judges of the existence of certain objections, these Judges may turn round and declare that they have been giving effect to assumed laws which they knew all the time had no validity."(28)

Hundreds of persons had been convicted in Local Courts since 1861 and sentenced to imprisonment. Were those still in prison to be released, as having been unlawfully confined? And might not some of those who had been sentenced by magistrates take action against them for wrongful imprisonment or illegal extortion? To prevent this latter possibility, Act No. 14 of the Session, a Magistrates' Indemnity Act, was passed, although Boucaut and others maintained that it would be either unnecessary or repugnant - the first if the Parliament had the power to erect courts and the second if it had not.(29) The Ministry instructed magistrates to use their discretion as to whether they should continue the civil jurisdiction of the Local Courts. Criminal cases were transferred to the Supreme Court, and the criminal jurisdiction of the Local Courts was never again revived.(30)

Most of the Local Courts carried on; that of Adelaide, for instance. In the absence of remedial legislation from the Imperial Parliament, the only recourse left to the Parliament of South Australia was the local Court of Appeals. A serious difficulty, however, was that £100 had to be at stake before this court could intervene. In Dawes v. Quarrell the amount in question was only £20. A Bill was introduced to amend the provisions of the Supreme Court Act relating to the Court of Appeals by giving a right of appeal irrespective of the amount involved. Daly explained to the Secretary of State that he and his ministers were reluctant to resort to this expedient, as all laws affecting the administration of justice should have regard only to permanent objects and it was not desirable that the Court of Appeals should ordinarily have power to entertain appeals for so small a sum as £20. Nevertheless, for the public good this measure was absolutely necessary.(31) An appeal was immediately lodged in Dawes v. Quarrell, but the Court was not in a hurry to sit. Matters were in this state when news arrived on August 11 of the passing of the Colonial Laws Validity Act by the Imperial Parliament.(32) There was relief at this intelligence, for the Act was comprehensive, settling at one blow all doubts of the validity of past legislation, and defining the powers of Parliament.

> "All's well that ends well. The forensic cloud is dispelled by thunder from above."(33)

The Act declared that no Act of a colonial legislature should be deemed invalid on the score of repugnancy unless it contravened a specific Act of the Imperial Parliament extending directly or by implication to the colony concerned. No law assented to by a governor was to be invalid by reason of his instructions not having been complied with. Every colonial legislature was to have full power to establish courts and revise them, as also to revise and alter its own constitution. The certificate of the Clerk or other proper official attached to a colonial Act was to be sufficient proof that the document so certified was a true copy of the Bill. Lastly, all Acts of the South Australian legislature that had received the Royal Assent through the Governor or by the assent of Her Majesty in Council were declared to have been valid from the date of such assent.(34)

In the Circular conveying the news of the Colonial Laws Validity Act were included two other Imperial Acts having reference to the colonies. One was an Act, 28 & 29 Vict. c. 64, confirming the validity of certain marriages contracted in the colonies with formalities other than those made necessary by law in Great Britain. It was passed to remove any doubts about the validity of marriages already informally solemnized in the colonies, but which had been given retrospective validity by colonial laws. Some

persons had held that such a retrospective colonial law, though binding with respect to civil rights and property within the colony where it was passed, might not have the same effect elsewhere in the Empire. The other Act established retiring pensions for colonial governors. The above-mentioned Marriage Act, the Colonial Laws Validity Act and the Act 29 & 30 Vict. c. 74 of the next year making it unnecessary for colonial governors to reserve Bills connected with the tariff, were entirely at variance with the predictions of the "repugnancy" school of thought. They showed conclusively that in granting self-government to her colonies, the Mother Country intended to confer that great boon on them in reality and not in name only. Gwynne was at length won over, and no longer had doubt as to the existence of the Court of Appeals. It is true that he concurred with Boothby in October, 1865, in declaring that the Registration of Deeds Act of 1862 had not been validated by the recent Act, but this did not so much matter since the Court of Appeals was able some time later to reverse the decision here given.(35) Boothby, of course, was irreconcileable. Mention by advocates of appeals from his decisions provoked his ire. He threatened to strike Mann from the rolls for acting as clerk of the Court of Appeals, and rebuked Stow for impudence in announcing that the defeated party in Walsh v. Goodall would appeal to the Court of Appeals.

Whether it was the Act of 1864 giving legal protection to the funds of mutual and provident societies or the example of other places, or the developing complexity of industrial life in the State, we notice in 1865 the emergence of a number of associations of workers. There was a Carpenters' Association, which aimed at obtaining the 8-hour day already existing in Victoria. It had benevolent functions also, such as the replacement of a member's tools lost through fire or accident.(36) The Drapers' Assistants' Association was to be a good deal in the news for the next few years, with its efforts to obtain early closing, in winter at 6, in summer at 7. Some employers were willing, but the others who refused prevented the industry as a whole from adopting the desired hours.(37) The Grocers' Assistants' Association had already been in existence for 9 years, having led the way in the matter of Saturday afternoon holidays. The employers, in this case, had not required much forcing, judging from the remarks of speakers at the dinner to celebrate the 9th anniversary of the Association.(38) In September, several meetings took place at Port Adelaide, at the Wharf Hotel, with the object of forming a working men's union. That held on September 20 resolved that such a union should be formed, and about 50 of those present paid the 2/6 membership fee. 6d. a week per member was to be paid to form a fund in case of

accident or sickness. The meeting asserted that the rate of wages on board ship ought to be 10/- per day of 10 hours, and any man, if employed only for one hour, ought to be paid not less than for a quarter of a day. This Union was to apply only to men employed on board ships. It was formed for the protection of those resident about the Port as many of the boarding-house keepers harboured runaway sailors who contracted to discharge ships at a rate below the subsistence level. Robert Burfield was appointed treasurer and meetings were to be held fortnightly.(39)

News of the Northern Territory came in a telegram from Melbourne on July 25. A party of 13 had left Adam Bay in the "Bengal" early in May, and this was their first chance of sending news to Adelaide. Another smaller party, including Jefferson Stow, had bought a boat from the "Bengal", 23½ ft. long by 6 ft. beam, which they christened the "Forlorn Hope", and in this they intended to make for Perth, so disillusioned were they with conditions at Escape Cliffs. The reports of the party from Melbourne, who came on to Adelaide within a few days, caused deep disappointment. A township had been surveyed at Escape Cliffs, and several buildings had been constructed, including houses for Finniss and Manton, and a large storehouse. Cotton, bananas, melons and vegetables were growing. Port Darwin had been examined in accordance with the Government's instructions, but it was thought that it would not do as a

port because it was bounded by mangrove swamps, except at the North-West corner, and because the tide rose as much as 24 ft. Rains during the first three months of the year had prevented exploration beyond Port Darwin. The bickering and idleness continued, due to faults on both sides. Much of the dissatisfaction, it became clear, was owing to the men having to do hard manual work, to which many were unaccustomed. The settlement, apparently, was as unhappy in the choice of its rank and file as of its commander. According to a letter from Stow, although Finniss decided on the site at Escape Cliffs before mid-October, no start of surveying was made until December 14. Yet he had four surveyors with him.

The adventurers of the "Forlorn Hope" arrived in Adelaide on August 11, by way of Perth. Their trip from Escape Cliffs to Perth took them 53 days, during which they were out in a storm for five days. They hugged the coast all the way down, calling in at Camden Harbour and Champion Bay. With them came despatches from Finniss, and correspondence "very voluminous and contradictory in many respects". The "Advertiser's" own correspondent told of the feeling of disgust in the Territory when the "Beatrice" returned from Adelaide earlier in the year.

> "Had both the Government Resident and the site been confirmed, there would, it was thought have been some consistency in the action of the Government; but to employ in the selection of another site a man

> who had been guilty of such folly in choosing the first was a policy land holders (and there are not a few here) were unable to understand."(40)

In reference to this criticism of Finniss, Grenfell Price's review of the history of the Northern Territory quotes the report of a Parliamentary expedition of 1907, which justified the choice of Escape Cliffs rather than Port Darwin.(41) In the minds of many, the conviction has persisted that less than justice was done to Finniss in the matter of the site, whatever his shortcomings as a leader. At any rate, the Ministry were prevailed upon by the popular outcry to decide on the recall of Finniss. Manton was left in charge, and the explorer McKinlay was engaged for 12 months to explore and report on the Northern Territory, including sites for settlement. The site for a capital was to wait pending his report. The Northern Territory Land Regulations were altered, as the land-order holders had requested at the beginning of the year, to include the clause that no selection of land would take place until three months' notice had been given in the Government Gazette that the site for the capital had been decided upon and that the lands were open for selection.(42) A little over half the Northern Territory land fund remained, about £50,000. What was wanted now was

> "a hearty united little band of surveyors, explorers, labourers and men who will be content to postpone civic and official proceedings until society is a little better consolidated."(43)

The "Ellen Lewis", which took McKinlay and his party in September, was to bring back Finniss and most of the men with him. It returned on February 13, 1866, leaving behind only 9 officers and 10 men, together with McKinlay and his party. On March 1, the Executive Council appointed a Commission of enquiry on the Northern Territory, and decided also to recall the naval survey ship, the "Beatrice", from surveying the northern coastline, to engage in the far more important work of surveying the South Australian coast.(44) In a preliminary despatch, McKinlay recommended Darwin, stating that the landing of stock should be made there in future. A good landing place existed near Point Emery, with plenty of feed and a running stream of fresh water. He condemned Escape Cliffs, both for a seaport and a city.(45)

The report of the Commission on Finniss and his administration was printed in the newspapers on May 23, 1866. It declared that he showed an "utter want of management of the men under his charge". All three of the members of the Commission agreed to this. It asserted further that he "neglected to carry out the instructions of the Government contained in despatches". From this, one member, Capt. O'Halloran, dissented. On May 25, the resignation of Finniss was accepted, after his request to be heard before the Executive Council had been refused on May 23.(46)

Parliament was in recess until September 29, 1865. A little before it reassembled, there were two changes in the Cabinet. Reynolds resigned from the Treasurership, through his inability to carry out his election pledges of the repeal of the ad valorem duties. He favoured direct taxation but could not persuade his colleagues to agree with him. It was, as he said later, the third time that he had resigned on principle. As far back as June 22, he had openly collided with Dutton, the leader of the Ministry and Commissioner of Public Works. Dutton said in the House on that day that the Government had not considered any fiscal changes and had not therefore declared any policy on the tariff. Reynolds reminded him that it had been understood when the Ministry was formed that he (Reynolds) was to be the exponent of Government policy in the House and stated that he intended to move in the next session for a revision of the tariff.(47)

At the same time as Reynolds withdrew, so did Dutton. The post of Agent-General had become vacant, and to this the latter was appointed on September 21. Ayers took over the leadership of the Ministry, in which A. Blyth became Treasurer and Santo the Commissioner of Public Works. It was not long before the Parliament voiced its disapproval of the appointment of Dutton. If a Ministry might appoint one of their own number as Agent-General, or indeed

to any lucrative post, such a tempting prize might influence a man's political conduct. If to the pay of a responsible Minister were added the chance of some valuable preferment, there would be a greater struggle for office and the possibility of dark bargains. The Legislative Council accordingly passed, without a division, a resolution to the effect that such an appointment was contrary to the spirit of the Constitution, and calculated to lead to abuses.(48) Two things in particular were singled out for condemnation, firstly, the haste with which the appointment was made, as there was no immediate necessity for it, and secondly, the fact that it was made during the recess, giving Parliament no chance to express an opinion. It was this count against the Ministry which aided in their overthrow a few days later. on the vote of the Assembly, although there were a variety of reasons contributing, among them the squatters' hope of obtaining an administration more favourable to their demands, and the dissatisfaction of free-traders and protectionists alike at the tariff proposals of the Government.

The first month of the session had shown practically no results. In response to agitation for some time past, Government clerks were given at the beginning of October a rise in salary of 5%. The "Advertiser" facetiously hoped that this sudden accession of good

fortune would not induce habits of extravagance.[49] There was some skirmishing, also, in the Legislative Council over the question of how Bonney, being a member of that House, could accept an office of profit on the Northern Runs Commission. Ayers, the Chief Secretary, replied that it was a temporary duty, not under the control of the Ministry. Otherwise, how could a barrister who was also a member of Parliament receive a fee from the Government if retained by them? A permanent office he defined as one held for life unless revoked. A Select Committee was appointed, every member of which was pro-squatting. The Committee reported on October 17, condemning the appointment; this was a fresh nail in the coffin of the Ministry. Like many in our own day who cannot see the distinction between amateur and professional status in sport, the Committee confessed themselves unable to comprehend the difference between "remuneration for services rendered and reimbursement for loss of time sustained."[50] Baker moved a vote of want of confidence in the Ministry. The voting was equal, with all the squatters on one side, and it fell to Morphett, the President, to give his casting vote. This he gave for the Ministry.[51] The day after, Townsend, who was not a squatter, moved in the Assembly a similar vote of want of confidence, and it was carried. The failure of the Government to implement free trade seemed

to be the main item in Townsend's indictment, but the charge of their having no policy also figured prominently.

Hart had seconded Townsend, and became the head of the Ministry which was announced on October 23.

J. Hart - Chief Secretary.

J.P.Boucaut - Attorney-General.

W.Duffield - Treasurer.

L.Glyde - Commissioner of Crown Lands.

Hon. T.English, M.L.C. - Commissioner of Public Works.

The Governor again complained, in his despatch conveying the news to the Colonial Office, of the best interests of the country being "neglected and sacrificed to a perpetual scramble for office".(52) The composition of the above Ministry makes it clear that the Assembly played into the hands of the squatters by turning out a ministry, the strongest opposition to which

> "rested upon the fact that nearly all of them had been an unusually long time in office, and were accused of assuming too much the air of indispensability."(53)

The presence of Glyde among the Ministry was remarked upon, since he had always led the anti-squatting party. Thus, when it was known on Nov. 1 that he had resigned over the decision of the new Ministry to send out Goyder to submit a report with a view to the relaxation of his Valuations, the "Advertiser" declared that it had thought that he

would be unable "to sail in such company as the Ancient Mariner has got together". Neales took his place.

After the short recess consequent upon the change of Ministry, Parliament resumed on November 14, to hear the report of the Northern Runs Commission. The runs visited and suffering from the drought included some of those valued by Goyder. It was evident that the land could not support the valuations which had been made in 1864 on the returns of a succession of good years. The Commission did not recommend any particular scheme of relief. It mentioned that the evidence of the last 15 years showed that droughts occurred every five years or so, and expressed the belief that the North could be much better managed in comparatively smaller areas (200 to 300 square miles) managed by resident lessees. For the year ended September 30, 235,000 sheep had died out of 827,000. 903 horses out of 2,145 were dead, as also were 28,000 cattle. There was even a suggestion of condemnation of the lessees for over-stocking, a charge which has recurred against landholders at each drought down to our own days. The surviving sheep were being driven South, as there could be little hope of relief until the next winter, and the stations were being deserted.

For some weeks after this, there was not much of interest. Goyder - "little energy", as he was nicknamed - was away travelling along the line of division

between the country affected by the drought and that where conditions were nearer to normal. As usual at slack times, the amendment of the Constitution came on for discussion. The new Government brought forward a Bill, in the clauses of which could be seen the influence of various recent political events in South Australia and Victoria. They desired to increase the membership of both Houses, in order to minimize, by the larger number of members, the scrambling for office. With more members, the opportunities for tasting "the sweets of office" would extend to a smaller proportion of members, making them less anxious to share in movements to overturn Ministries. The Council was to have seven districts returning its members, and one quarter of its members were to retire at every dissolution. The Victorian deadlock between the two Houses over the question of a protective tariff clearly influenced the Ministry to include this clause. There were to be seven Ministers and it should be permissive whether the Attorney-General were in or out of the House. Ministers were to return to their constituents on taking office, salaries were to be reduced, that of the Chief Secretary to be £700, and those of the others, £600 each. Judges were to hold office during good behaviour, but might be removed by the Governor on the address of both Houses, after which they might appeal to the Privy Council.

Other provisions were the validation of the local Court of Appeals, the prevention of Government contractors from holding a seat in either house, and the raising of the salaries of the Governor, the Judges, the Crown Solicitor and the Auditor-General. The Bill passed its Second Reading in the Assembly in January of the next year, but not by a sufficient majority. Consequently, it was abandoned. The Legislative Council referred it to a Select Committee - this being to shelve it, as the "Register" remarked.(54) There were very many who opposed interfering with the Legislative Council. Concurrent elections for the two Houses also were considered undesirable, as then the voters might not do themselves justice at a time of excitement. Others thought that the suggested revision of the Council would be beneficial, as the number of members that it was proposed to send back to their constituents would not be sufficient to make the Upper House the reflection of a momentary agitation but would be sufficient to test the question of whether the class that it represented was or was not in accord with the class represented in the Assembly.

Goyder's report on the rainfall was laid before Parliament on December 12. The line dividing the country where the rainfall was reliable from that subject to droughts, he wrote,

"extends from Swan Hill on the Murray in a north-westerly direction to the Burra Hill and thence north to Oak Rises, east of Ulooloo and by the last named hill to Mt. Sly; and in a northerly and westerly direction as shown by plan herewith forwarded, by the Hogshead and Tarcowie to Mt. Remarkable; then southerly by the Bluff and Ferguson's Range to the Broughton; and south-westerly to the east shore of Spencer's Gulf, crossing the Gulf to Franklin Harbour, and thence north-westerly to the west end of the Gawler Ranges."

The line was further south than he had thought. He had been guided previously by the idea that the beginning of the salt-bush marked the end of the area of reliable rainfall. This famous line of his has remained. It was challenged later in the century, when the North was brought under the plough as far up as Hookina, but the lesson of repeated droughts has been that it is not economical to grow wheat north of Goyder's Line, and the "marginal areas" tend to revert continually to sheep-raising.(55)

Hart outlined his plan two days later for giving relief to the Northern squatters. It included longer leases, of 3, 6, 10 and 14 years, according to their classification, of the runs lying outside Goyder's Line, and a remission of rent to the extent of 6, 12, 18 and 24 months respectively. In the debate that followed, Strangways leaped to the front as the opponent of concessions, a position that he was to hold continuously from now on. He and Reynolds directly challenged the votes of several members present, as being pecuniarily interested. To this

the reply was made that the matter was one of the public interest, not a private one. The debate continued throughout December 19, 20, 21, during which the House negatived any mention of remission of rent. It gave permission, though, for a Bill to be introduced for the granting of longer leases. Duffield refrained from voting on the question of the remission of rent. Watts and Williams, both squatters, were struck off the division list, although they objected, saying that they were perfectly willing, as regarded themselves, to refrain, but that they represented the squatting district of Flinders and should vote. The Bill to grant longer leases was introduced on January 18, 1866. A meeting at Nairne on January 29 stigmatized it as detrimental to the public interests, as the aim of the Government should be to unlock the lands for agriculture, and extensions to the squatters was putting back the day. This resolution shows that many people did not understand the position, because the Government had power to resume any leases at six months' notice, whether they were in agricultural areas, or, as these, beyond them.

After the Bill had passed its Second Reading in the Assembly by a majority of 11, the Speaker, G.S.Kingston, delivered a ruling, on January 30, on the score of the 199th Standing Order, that certain members were not entitled to vote on the Bill before them. His ruling was immediately challenged by many of the members, who main-

tained that the Bill was not the same as the motion for a remission of rent, but was for the extension of the time of leases, a public question. Strangways posed the question of whether the five members referred to by the Speaker were to be allowed to vote on whether they were disqualified. Blyth moved a resolution setting aside the Speaker's ruling, and the House became a "bear-garden". The Speaker, it was said, was unable to prove that the members' interest was direct and pecuniary. The two precedents which he quoted were the Loyalty Loan of 1797 and the Gold Coin Bill of 1811. On the first of these, the votes of interested members were disallowed, but not on the second. Hence reference to them did not give much assistance in the case under consideration.

Before the adjourned topic came on again for discussion, Milne moved on February 2 for free distillation. So many of the members were pecuniarily interested in the subject that exception was taken to the names of Milne, Murray, Martin, A. Blyth, Bower, Bright, Townsend and Colton. The Speaker was obliged to give his casting vote on whether these might vote. He did so, and voted that no-one be disqualified, in accordance with Blyth's motion that the question being one applying to public matters, and in which the interest of members could not be separated from the interest of the public, all members were entitled to vote. As Reynolds remarked, the word

"interested" was like "repugnancy", - nobody could define it. Milne's motion for free distillation was negatived, from the general conviction that the wine-growers did not want free distillation, only easy access to the available spirits. The whole discussion was, of course, merely preparatory for the squatting leases question, which followed it immediately, continued through that day, and was concluded on February 6, when the Speaker was over-ruled by a majority of 8. There was no precedent to justify his ruling, either in the Commons or the Colonial Assemblies. No one knew where the Legislature would be led if it excluded these votes. Had the Bill been a private one, the case would have been different.(56)

Thus encouraged, the Chief Secretary, Captain Hart, obtained leave soon after, on February 8, to bring in a Bill to grant remission of rent to certain lessees, the same ones as had benefited by the Act for longer leases. The expected loss to the revenue was £40,000, causing Strangways to express his doubts of the inability of the lessees to pay. However, the motion for the Bill was assented to by 26 to 7. Meetings at Smithfield and Hindmarsh condemned the action of the Government, as also did another at Mount Barker.(57) In the Assembly, Strangways fought the Bill for longer leases to the end, dividing the House again and again on the question of members being ex-

cluded from voting.(58) He became the bete noire of the "Register", which accused him of wilfully holding up the business of the country. The "Advertiser" thereupon set itself out to champion him.(59) Henceforth, he would supplant Reynolds as the leader of the popular party. Not that he was in accord with the popular voice over the question of Mr. Justice Boothby. He had opposed the Real Property Act in its early years. When Boothby's continued defiance of the Legislature would, in a few months' time, lead to a second demand for his removal from the Bench, Strangways, ever impervious to criticism, would be his chief, indeed almost his only, supporter. To what extent Strangways' attitude was prompted by the desire to embarrass the Government is hard to say. It was his ability to remain cool in the midst of political conflict, to deliver mordant strokes with a smile, that made him such a power in the House. Above all, he was never put out of countenance by the taunts that his searching attacks elicited. He had been trained at the English bar. and possessed abilities which would carry him, by the end of 1868, to a leadership in the House, the strongest yet since the grant of Responsible Government. Now, to such good effect did he and the moderates organize the opposition in and out of the House that the Ministry were obliged to announce that the squatters would be given the option of taking longer

leases or rent reduction.(60) So the question rested until the next session, with Goyder's Valuations still intact, even on the runs that had been denuded of feed.

The Central Road Board finally passed under the full control of the Government, after it was discovered in January that negligence had occurred on the part of a surveyor in passing contracts on the main road between Stony Creek and Tungkillo. The slopes of the cuttings had not been cut back enough, nor were the cuttings sufficiently deep. Sutherland used this opening for his move in the Assembly against the Board. They were shown, he said, to have insufficient control over their employees. They had the expenditure of £150,000 a year, but knew nothing as to the execution of the works, since there were no facilities for their travelling about the country. They trusted to the surveyors, who trusted in turn to their clerks of works, and no-one was finally responsible.(61) The difficulties of the past would be enhanced in the future, with the extended length of the main roads. Over 400 miles of made road now spread out from Adelaide, with a rate of extension of about 40 miles a year. A Bill was introduced by the Government, giving the Executive the power of appointing the members of the Central Road Board and of constituting local Road Boards, by which expenditure in excess of the money voted, such as had occurred recently in the South-East, might be avoided. This Bill

passed with little opposition, and its beneficial results were soon evident in the appointment of local Boards in the South East, in the North for the Port Augusta area and on Eyre Peninsula. Act No.27 of the following Session, that of 1866-7, declared the main roads in the Port Lincoln and Port Augusta Districts. From Port Lincoln they ran to Tumby Bay on the east and to Lake Wangary on the west. Out of Port Augusta they ran via Horricks Pass and Beautiful Valley to Melrose, via Pichi Richi Pass to Willochra and via the Western Plains to Parachilna. In this way the communications of the province were considerably expanded.

A Jury Bill, dispensing with fees in certain cases, was amended by the Legislative Council in a money clause. The Assembly, on January 11, 1866, acquiesced in the amendment, but the Attorney-General, Boucaut, moved on the next day for another Bill, in order to avoid the precedent of agreeing to the Council's alteration of a Money Bill, the terms of the new Bill being such as the Legislative Council had desired.(62) This method of procedure was repeated in the next session, when the Port Wakefield Tramway Bill was amended by the Council in an essential principle, viz., the substitution of a 3'6" gauge instead of one of 5'3".

The Volunteer forces probably reached their nadir in 1865. For the opening of Parliament in the beginning

of the year, on March 31, they were supposed to form a guard of honour to receive the Governor. There was to be a captain, a lieutenant, a sergeant and 30 privates, as well as the regimental band. To the amusement of the bystanders, only 5 out of the 30 privates turned up, because the Government had not issued the new uniforms that had arrived from Melbourne a few days before.(63) A Commission on defence was appointed by the Executive Council on January 11. It reported in favour of payment of the Volunteers, and recommended also revolving batteries for the defence of the Port.(64) Another report was drawn up a little later by a visiting naval man, Commander G. H. Parkin of the "Falcon". He suggested 6 gun-boats, each carrying one 160-pounder smooth-bore gun, as well as fixed batteries, with obstructions at the inner bar and forts beside the roads leading to the city from Glenelg and Port Adelaide.(65) As with all the reports on defence, nothing came of it. The Imperial Act of this year allowing the formation of colonial naval forces was not received at all enthusiastically in Adelaide,(66) because it offered no men, money or help to the colonies. The British Government had in 1858 established a Royal Naval Reserve, which, by this time, comprised 18,000 in England alone, and it was thought wise to extend it to the colonies. The Act gave ships of war under colonial authority none of the rights or privileges

of Admiralty ships. It enabled the colonies to raise a reserve, and to place their ships under the Admiralty either in peace or in war. It also enabled the colonies to combine for mutual defence. Not until the eighties would South Australia think about establishing her own navy, which would then amount to but one ship.

There was no review on May 24 of 1865. Instead, the Volunteers and their failings were discussed in Parliament and a resolution was carried in the Assembly that the failure of the Volunteers to provide efficiently for the defence of the colony was due to the neglect of successive Governments to carry out the provisions of the Act. All the men's grievances received an airing, and opinion was unanimous that the movement did not receive the encouragement it should -

> "When war is near and danger nigh,
> God and Volunteers they cry;
> When war is o'er and things righted,
> God's forgot and Volunteers slighted."(67)

Nothing was done until the next year, when the Assembly, on January 11, 1866, passed the Volunteer estimate of £7500 for 1000 men with reluctance, and only on the understanding that a new Bill be brought in to provide for the reorganization of the force and the payment of its members. The Bill was accordingly introduced on February 1 and passed as Act No. 18 of the session. The new force was to consist of not less than 540 men. Besides this, there

was to be a "reserve" force of not more than 1000, of tho[se] who had served 3 years in the Volunteers. Companies were to consist of not less than 60, and mounted troops of not less than 18. Rates of pay were to be 5/- for a private, 7/6 for a sergeant and 9/- for a lieutenant per day. The captain of a company would have to certify if a man's conduct warranted his being allowed to shoot for the rifle prizes to be given in each district.

Near the end of the session, the Assembly, on Strangways' motion, assented to a resolution similar to that already agreed to in the Upper House, condemnatory of its members receiving pay for serving on a Commission. He and others were dissatisfied with the number of Commissions recently, the Harbour Commission, the Northern Territory Commission and the Northern Runs Commission. Members might be tampered with or tempted, he said, by being put on paid Commissions.[68] If this were to happen, it would be payment of members in its worst form. He reviewed the history of Commissions under Responsible Government in South Australia. First, there was that on the wreck of the "Admella", which was unpaid. Next, the Commission on the Real Property Act of 1861 was paid. Members received £150 each, at £5 a day. (Waterhouse refused to accept pay. Hanson and Barrow took it.) Next, there was the Commission on the Hospital and Lunatic Asylum, which was not paid. Now there was a second on the Real

Property Act and one on the Northern Territory, the last of which was a farce, since the Government should have taken the matter into its own hands. His motion that a member accepting a seat on a paid Commission have his seat declared vacant by the House was not passed, but the second part of his motion, that it was inconsistent with the Constitution that a member be appointed on a paid Commission, was assented to.

On March 16, the Parliament was prorogued. An hour after the ceremony of assenting to the Bills of the Session and dismissing the Parliament, the Clerk of the House of Assembly waited on the Governor, stating that the Bill for the Strathalbyn tramway had not been included and so had not received the Governor's assent. Thus, it had to remain until the next session and be passed again. Inquiry revealed that the printed blue copies had not been taken up from the Government printer in the usual way. The printer informed the Chief Secretary that no application had been made for them until after the prorogation. On March 20, the Chief Secretary wrote to the Speaker asking for an explanation of the Bill's absence. The Speaker's reply, of March 21, was as follows -

> "I have to observe that I cannot acknowledge the right of any person to question me as Speaker of the House of Assembly or to call for explanation of anything happening in relation to the conduct of the business of the House of Assembly."

However, he said that the usual requisition was sent to the Government printer, and he was unable to account for the non-transmission of the copies. The Executive Council was satisfied, and submitted a recommendation that arrangements be made for the appointment of some officer who should be responsible for the due presentation of all Bills passed by Parliament.(69)

A week later, Captain Hart resigned his leadership of the Ministry to pay a visit to England. Neales also withdrew, leaving J. P. Boucaut at the head of a Ministry which was destined to hold office for over a year, from March 28 1866 to May 3, 1867. Its members were -

Chief Secretary - A. Blyth.
Attorney-General - J. P. Boucaut.
Treasurer - - W. Duffield.
Commissioner of Crown Lands - W. Milne.
Commissioner of Public Works - T. English, M.L.C.

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26. Judgment in Dawes v. Quarrell S.A.P.P. No.120 of 1865. "Advertiser" July 19, 1865.

27. "Advertiser" April 8. A.Todd "Parliamentary Government in the British Colonies". P.843.

28. Daly to S. of S. No.42. July 26, 1865.

29. S.A.P.D. 1865. c.745.

30. R.Hague. History of law in South Australia. Ch. 8.

31. Daly to S. of S. No.42, July 26, 1865.

32. Ibid. No.52. Aug.22, 1865. S. of S. to Daly. No.43. Aug.2, 1865, also Circular of July 26.

33. "Advertiser". Aug.24.

34. "Judge Boothby". Hague. Ps.704-747.

35. "Register". March 5, 1866. For full account of the whole crisis of 1865, see R.M.Hague, "Judge Boothby". Also his "Court of Appeals". Ps.61-76.

36. "Advertiser". May 8, 1865.

37. Ibid. Oct. 28, 1865. Jan. 3, 7, 18; Feb.20, June 10, Sept. 11, 17; Oct. 25, 30 (editorial against trade unions); Nov. 29, 1867. "Register", July 13, 1866; Jan. 31, March 20, April 30, May 22, Dec. 4, 1868.

38. "Advertiser", March 2, 1865.

39. Ibid. Sept. 15, 22, 1865.

40. "Advertiser", Aug. 14, 1865. Also July 26, 31; Aug. 2, 3, 12, 17, 22, 25. S.A.P.P. 1865-6. Nos. 15, 33.

41. "History and problems of the Northern Territory". Grenfell Price. Ps. 13 & 14.

42. "Advertiser", Aug. 24. Daly to S. of S. No. 56, Aug. 25.

43. Ibid. Sept. 21. Daly to S. of S. No. 61. Sept. 26.

44. Daly to S. of S. No. 78, Dec. 26, 1865. Also No. 10, Feb.23, 1866. Minutes of Executive Council, March 1, 1866.

45. "Register". Feb. 15, 1866. S.A.P.P. 1865-6. No. 131.

46. Minutes of Executive Council. May 23 & 25. "Register", May 9, 11, 23.

47. S.A.P.D. 1865. c.564 et seq.

48. Ibid. c.58, 80, 83.

49. Oct. 2.

50. S.A.P.P. 1865-6. No. 29.

51. S.A.P.D. 1865-6. c. 107, 128.

52. Daly to S. of S. No. 67. Oct. 25, 1865.

53. Ibid.

54. "Advertiser", Nov. 2, Dec. 6, 8, 9, 1865. "Register", Jan. 3, 10, 19.

55. S.A.P.P. 1865-6. Nos. 57 (Report of Northern Runs Commission), 78 (Goyder's Report), 82 (Goyder's Report on Northern Runs, with map), 154. (Another map).

56. "Register". Feb. 7, 1866.

57. Ibid. Feb. 15, 21. March 1.

58. S.A.P.D. 1865-6. c.1112.

59. "Register". March 5. "Advertiser", March 1, 1866.

60. S.A.P.D. 1865-6. c.1225.

61. Ibid. c.890.

62. Blackmore. "Procedure of Assembly". P.275.

63. "Advertiser". March 31, April 1, 1865.

64. S.A.P.P. 1865. No. 29.

65. Ibid. No. 32.

66. "Advertiser". May 16, 1865. Circular to Daly. May 19, 1865.

67. Ibid. June 13. S.A.P.D. 1865, c.483.

68. S.A.P.D. 1865-6. c. 1300.

69. Minutes of Executive Council, March 21, 1866.

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## CHAPTER 8

## THE AMOVAL OF MR. JUSTICE BOOTHBY

(May 1866 to December, 1867)

In May, 1866, Boothby, foiled on all other points by the successive Acts of the last few years, forced the issue on the question of the Attorney-General's powers of criminal indictment in the stead of a Grand Jury. He first refused to discharge a prisoner, Hibbart, after the jury had acquitted him, seeking to bring pressure on the Attorney-General to charge him on another count. When Stow, the counsel for the prisoner, applied on May 15 for his discharge, Boothby replied that, as Judges in England could direct the Grand Jury to recommit a prisoner, so he could make the same direction to the Attorney-General here. He refused to hear Stow on the following day, in another case, alleging that, as a Queen's Counsel, Stow needed a licence to appear against the Crown. Here again, he had his eye on English practice, where it was customary to ask whether a Queen's Counsel had licence to appear. Stow refused to say whether or not he had a licence, and maintained that Boothby was insulting him by insinuating that he had appeared without proper authority. Strangways,

who did not ordinarily practise, gave the Judge the opening for which he was looking on May 18, when he appeared for a certain Green, charged with murder, and objected to the indictment, saying that there was no Attorney-General. His arguments in favour of such a claim were mere sophistry. The fact that a salary was set aside in the Constitution Act for the Attorney-General, he boldly stated, was not sufficient warrant for assuming that such an office had in fact been created, seeing that his powers were nowhere defined in the same Act. This astounding assertion, which would elsewhere be treated with derision, was acceptable to Boothby. All the other counsel naturally made use of the same objection, and the remaining cases were all adjourned. This identical question had been raised and overruled by Gwynne in Reg. v. Nethery in 1864 and by Boothby himself in Reg. v. Preston in 1861. On May 22, Boothby announced that there was no Attorney-General, and that there was no warrant for putting any man on trial for any crime without the intervention of a Grand Jury. There had never been any taint of convictism in South Australia. Hence, the reason for dispensing with the Grand Jury in other colonies, he declared, did not apply here. All the cases for the rest of the sittings were adjourned, causing a disedifying scene between Boothby and Stow when the latter objected on behalf of 2 or 3 prisoners to the postponement. The Full

Court could do nothing to help, as, by the constitution of the Supreme Court, the Judge sitting in criminal matters formed the Court and unless he reserved a question for the consideration of the Full Court, no action could be taken. The other two judges would not advise the issue of a Special Commission by the Executive giving another Judge power to try the cases, since they doubted if such powers could be validly exercised. The cases, including three murder trials, were therefore remanded until the next sittings.(1)

Public opinion was naturally gravely excited. The Executive Council, in its meeting of May 28, caused a proclamation to be issued calling Parliament together on June 15, some 2 weeks earlier than had been intended. Then the first business to which it proceeded was the consideration of the advisability of removing Boothby. Full reports of his judicial conduct, prepared by the Attorney-General, Boucaut, and the Crown Solicitor, Wearing, were laid before the Parliament. The charges in the resolutions for his removal came under 6 heads, thus giving the Colonial Office no opportunity to say this time that the reasons had not been stated. They were as follows:-

(i) That he persistently refuses to administer laws duly enacted by the Parliament of South Australia;

(ii) That he declines to give effect to the Imperial Statute known as the Validating Act;

(iii) That he is accustomed from the bench to impugn the Local Court of Appeals;

(iv) That he refuses to conform his judgments to the decision of the Supreme Court;

(v) That he obstructs the course of justice by perversity and an habitual disregard of judicial propriety;

(vi) That he has delivered judgments and dicta not in accordance with law.

The Opposition, notably Strangways, Reynolds, Clyde and Townsend had much to say that was captious. The latter, for instance, declared that the matter should be referred to a Select Committee and an opportunity given the Judge of defending himself That had been the procedure in the Addresses of the Imperial Parliament for the removal of Sir Jonah Barrington in 1828. First a Commission had been appointed by the Commons to enquire into the proceedings of the Admiralty Court over which he presided. Then he was heard before a Select Committee of the Commons and at the bar of the House. When the Address of the Commons had been agreed to and transmitted to the Lords, he was heard again at the bar of the Lords with witnesses on both sides and the Attorney-General prosecuting.[2] Thus, there was some ground for the reply of the Secretary of State to the South Australian Government, on February 26 (No. 9), 1867, in which he compared the deliberation of

the proceedings that would be adopted in the English Parliament for the removal of a Judge with what he seemed to consider the rustic methods of the South Australian Legislature. To the colonists, however, it appeared that the reasons for his removal were so evident that further delay was unnecessary and even dangerous.(3) The Assembly adopted the Address for Boothby's removal on June 28, and the Council did likewise on July 3. In the Assembly, even the Opposition kept their seats when the division was called. Opinion was not unanimous in the Council, but the majority was a clear one.(4) The Governor, in a covering despatch, sent with the Addresses, strongly urged the necessity of a favourable reception of them by the Home Government as being

> "in the highest degree important to the peace, order and good government of the Colony."(5)

These Addresses, he pointed out, were not now, as in 1861, passed by a bare majority. Boothby's contumacy could no longer be doubted, besides which the Duke of Newcastle had promised in 1861 to take action if a Judge were proved obstinate. Daly added that at no time since his appointment, probably, had Boothby been "so fertile in objections" or "so reckless in giving effect to them".

Boothby sent a protest against the Addresses to the Secretary of State, not through the Governor, but through private channels. This, it was thought, was

intended to cause delay, for the protest had to be sent back to the Governor for comment by the Executive. In it, he claimed that it was his fidelity to the law of England that was cuasing his unpopularity, alleging that the petitioners wanted to throw off Imperial restraints.

"The Imperial Parliament is thus shot at, through the sides of a Judge."

The prisoners held back from May were tried by Hanson in August at the next Criminal Sessions. In order to prevent Boothby again presiding at another Criminal Sessions, Boucaut introduced a Bill on August 30 to amend the third Judge and District Courts Act by providing for the issue of Special Commissions to Judges to preside at Sessions out of their order. There was some criticism of this because it gave the Executive power to say which Judge should try a case, it was made perpetual instead of temporary, and it provided for civil as well as criminal sittings.(7) However, it was efficacious in preventing Boothby taking his turn in February, 1867.

Boothby's letter to the Secretary of State may have caused the Colonial Office to pause, for the Despatch No.11, Oct. 23, from England, contained the information that the Secretary of State was considering reference of the case to the Privy Council. Boothby had maintained that the Secretary of State had not the functions of a

Court to try the facts and declare the law, but only to remit these to the Privy Council. As a compromise, the Secretary of State suggested pensioning him off. To this, Daly replied that such a solution was hopeless, as, first of all, he would not agree, and secondly, no Government could carry through such a provision.(8) A following Despatch contained a further report of the Attorney-General on Boothby's conduct on the bench in civil cases, conduct

> "which continues to be an unceasing source of irritation and scandal".

The Executive Council, on December 27, agreed to a Minute of which the wording assumed a very firm tone. They were not going to put the colony to the expense of an appeal to the Privy Council. They maintained further that the position adopted by the Colonial office was

> "founded upon a misconception of the question upon which His Lordship" - (Carnarvon, the Secretary of State for the colonies) - "is called upon to advise Her Majesty, which is not a question of law, but one of constitutional right and public policy; . . . The Council submit that the Addresses of the two Houses of Parliament of South Australia, relating to the removal of a South Australian judge, should be dealt with by Her Majesty's ministers in the same manner as similar addresses by the Imperial Parliament for the removal of an English judge; otherwise the confidence of the inhabitants of Her Majesty's various colonies in their mode of Government cannot remain. The Council are of the opinion that Addresses of the two Houses of the Imperial Parliament would not be referred by the Home Secretary to the Judicial Committee, or to any other legal tribunal, and submit that the local Parliament have a right to complain of a course being adopted with regard to them in a matter of local concerns that would not be adopted towards the Imperial Parliament."(9)

(These sentiments appear to the present writer as being in advance of Constitutional developments at that time, as the Executive Council claimed almost an equality with the Imperial Parliament. No wonder that Carnarvon would not recommend the Queen to remove the judge, when the demands of South Australia embraced principles that were as yet 50 years in the future.) The Minute of the Executive Council stated also that if the British Cabinet wished to escape responsibility by asking the advice of any other body, they, and not the colony, should defray the expense thereby occasioned. The delays already inflicted by the Colonial Office had dealt Responsible Government in the Colonies a hard blow. The present mode of acting of the Secretary of State was, moreover, directly contrary to the constitutional principles laid down for the guidance of the Duke of Newcastle at the time of the previous Addresses.

Still stronger was the wording of another Minute of the Council two months later, elicited by a further despatch from England telling the Governor that Carnarvon had placed the matter before the Privy Council and desiring the Colonial Government to put the indictment into legal form, so that Boothby could be given an opportunity of framing his defence. The Executive treated this intimation as a test case of Responsible Government and refused to recommend the Legislature to adopt such a

course. The Constitution Act, they declared, enabled the South Australian Parliament to obtain the removal of a Judge by addresses. There was almost a threat of secession in the following Minute of February 25, 1867:-

> "They, (the Government) are most desirous to preserve unimpaired all the ties which connect South Australia with the Mother Country, and not only to acknowledge that they are subjects of the British Crown, but to cherish and deepen the feelings of loyal attachment to Her Majesty; still they cannot but fear that these ties must be loosened, and these feelings diminished, unless Her Majesty's advisers are prepared to recognise the rights of the Colony and to pay attention to the respectful demands of its Parliament."

This crisis was clearly South Australia's greatest. It is comparable with that in New South Wales in 1851 when it appeared that Responsible Government might not be granted in full to the Australian colonies,(10) or with the contemporaneous Victorian deadlock between the two Houses of Parliament over the tariff. There was never, however, the same unmeasured talk of secession here as in those other colonies. Had relief been longer refused, one cannot say what situations might not have occurred, but, fortunately, the Colonial Office was sufficiently impressed by the first of the above-mentioned Minutes to send out directions to the colony to remove Boothby itself.(11) The colony of Victoria had already been informed, in reference to the case of Mr. Justice Redmond Barry, at the beginning of 1866, that the English Law

Officers considered that colonial governments, with their Executive Councils, were still competent, after Responsible Government, to amove Judges in virtue of the Statute 22 Geo. III c. 75.(12) South Australia was now directed to proceed against Boothby under this Statute. The news of this desired solution was given to its readers by the "Advertiser" of March 11, 1867.

The session of the Houses of Parliament for the second half of 1866 continued throughout the year and was not closed until January 11, 1867. It presented nothing of a sensational nature, and, mirabile dictu - no ministerial crisis. Reynolds tried on October 12 to move a vote of want of confidence, but he was beaten without a division. Among the Acts passed were some having a bearing on law reform. They included:-

No. 2, An Act to protect persons from Actions by reason of their being elected to Parliament, while members of the Court of Appeals. (The Constitution Act declared that no Judge of any Court could be elected to Parliament.)

No. 3, to prevent crimes of violence;

No. 4, amending the law of partnership;

No. 7, the Supreme Court Procedure Act, Revenue Jurisdiction;

No. 11, the Act already mentioned to amend the Third Judge Act, allowing the Governor to issue a Commission for holding courts in Adelaide or elsewhere;

No. 13, for amending the law of evidence and practice at Criminal trials;

No. 14, relating to the limitation of suits and actions; and

No. 20, dealing with the Equity side of the Supreme Court.(13) This Equity Act Boothby refused to recognise in the following year. The Act No. 3 provided penalties, such as whipping, in an attempt to deal with the outbreak of lawlessness that Adelaide witnessed during 1866. Almost daily, for a period, there were newspaper accounts of "sticking-up". This was something new for South Australia, which had previously been so respectable and law-abiding and had looked askance at the bushranging exploits of Ben Hall, Captain Starlight and others in New South Wales. A very strict watch had also been kept on ships coming from Western Australia. The police force was felt to be incompetent, with the result that Townsend, as Mayor of Adelaide, opened the question in Parliament, and secured the appointment of a Commission to investigate. When the Commission reported, it had no record of the evidence taken, since this had been given on the understanding that it should not be made known. The report advised the removal of the Police Commissioner, Major Warburton, because of his frequent absences on exploring expeditions. Other recommendations were the reorganization of the Police Department, the establishment of a detective service, a better mode of

appointment and promotion, and increased pay for extra duties, as well as other changes of lesser importance. Since the report of the Commission unsupported by evidence was not very satisfactory, a Select Committee of the Assembly was appointed. On the recommendation of this Committee, Warburton was dismissed on February 12, 1867. Many thought that he had been unjustly treated, as his explorations had been undertaken for the benefit of the colony. A Select Committee of the Council of the 1867 Session was, in consequence, appointed with the purpose of justifying him. The crimes of violence were traced at length to the Kerney brothers, who were sentenced to life imprisonment, setting at liberty by their confessions four men who had been wrongfully imprisoned.(14)

In view of the expansion of the Lower North since 1860, several new railway projects were decided upon. They were the line from Roseworthy to Forresters - now Hamley Bridge - and a tramway from Port Wakefield to Hoyle's Plains, 26 miles away to the North-East. Port Wakefield had expanded so quickly that it now handled the second largest bulk of exports in the colony. In 1864, 160,000 bushels of wheat were sent from there, and in 1865 over 7900 bales of wool. A great deal of land was being sold in the County of Stanley, and for the products of this area an outlet was required that would not be so inconven-

ient as Port Wakefield was in its present state. The inhabitants of the districts towards Clare were divided as to whether they should apply for railway communication and better roads in the direction of Adelaide, or a tramway and improved shipping facilities at Port Wakefield. At the same time, the Burra, Saddleworth, Mintaro and other places along the valley of the Gilbert were petitioning for a railway to the Burra, not so much for the use of the mines, though it was maintained that a railway would increase the value of copper there by £10 a ton, as for wool and wheat. Parliament granted the extension from Roseworthy to Forresters, at the junction of the Light and Gilbert Rivers, and voted £77,000 for the improvement of Port Wakefield Harbour and the construction of a tramway of 3 ft. 6 ins. gauge.(15) £100,000 was likewise voted for the deepening of the Port Adelaide harbour and the removal of the bars. Larger ships were coming to South Australia than formerly, and harbour improvement could no longer be delayed. The money was not to be handled by a Trust as previously, for the Colony had experienced enough of the heart-burnings that such a mode of administration induced.(16) The Dry Creek loop-line, making unnecessary the roundabout journey of northern trains into Adelaide and out again to the Port, was another improvement decided upon in this session. The tramway

from Strathalbyn to Middleton has already been mentioned in the previous chapter as having been sanctioned in the previous year but as having miscarried temporarily through the omission of the Bill from those presented for the Governor's assent.

A Destitute Persons relief Act made improved provision for those unable to help themselves. Its provisions embraced four main heads. (1) the maintenance of indigent poor by their relations; (2) the establishment of a Destitute Board; (3) the establishment of industrial and reformatory schools; and (4) protection for officers. There had long been in existence a Destitute Asylum, which had come under criticism at various times, and particularly earlier in the year, for the reluctance with which it gave assistance and the formalities it required before helping even the most obvious cases of destitution. The immediate result of the Act was the setting up of orphanages and industrial schools by the State and the denominations, places such as "Grace Darling" at Brighton, St. Vincent's Orphanage at Goodwood, and the "Orphan Home" of the Anglicans.(17)

On Friday, July 13, a deputation, headed by John Barrow, waited on the Commissioner of Crown Lands to induce him to help small capitalists to reclaim the dense mallee scrub-lands lying between the Bremer and the grazing land on the Murray banks. Favourable terms

were necessary to render them available for cultivation, as the cost of clearing would be very great - at least £4 an acre. Long leases and low rentals, with a right of purchase at 10/- an acre, were the suggestions of the deputation submitted for the Government's consideration. Later, Barrow introduced the matter into the Legislative Council. It was taken up by the Assembly, and resulted in the Scrub Lands Act, granting leases of up to 21 years, with a minimum rental of 10/- a square mile and a right of purchase. The discussion on this Bill is enlightening as showing the general opinion of the House that it was only a step in the way of land reform. Carr objected to it, saying that the land was worthless. Strangways forecast his later policy of making good land available to the farmers rather than land which others did not want. At the same time he showed his uncertainty as to the details of the concessions which should be made. He feared, for example, that the farmers, if given deferred payments, would follow the example of the squatters and miners by repudiating their engagements and asking for more liberal terms. He spoke also of the advantage of going in for the Melbourne system of free selection and deferred payments, if they were going to alter their land system. The present Bill he stigmatized as a "little, petty, peddling scheme".[18]

All this time the drought in the north remained unbroken. Hardly any rain fell north of Pekina. For

miles and miles on the Mt. Arden run not a blade of grass was to be seen, the Willochra and Kanyaka plains were as red as a brickfield, according to a correspondent, and Wilpena was little better. An area 170 miles long by 100 wide - from Pekina to Mt. Deception - was affected worst. This part had received no rain worthwhile since January, 1864, when the runs had 450,000 sheep and 15,000 cattle. Now there were about 100,000 sheep and 1,000 cattle only. The summer rains which had relieved the country north of Mt. Deception had been denied to all the runs lying south of it. By the end of 1866, a further remission of £65,243, due for rent and assessment, was desired. A Commission was therefore appointed to go into the matter. There were now to be three valuators and these were appointed in September. They were Goyder, Bonney and Valentine, the Inspector of Sheep.[19] The motions for the appointment of a Commission on squatting relief were introduced in the Legislative Council and the Assembly by Barrow and Glyde respectively, two who had formerly been most prominent in their opposition to the squatters.[20] "The Idler", writing in the "Register" of December 24, remarked,

> "It was quite interesting to see Mr. Baker's play of features during the time Mr. Barrow was speaking - conviction overcoming incredulity and amusement suspicion."

Almost all the disinclination to disturb Goyder's Valuations had died away, except in the case of die-hards like Strangways. The Commission was to report to Parliament after its reassembling in the session of 1867.

One Act of 1866 remains to be considered, that increasing the Governor's salary from £4,000 to £5,000. According to an Act of the British Parliament of 1865, granting retiring pensions to colonial Governors, the higher a Governor's salary, the higher would be his retiring pension. It was considered, therefore, that the higher the salary offered by the colony, the more likelihood of obtaining a first-class man for Governor.

A measure which was unsuccessful, but was passed in the following year, was a Bill for the systematization of the marriage laws of the province, a favourite topic with A. Blyth, who had brought it forward in the first Parliament in 1857. It was then dropped on the receipt of petitions from the various denominations. As revived in 1866, it again affronted the major part of the community by treating marriage solely as a civil contract. Ministers of religion were to be obliged to make application for a Government appointment as registrars, and would thus become Government officers, it was argued. A deputation of ministers of religion, thereupon, obtained an alteration of the words "appointed by the Government" to

"entered by the Government". The Catholics, after that, were practically the only ones opposed, even though a clause in the Bill provided that ministers of religion, acting as registrars, should not be obliged to solemnize a marriage to which they had conscientious objections, as distinguished from district registrars, who, being Government officers, were obliged to act in all cases where there was no lawful impediment. The Catholic objection was based on the fact that marriage was for them a Sacrament, and that all authority for marriages was derived from the Church, not the State. The clause in the Bill, therefore, making it a felony to solemnize marriage without a licence from the State was viewed by them as striking at the anterior powers of ordination of the priesthood. Their attitude was difficult for non-Catholics to understand, especially as priests had been acting as registrars since 1855, when an Act stated that no clergyman could solemnize marriage without being first entered in the register and having undertaken to make returns to the Government. At a meeting of Catholics at West Terrace, the Bill was denounced as "intolerant and tyrannical". A meeting of dissenting ministers in Chalmers Church, North Terrace, in equally strong terms, voted in favour of it and the equalization of the marriage laws. Since there was no State Church in South Australia as in England, no distinction

should be made, declared the ministers, between the denominations. Yet the clergy of the Church of England and the Catholic Church were allowed to celebrate marriage in virtue of their ecclesiastical appointment, while the ministers of other denominations were required to ask leave of the civil power. The Bill was finally withdrawn, to be introduced next year in an amended form. In May, 1867, the Diocesan Synod of the Church of England agreed that the marriage laws of the province were in "a very uncertain and confused state". Banns, for example, might be published 100 miles away from the place concerned, and so be of no use. It was supposed to be a felony for a minister to solemnize marriage except in a chapel, a provision which could not be observed in a young country such as Australia. Officiating ministers did not observe the law requiring seven days' notice of the ceremony, and the powers of District Registrars were uncertain. The 1867 Bill avoided contentious ground by stating that the Governor "might" appoint officiating registrars and that ministers of religion "might" apply to be enrolled. The ministers of any denomination were to be appointed on the recommendation of the head of that particular body.[21]

Stagnation continued in the affairs of the Northern Territory. On Sept. 26, 1866, McKinlay returned in the "Beatrice" with news of his failure. He had travelled only 80 miles from Escape Cliffs to the Alligator

River when he was stopped by floods. After living on horseflesh, he was lucky to save his expedition by making a crazy boat of horse-skins to take them back to Escape Cliffs. He and Manton had quarrelled violently, leading "the Idler" to speculate whether

> "there was something in the air at Adam Bay to affect the temper and judgment of persons going there."

It was a place where

> "good reputations are quickly lost and mental vigour declines."(22)

The question before the public was what to do in regard to the land orders held for the Northern Territory. Was the Territory to be abandoned, and would the investors simply lose their money? They took the risk, no doubt, but the South Australian liability still remained. The Legislative Council carried the proposition on October 18 that the Northern Territory be abandoned and the purchase money be handed back to the land-order holders. Manton, it was pointed out, thought the country utterly worthless, and Ayers defended his qualifications in his absence from the attacks of McKinlay, who called him by such unrestrained terms as "coward" and "maniac". The Assembly voted to recall Manton's party, but negatived the resolution, proposing to repay the money, of which a large part had already been spent. It directed the Government instead to call for tenders for the survey of 300,000 acres.

Eleven tenders were received, all too high, leading the Ministry to decide upon sending another man with a high reputation for efficiency, namely, Captain Cadell, the veteran Murray River navigator, who was instructed to fix on a proper site for the survey.

It is easy to criticize the Governments of those days for the continued failure to achieve something tangible in the North. One should rather admire the constancy of aim which marked the efforts of South Australia to overcome the difficulties of a tropical venture. The real fault of the Legislature was in listening to too many advisers. Certainly the land-order-holders who later made common cause with those in England in suing the South Australian Government for non-fulfilment of its contract to allow selection within 5 years had little of right on their side, since it was at their instance that the Government had halted the surveys and begun to look for a more favourable location. The experience of nearly 100 years of Northern Territory development leads to a more tolerant view of the delays than was possible for the men of that day.

Cadell was appointed by the Executive Council on February 4, 1867, and left soon after for Brisbane with a party of seven, to take the steamer "Eagle" from there. He spent a year over his survey, examined and reported adversely on the Roper River district, and

returned finally with the report that the best place possible was the Liverpool River area in Central Arnhem Land. Meanwhile the English Company holding land-orders had sent out to Adelaide a representative, Anstey, who waited on the Chief Secretary, in company with land-order holders living in South Australia. This was on November 22nd, 1867. The Chief Secretary at the time was Henry Ayers. On learning that the Government proposed going on with the contract, although they realized that they would be unable to complete it by March 1869, Anstey protested vigorously, speaking of an appeal to Parliament and to the Sovereign. It looked, indeed, as if the gift of the Northern Territory would prove to be a Cassandra gift for the colony.(23)

On May 3, 1866, the Executive Council proclaimed the new arrangements for the Volunteers under the provisions of the Act of the previous session. The districts which were to provide companies were Adelaide (to a radius of 4 miles), the Port, the Sea-Coast, the Eastern District, Gawler, Kapunda, Willunga, Yankalilla, Strathalbyn, Encounter Bay, Mt.Barker, Robe and Yorke Peninsula. The Government Gazette of the same date contained 8 pages of rules and regulations concerning precedence, clothing, distinguishing badges, and so on. J. H. Biggs was appointed Colonel-Commandant and Paymaster. The response was poor for some time, the only ones showing alacrity being the Scots, who formed a Company to wear the kilts. They

had their first drill at the beginning of August, and appeared first in the kilts with a piper on May 18 of the next year. The Irish wished also to form a Company, but when they were refused first an all-green uniform and later, even green facings, they appear to have abandoned the idea. The wholesale and retail drapers wished to form two companies, which should drill at hours convenient to those employed in the drapery trade. The Scots, however, were the only ones who made any move prior to a public meeting in the Town Hall on July 17, where it was resolved that an armed force was absolutely necessary for the defence of the colony and that if a sufficient number of volunteers had not soon enrolled the Militia Act ought to be enforced. After that, the ranks filled quickly. By August 10, there were 750 enrolled and soon after, the full quota had been obtained. It is doubtful if the Government would have had the courage to invoke the Militia Act, for it would have given an unfair advantage to those with means, who would have been able to pay for substitutes. In England, the working men were exempt from the Militia, but were not so here.

On November 6, 1866, Adelaide saw again, after three years, the red coats of the regulars marching through its streets. Two Companies under Major Vivian arrived, to be welcomed by the Adelaide Artillery with four guns.

Hundreds were in the streets also to cheer the newcomers as they moved into barracks. They remained until August 13, 1867, when they were relieved by three Companies under Lt.-Col. Hamley. Apparently, the Volunteers functioned efficiently for a year or so after their reorganisation. At the review on May 21, 1867, for the Queen's Birthday, there were over 600 present, and Hamley, in his annual report, sent in an "authoritative and well-merited eulogium".(24)

Reynolds, always an ardent free-trader, introduced resolutions into the Assembly on October 31, 1866, regarding (1) unfettered interchange of colonial products and (2) a uniformity of tariff among the Australian colonies in respect of the Murray trade. The second of these was amended so as also to refer to the coasting trade. The Assembly assented to these with the feeling that "it could do no harm", but with little faith in their fulfilment. Interest was keen in the tariff, of course, throughout Australia, but the tendency was towards higher protective tariffs, and the days of free-trade had passed. Victoria was talking of yet more duties, which she did, in fact, apply in the beginning of 1867, thereby shutting out South Australian wheat in the interest of her own wheat growers; New South Wales had lately raised her fixed duties by 20%, besides adopting an ad valorem duty

or 5%; Queensland was looking for means to raise £400,000 or twice the Customs revenue of South Australia. In the absence of direct taxation, and in view of the expanding field of State activity, it was essential for the various Governments to obtain a revenue by the only means left open to them, namely, the tariff.

In the discussion, Australian Federation received mention, but in a despairing sort of way, leading to the comment by the "Register" -

> "It is too remote to be thought of, like universal peace or the cessation of evil."

A third resolution was added to the above for correspondence with the other colonies on the subject, and for a request to the Home authorities for legislation allowing differential tariffs between the Australian colonies, such reciprocal treatment being forbidden by an Imperial Statute. There had been various previous suggestions, said Reynolds, of a Zollverein among the Australian colonies, for example, the Intercolonial Conferences of 1862 and 1863. An Intercolonial Exhibition was about to be held in Melbourne and the time was favourable for re-awakening the matter. He was of the opinion that the protectionist views prevailing in Victoria and New South Wales applied solely to foreign imports and not to articles of colonial production. (25) Herein he was wrong and was soon to be proved so by the action of Victoria against South Australian wheat imports,

for early in 1867, the Victorian Government announced a revised tariff of 10 to 15% ad valorem duties on food-stuffs, 9d. cwt. duty on wheat and 1/- cwt. on flour.(26) It was well for South Australia that a market appeared in England. The farmers were advised to send off about one third of their crop, and soon the railway and the roads leading down from the wheat lands were alive with all the rolling-stock and drays available. Some merchants and shipowners were ready to make advances of up to 3/- per bushel on wheat sent away in January, for the orders from England specified that time. Before long, the ships were loaded, and the "Advertiser" was able to tell of three heading down the gulf under full sail, and to speculate on which would reach port in England first. Thus was born the annual race of the wheat-ships, which for so long was a feature of South Australian export trade.(27) Although the Victorian market was closed, a large market still remained in the other colonies, where the development of the wheat-growing industry was yet to come.

The experience of farmers in sending away their wheat at this time led to a number of meetings all over the wheat-growing areas of the north, demanding a reduction in the rates on the railway for the cartage of wheat. This was an old grievance, which illustrated

clearly the discriminatory policy of successive governments against agriculture. Whereas wool and copper ore were carried from Kapunda to the Port for 15/- a ton, wheat was charged 26/- a ton. A deputation of northern farmers and members of Parliament, including Ayers, Barrow, Bagot, Hogarth, Kingston, Reynolds and Glyde - all of whom were champions of the small man, - waited on the Governor with a memorial signed by 1500, asking for an equalization of the charges. Accordingly, the cost of carriage of wheat was first reduced to 20/- a ton, and afterwards the charges on wheat, copper and wool were fixed at 18/- a ton. The Agricultural and Horticultural Society felt also that it was treated with extreme parsimony, as it was advanced a bare £500 per annum by the Legislature in contrast with the £4500 paid for the same purpose in Victoria.(28)

A letter concerning tariff assimilation, dated November 6, 1866, was sent by the Chief Secretary to the other states, as a result of which the matter was discussed at the Intercolonial Conference in Melbourne in March, 1867. The Conference was required primarily for a discussion of the proposal of the British Government that the colonies should make arrangements on their own responsibility for the mail contract with England, the Home Government still undertaking to pay half the expenses.(29) It sat from March 4 to 21, and arrived at a practical arrangement for

the postal service, but nothing in the way of tariff assimilation resulted.(30) It decided to establish a Federal Council of representatives from the colonies, and to this end each Legislature was to pass an Act setting forth the powers of such representatives. Hence Act 10 of the 1867 session of the South Australian Parliament authorized the appointment of members of the Executive Council for the time being as members of a Federal Council. They were empowered to vote for postal purposes an amount not exceeding the £17,000 annually expended at that time by South Australia. The Governor, with the advice of his Executive Council, was to carry out the decisions of the Federal Council, but the province might retire at any time on an address to the Governor from both Houses. The Schedules to the Bill set forth the resolutions agreed upon at the Melbourne Conference, namely, fortnightly communication by three lines, via Torres St. to Singapore, via Melbourne and South Australia to Suez, and via New Zealand to Panama, the costs to be in proportion to the resources of each colony. Together, the colonies were prepared to contribute £200,000 annually, and expected Great Britain to contribute an equal amount. It will be seen that the powers handed over by the colony to the Federal Council were very slight. It therefore made very little difference when the Home Government disallowed the Bill, not that it objected to the executives of the Australian colonies meeting and discussing

postal arrangements, but rather to being bound by the arrangement given in the schedules. A Tasmanian Bill of 1867 allowing differential tariffs was likewise disallowed, although it was only a few more years until the prohibition was removed by the Statute 36 & 37 Vict. c. 22. The Federal Council envisaged at this time was actually set up in 1883, and continued to function until the Commonwealth came into existence, but it had very little real power, since it lacked any coercive force over the separate legislatures. Nevertheless, it was a step along the road to real Federation, if only by showing the insufficiency of a Federal Council unbacked by the power of the purse.(31)

Boucaut was called away hurriedly from the Conference in Melbourne in March, by the news that a petition had been lodged by one of the parties in the case for the possession of the Moonta mines. The petition maintained that, as Attorney-General, he ought not to be allowed to appear in the case, because the line of attack that his side were pursuing involved the impugning of certain Crown leases. He had already, indeed, afforded an opening for complaints by using his official position to file an injunction on technical grounds. A month later, on April 25, it was known that he had resigned as Attorney-General, since it was a choice between continuing in that office or

giving up the case. The rest of the Cabinet were likewise embarrassed, as people asked why they had allowed the Attorney-General to initiate proceedings at all on a basis which they condemned. Consequently, they resigned, leaving Ayers to form another administration.(32) It contained no new blood, being as follows:-

Chief Secretary - H. Ayers.
Attorney-General - R. B. Andrews.
Treasurer - - T. Reynolds.
Commissioner of Crown Lands - L. Glyde.
Commissioner of Public Works - P. Santo.

This Ministry was announced on May 3.

Mr. Justice Boothby had meanwhile continued his "pedantic follies and reiterated egotisms", indulging in such puerilities as entering the Supreme Court on February 12 and protesting against the validity of the Special Commission which entrusted the February Criminal Sessions to the Chief Justice. When the Attorney-General presented his Commission to the Supreme Court to be recorded as required by the Equity Act of 1866, he declared it waste paper, on the old ground that no such office as Attorney-General existed. The Equity Act itself he declared invalid. With no consideration for the feelings of his fellow Judges, he declared, in Full Court on March 8, that every writ of summons and every summons on order from a Judge in Chambers, except from himself, had no validity. At the

end of March, while Mr. Justice Gwynne was absent on circuit in the South-East, he held up all business on the Equity side of the Supreme Court, declaring that he was the only lawfully appointed judge in South Australia, and that all the writs "tested" by the Chief Justice were waste paper. Thus suitors were put to "enormous losses and endless delays."(33) After the resumption of the Court on April 12, fierce quarrels between the Judges occurred in open court. Hanson at length adjourned the Court until May 27, since the position was an impossible one. A joint letter of Hanson and Gwynne of April 24 to the Governor set out the story of Boothby's insulting conduct towards themselves and his obstruction of business. As a result of this, the Executive Council proceeded in June to cut the Gordian Knot by removing him from office.(34) Boucaut, the late Attorney-General, undertook the case against him before the Executive Council, with Sir Dominick Daly presiding. The proceedings opened on June 24, when Boothby attended and challenged the right of His Excellency to institute the proceedings and of the Council to amove him.

The Council held eight sittings between June 24 and July 29, during which the overwhelming weight of evidence left no doubt of what, in any case, was already well known. Wearing, the Crown Solicitor, demonstrated that

in the Moonta mines case, he had added partiality to the Hughes side to his other failings. Evidence was taken from the Chief Justice and Mr. Justice Gwynne, the latter of whom revealed the extent to which Boothby used to brow-beat the former Chief Justice, Sir Charles Cooper, and admitted that he could not recall a single important case in which Boothby had agreed with Hanson. Boothby's defence on July 29 was no defence at all. It simply amounted to a declaration of his reasons for not recognising the competency of the Council in this case, and of his intention to appeal to the Privy Council in the event of an adverse judgment. During July, he continued to sit in Court, but no-one attended. On July 16, even the Master of the Court, Hinde, disobeyed him by walking out and leaving him alone.(35) The decision of the Executive Council was announced on July 30 in a Gazette extraordinary; it declared that he was deprived of his office by reason of his behaviour. He died in the following year, on June 21, 1868, without having appealed to the Privy Council.(36)

On Boothby's amoval, Mr. Justice Gwynne was appointed Second Judge of the Supreme Court and Primary Judge in Equity. Wearing was made Third Judge and W. Bakewell Crown Solicitor. The Judge in Equity was hence-forth to sit apart from the others, to prevent the inconven-

ience of proceedings in Equity and Common Law being dealt with by the same Judge.

Shortly before the opening of Parliament on July 5, the Government received the report of the Commission on the northern runs. It revealed that the lessees in many cases had lost the major part of their stock, some all of it. The experience of the past few years proved that the carrying capacity of the country had been over-estimated. John Ragless, of Eastern Plains, lost 4,800 sheep, and gave his opinion that long leases of 25 years, with a low rental, were the only remedy. Philip Levi lost 50,000 sheep and 10,000 cattle. John Jacobs, of Mt. Serle, lost since 1864, £16,811 through drought. His recommendation was 5 years remission and an extension of tenure for 23 years. The Commission supported Goyder's Line, and it may be noted that the above lessees were all outside it. For the country affected, the Commission recommended that the system of rent and assessment be abolished and a charge levied of so much per head on the actual number of animals depastured on the run, and with this an extension of tenure.(37) In the Act framed on these principles,(38) that by which the 1867 session is best remembered, Goyder's Valuations were "carried by assault" as far as the lands north of his line were concerned. This fact of the variation of his valuations as applying only to the outer pastoral runs needs

emphasizing, for commentators in the past have not always been clear in their exposition of the point. They leave one with the impression that all the squatting lands had been over-valued by Goyder, and that a general revision was necessary. The lands concerned were divided into three districts, A, B and C, the extension of leases in District A being for 14 years and in B and C for 21 years. If lands were resumed by the Government, at six months' notice, during the first half of this extended period, the full value of all the improvements was to be paid the lessee; if in the third quarter of the period, one half the value of the improvements was to be paid, and if in the last quarter, nothing. The rents were much below those previously applied. In A, they were 6d. per head for sheep and 3/- per head of cattle actually depastured on the lands. In B, the charge was 4d. for sheep and 2/- for cattle, and in C, 2d. and 1/- respectively. In no case, however, were the rents to be less than 20/- per square mile in District A, 8/4 per square mile in B and 2/6 in C. Thus was there an assurance that the land should not be left idle, while at the same time the lessee was not driven to overstock in the effort to meet his liabilities to the Government. By this Act, as well as by one a little later in the session,(39) further remissions of rent were made to the northern squatters, to

enable them to get on their feet once again. While in magnanimous mood, the Legislature passed a more liberal Mining Act, giving mineral leases for 14 years, and remitting two years' rent due from leases in the north which had been abandoned through lack of water during the drought and the impossibility of provisioning them. For the convenience of pastoralists and miners, Act No.22 was passed, giving a Government guarantee of interest on the capital which any Company might expend on the construction of a railway north from Port Augusta. The country was occupied at this stage as far as Mt. Margaret in the north-west and Lake Hope in the North. A line of railway would give rapid transport for stock and provisions for all this area.(40) As in previous years, the project was not taken up, and when the line was built, years later, it was the Government which undertook it.

The railways from Roseworthy and Port Wakefield were started, one on April 30 and the other on May 22. The mines at the Burra closed down at the end of April, about 500 men being thus thrown out of work. A monster meeting in May petitioned for the railway in the hope that the cheaper transport would make it possible to keep the mines going. The Legislature accordingly decided later in the year that the Forresters line should be extended up the valley of the Gilbert to the Burra.(41) In the mean-

time, the effects of the long drought, the drop in the prices of copper and wool, the difficulty in obtaining land and the European monetary crisis were all causing a recurrence of the depressed conditions of 1841, 1850 and 1859-60. There had been a certain amount of distress during the winter of 1866, leading to a meeting in the Town Hall calling on the Government to press on with public works. An attempt was made under W. Dale to revive the Political Association, and a Committee was appointed, but the movement does not seem to have endured.(42) Once again, at the beginning of June, 1867, with the slack season for agricultural work, destitution made its appearance. A monster meeting at the Town Hall demanded, on June 10, as in the previous year, that the Government should push on with public works. A leading cause of complaint was Sutherland's Act, by which one third of the land fund was set aside for immigration. For a year past, the Government, foreseeing the trend towards a depression, had cancelled the sailing of immigrant ships. Only one arrived during 1867, and no more until 1873. The workers could not see the use of keeping hundreds of thousands of pounds tied up for future use in immigration when the money could be used in providing work for those needing it. Sutherland's Act had been under fire at the meetings of 1866; it was the special subject of a meeting of the

unemployed at Montefiore Hill on July 25, 1867, and continued to be long discussed in Parliament until repealed in 1872. In making his financial statement on July 18, Reynolds declared the Government's intention of converting into short-dated Government bonds £300,000 lying idle in the banks to the credit of the immigration fund, and of applying this money to reproductive public works. In this way the difficulty would be solved for the time being. Act No.28 was also intended to create employment by authorizing a further loan of £811,000 for railways, including the extension of the Victor Harbour jetty to Granite Island, where sheds could be built for the protection of cargoes, and the vessels would be sheltered from the swell, and consequently be able to load in all weathers.(43)

In July, the suffering of the unemployed was at its height. Under the inspiration of Rev. Canon Russell, a Working Men's Association, a non-political body, was formed for mutual assistance. Ayers told a deputation which waited on him that the Government had been unaware until that moment of the distress which existed. His solution of the employment problem was for a representative committee of working men to let the Government know the numbers of unemployed and make suggestions as to how work could be found. Labour tests and relief work were provided, and men allotted to the road contractors. As usual, the

system had only a limited success, as the workmen complained of the novelty of the labour, and drifted off to look for better prospects. The Association sponsored by Canon Russell aimed at ameliorating distress by making a list of all men out of work and of their trades and trying to place them. There was an entrance fee of 2/- and a weekly contribution of 1d. to be used in cases of emergency. It was agreed to hold two meetings monthly, though not in hotels. Classes in reading and other subjects were intended to help the men improve their condition. The movement had of necessity a limited operation, but it deserves attention, from the earnest effort on the part of private people to supplement the contribution of the State in this emergency. By the end of August the crisis had passed, and the Assembly was no longer prepared to give work to the unemployed. During the four months preceding, the Government had spent on various public works £188,506, and the vote to Corporations and District Councils had been increased by half. Most of the members held that the Government should not interfere in the labour market, nor should it fix wages, leaving them rather to the laws of supply and demand. (44)

It may be asked why the workers did not revive the Political Association at this juncture. First of all, many had lost faith in the political

solidarity of the workers. At the suggestion to revive the Association, made at a meeting in 1866, several of the most ardent of the Association's supporters in 1860 gave this as their reason for having nothing to do with such an organization. The working men, declared J. Macdonald, forgot about the Association as soon as their affairs settled into a prosperous condition.(45) Another explanation for the absence of united political action may be found in the Government's alacrity in suspending immigration and forestalling criticism. It was generally realized by now, too, that unemployment was a characteristic of the winter, and with the approach of harvest there was always a substantial demand for labour. We notice, besides, two sharply contrasting schools of thought on the issue of Protection for Home Industries. The farming section of the community, sufficiently incensed over their inability to obtain fair terms at the land sales, were yet opposed to a tariff wall, which would tax the majority in a primary producing community for the benefit of the few. They favoured free trade principles sufficiently to be satisfied to exchange wool and wheat for European manufactures, and so did not make common cause with the Protectionists against the Government.(46)

The Protection League, as it was called, was launched at a meeting of March 15, 1867, at the Hotel Europe. About 50 employers were present, who promised

£200 to £300 for carrying on an agitation, and also appointed a committee. The duty that they desired on imported manufactured goods was from 20% to 25% ad valorem.[47] The committee met again on March 27, when they appointed J. Macdonald as Secretary at £4 a week. About 70 names were accepted for a General Committee, out of which 13 were to be selected for a Committee of Management. The President at this stage was H. Mildred, M.L.C.[48] At a later date, it was agreed that half the Committee be employers and half employees. The leading spirits in the organization soon became evident, most prominent being our old acquaintance, John Clark of the Political Association, with J. Skelton and G. T. Bean. Gradually the members clarified their aims, until, on April 12, Clark moved, at one of their meetings, resolutions in favour of duties on goods that could be manufactured in South Australia. The removal of all duties from imported raw materials and bonuses by the Government for the encouragement of new industries were planks in the programme which the Protectionists prepared for the elections to the Legislative Council in August. Clark rightly saw that so long as South Australia was dependent solely on her primary productions and unsupported by manufactures, she would be subject to times of depression such as the drought was then inflicting on her.[49] The special aversions of the

Protectionists were Reynolds and Barrow, who were the most prominent freetraders of the colony. Skelton took the movement to the country, being fairly successful at Gawler on May 20, but receiving no encouragement from the farming community at Clare.(50) In July, the League selected its candidates for the elections, including in its programme land legislation in the effort to catch more votes. However, protection did not appeal to the majority of South Australians, and all the nominees of the League were defeated except D. Fisher, in East Torrens,(51) who took the place of Neville Blyth at a by-election for the Assembly.

Alexander Hay had returned to the Assembly, after an absence of several years. A meeting in his electorate at Mount Pleasant in August passed resolutions on the exodus of farmers from the colony in quest of land, on the practices of land sharks and on deferred payments. A Speaker, Gottschalk, stated that within the previous few months, 20 farmers had left Eden Valley for Victoria. This was hardly news, as there had been constant discussion in the daily papers of such departures, but it corroborated what others had said. At first, it was rumoured that people were leaving from the South-East, but this was denied by the Mount Gambier "Standard". It was rather from the Barossa and surrounding districts that the tenant-farmers, unable to buy the land for which they were paying

heavily to landlords, were leaving. Many families of Germans in this year trekked out of the colony to take up land around Albury on liberal terms.[52] On August 28, Hay moved in the Assembly that additional facilities be given for the purchase of land by bona fide farmers. His scheme was 20% down with a right of purchase in 5 years at £1 an acre. As will be seen, this struck at the principle of auction by limiting the price to £1 an acre. 61 families had left the colony, he declared, and immediate action was necessary to check the exodus. Glyde, the Commissioner of Crown Lands, was not favourable to action at that time, preferring to wait until after the elections in the new year. Coglin called for concessions at once, as did Carr a little later in the debate, which lasted on and off for three weeks. The departures, said Carr, were not from the free-holding parts of the colony, but those parts where there was tenant-farming. Things had changed from former times, and the system should follow suit, as there was no longer the simplicity of a transaction between the State and a purchaser. Let them not talk of deferring help to the farmers, any more than they were deferring concessions to the northern lessees.[53] The majority of members, however, were still reluctant to upset the auction system and feared besides that English capital would be frightened off by such a move. In spite of

meetings in the country districts supporting reform, and the admission by most in the debate that no outsider could get land at the land sales, or, if he did, that it was entirely by accident, the motion was negatived by a majority of seven. Those who voted for it were Blyth, Boucaut, Bower, Bright, Coglin, Colton, Fisher and Hay.(54)

At the end of October, the colony was favoured with a visit from His Royal Highness, Prince Alfred, the Duke of Edinburgh. He remained until November 21, during which time he was entertained with a levee, a review, a trip on the train to Kapunda, a grand Exhibition on the Parklands, a civic banquet and a shooting trip to the Murray lakes.(55) His visit had this much constitutional significance, that it brought to the fore the question of ecclesiastical precedence. On October 22, Ayers, when questioned in the Legislative Council, said that no place in the official procession of welcome would be reserved for any other ecclesiastical dignitary than the Bishop of the Church of England, in accordance with the rules of precedence established by Her Majesty. This was not acceptable to the other religious bodies, since no official State religion existed in South Australia. Accordingly, Barrow, on October 24, presented a petition from 12 ministers of religion protesting against the Government action. Hay presented a similar one in the Assembly. The petitions declared -

"That in the opinion of your memorialists the distinction thus made in favour of one religious body on an occasion of national interest and importance is neither right nor seemly, but is a flagrant violation of the principles of religious equality recognised by the Legislature and people of this province."(56)

It pointed out also that -

"the Imperial regulations relating to precedency on such occasions are not designed to apply strictly and in their integrity to every British colony; but that the Government of any colony may alter or modify those regulations, having regard to the social condition of the colony."

The ministers were here on safe ground, as they had the despatch of September 26, 1859, from the Colonial Office, for a warrant to support them in their statement of the power of the Colonial Government to vary the Imperial regulations. The Governor was authorized by that despatch, to decide in doubtful cases of precedency. Strangways was able to refer to the recent Colenso case in South Africa as an instance of developing constitutional practice. The Bishop of the Church of England, according to the decision in this case, had no status in a self-governing colony beyond being the head of a religious denomination. The matter was fully discussed in the Council on October 29, when a motion of Barrow was carried for an address to His Excellency to cause some measures to be taken to place the regulations as to the order of official precedence on a more satisfactory footing.(57) Why should the Chief Justice, Barrow

asked, be placed before the Executive Council? They had the power to remove him, and his position was not analogous to that of the Lord Chancellor. Baker thought the Legislature had no power in the matter. All they could do was to address Her Majesty. Any attempt to induce Her Majesty to place the Anglican Bishop on a level of equality with dissenters was likely to lead to difficulties. He was proved right several years later. The Act which South Australia passed in 1871 regulating ecclesiastical precedence was disallowed, as being a claim to colonial powers of limiting Her Majesty's Royal Prerogative.(58) The Chief Secretary, Ayers, agreed with Barrow that the table of precedence published in England was wholly inapplicable to the circumstances of the colony. Important officers of the South Australian service, including the Crown Solicitor and Engineer-in-Chief, were not provided for. He was glad of the discussion, although no alteration could be made in the published order for the procession in honour of the Prince. He therefore proposed to send home a draft table of precedence for approval. Barrow dissented from Baker's idea that the Legislature could not decide on the precedence even of civil servants, stating that there was no analogy between them and ministers of religion.

The resolution of the Assembly to grant free passes on the railway to members of Parliament afforded the Legislative Council an opportunity of protesting on the

score of Privilege and of the inexpediency of offering pecuniary advantages of any kind to members. Free passes, stated the resolution of the Council, were equivalent to an appropriation of revenue, and, as such, should have received the sanction of both Houses. The Chief Secretary denied the truth of this and appealed to the practice in other colonies, and Kingston, the Speaker of the Assembly, gave a ruling that no question of policy was involved in the giving of the passes nor any appropriation of the revenue. The Council still protested that a slight had been passed on them, and carried an Address to the Governor conveying their resolution to this effect.(59)

Little remains to be considered for this year. Some discussion occurred of abuses in the method of promotion in the public service. Persons from outside the colony were sometimes appointed above those who had qualifications at least as good and had long and faithful service to their credit. The appointments of Mais as Engineer-in-Chief and of Reid as Chairman of the Destitute Board were especially mentioned. It appeared, also, that members of Parliament used their influence for the promotion of their friends, for there was no recognised principle regulating promotion or emolument in the civil service. A reason for this could be found, of course, in the attitude which had prevailed in the beginning of Responsible

Government of regarding the civil service as an obstacle to the welfare of the country, a necessary evil and a burden on taxpayers. Experience had by this time taught the Legislature that no small part of its success depended on the assistance of the permanent staff. What was now wanted was (1) a guarantee that members of the service could look for reasonable prospects of promotion without political influence; (2) a probationary period for entry to the service; and (3) a statutory classification embracing all but heads of departments. These would all come in time.(60)

The attempt of the Legislative Council in December to discipline the proprietors of the "Register" for publishing the report of the Select Committee on the Police Force before it had been tabled in the House ended ignominiously. It seems to have been forced on the members by Baker. The others were reluctant to proceed. They felt about the matter as J. T. Bagot, who deprecated proceeding unless they were prepared to put the men, J. H. Clark, E. W. Andrews and W. Kyffin Thomas, in "the coal-hole". Andrews and Thomas were, nevertheless, summoned to the bar of the House. They were permitted to appear by counsel, and for the spectacle the galleries were crowded, with nearly the whole of the members of the Assembly present. The proceedings took on very much the character of a comic opera.

When asked how they had obtained their information of the report of the Select Committee, the offenders made the ridiculous reply that the question was of a private nature, for which reason they begged to be excused from answering. After some parley, the President resolved the impasse by putting words into their mouths which were capable of a double interpretation, and they were excused from answering any further questions. How little the "Register" was chastened may be gathered from the contemptuous tenor of its remarks in the days following this encounter. It would have been far better for the dignity of the Parliament if the men had never been summoned at all.[61]

The year ended as unfortunately as if the drought had not broken during the winter. Humid conditions in October induced rust in most of the crops, and where it had appeared that there would be an excellent harvest, the farmers in many cases were not able to recover even seed-wheat. It was a case for Mark Tapley. The causes of rust were not then known. So a Commission was appointed at the end of the session to take evidence in the hope of finding out some useful facts for future reference. The fourth session of the fourth Parliament ended on December 19, 1867, after a comparatively untroubled progress, during which there was again, as in the third session, no ministerial crisis. It was the calm before the repeated upsets of the coming year.

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20. S.A.P.D. 1866-7, c.1316, 1335, 1354, 1436.

21. Ibid. 1866-7, c.398, 760, 1393, 1867, c.774, 1195, 1198, 1303, 1353. "Register", 1866. Sept.12, 15, 18; Oct.18,26; Nov.1,2. Dec.7, 8, 14, 15. S.A.P.P. 1866-7. No.185. Acts of Session of 1867, No.15. "Advertiser", 1867, May 23, Oct.30.

22. "Register". Oct. 15, 1866.

23. Ibid. 1866. Sept. 27, Oct. 1, 3, 12, 15, 19, 20, 24. S.A.P.D. 1866-7. c.659, 660, 674, 693, 912, 1112, 1218, 1249. "Advertiser", 1867, Jan. 7, Feb.27, April 25, Aug.8, Oct. 3, 29, Nov. 23. S.A.P.P. 1867. No. 175. Daly to S. of S. No. 45. Sept. 27, 1866, No. 49, Oct. 24, 1866, No.8, Feb. 23. 1867. Minutes of Executive Council. Sept. 12, 1866. Feb. 4, 1867.

24. "Register", 1866. May 3, 4, 25, June 2, 8, 21, July 12, 18, 25, Aug. 3, 4, 7, 10, 17, 24. Nov. 2, 6. Daly to S. of S. No. 53. Nov. 17, 1866: No. 44. Aug. 23, 1867. "Advertiser", 1867. May 20, 22, Dec. 29.

25. "Register", 1866. Nov. 1.

26. "Advertiser", 1867. Feb. 7, 12. March 19.

27. Ibid. Jan. 22, 24. March 29. Sept. 10.

28. Ibid. Feb. 23, March 7, 16, 30. May 15.

29. "Register", 1866. Nov. 17, Dec. 14, 29. S.A.P.P. 1866-7. Nos. 145, 145A.

30. Daly to S. of S. No.15. March 26, 1867.

31. Blackmore, "The Law of Constitution"; Coghlan, "Labour and Industry in Australia"; Quick & Garran, "Annotated Constitution"; Daly to S. of S. No. 20. April 26, 1867. Circular from Colonial Office, Oct. 19, 1867. S. of S. to Hamley, No. 6, April 26, 1868. S.A.P.D. 1867. c. 823, 863, 878, 1002.

32. "Advertiser", 1867. March 25, April 26, May 3. Daly to S. of S. No. 22. May 27, 1867.

33. "Advertiser", March 27.

34. Ibid. May 22, 30.

35. Ibid. July 29.

36. Daly to S. of S. No. 17. March 28, No. 21, April 27. No. 28, June 22. No. 39, July 27. No. 43, Aug. 20. No. 45, Aug. 27. Minutes of Executive Council, June 5, 24, sequ. until Aug. 8. S.A.P.P.1867. No. 22 for full account of proceedings. No. 23 for despatches. Hague, "Judge Boothby" for survey of the year.

37. S.A.P.P. 1867. No. 14. "Advertiser", June 15, 17.

38. Acts of Session. No. 21.

39. No. 25. S.A.P.D. 1867. c. 496, 543, 638, 683, 780, etc. Also 309, 345, 376, 1114, 1234.

40. "Advertiser", June 20, 1867.

41. Ibid. Feb. 28, March 29, May 16, June 15. Act No. 20.

42. "Register", 1866. July 7, 10, 18. Aug. 1, 6, 10. "Advertiser", 1866. Aug. 5.

43. Ibid, 1867. Oct. 4, 8.

44. Ibid, June 4, 24, 29; July 26, 27, 29; Aug. 6, 8, 13, 26, 29; Sept. 4. 6, 7, 9; Oct. 24, S.A.P.D. 1867. c. 295, 451, 491, 584.

45. "Register", July 18, 1866.

46. "Advertiser", May 20, 1867.

47. Ibid. March 18.

48. Ibid. March 30.

49. Ibid. April 4, 13, 27. May 1. Editorials passim.

50. Ibid. May 22, 24.

51. Ibid. July 18, 20, 24. Aug. 8.

52. Ibid. May 22, June 4, 12, 14, 28. July 6. Aug. 22, 24. Dec. 9, S.A.P.P. 1867. No. 124.

53. S.A.P.D. 1867. c. 470, 515, 561.

54. Ibid. c. 613. "Advertiser", 1867. Aug. 29, 31. Sept. 2, 4, 5, 6, 7, 10. 11, 17, 24, 27. Dec. 9, 28.

55. Account of the Prince's stay by J.D.Woods, in book form.

56. S.A.P.P. 1867. No. 180.

57. S.A.P.D. 1867. c. 1185.

58. Alpheus Todd. "Parliamentary Government in the British Colonies".

59. S.A.P.D. 1867. c. 507, 652, 663, 666, 671, 757, 842, 936, 954, 979, 994, 1003, 1017, 1041, 1138. S.A.P.P. 1867. Nos. 66, 69.

60. "Advertiser", Oct. 25, 30, 1867. Also Feb. 21. S.A.P.D. 1868-9. c.1134.

61. "Advertiser", Dec. 13, 14. "Register" Dec. 18, 19. S.A.P.D. c. 1085, 1214, 1237, 1348, 1368, 1384, 1420.

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# CHAPTER 9.

## THE SOLUTION OF THE LAND QUESTION: STRANGWAYS' ACT

(January 1, 1868 to January 30, 1869.)

For the benefit of the farmers whose crops had been blighted by rust, the Government provided such work as the carting of stone and wood for the railway to the north of Adelaide.(1) The parts worst affected were the lands up to Freeling and all the County of Hindmarsh south of Adelaide. In the South East, the harvest was good; so that the Mt. Gambier "Standard" was able to write:-

> "Besides a large number of machines (reaping) made at Mt.Gambier this season and others imported from Adelaide, about thirty more are daily expected at Port MacDonnell from the workshops of Cawler Town."(2)

The Ministry had given the impression at the end of 1867 that they would provide seed-wheat for the distressed farmers. This they later refused to do, maintaining that such discriminatory assistance would be unfair to the other tax-payers. In view of the employment already made available to the farmers, and the disagreements on the subject of assistance among the farmers themselves, as displayed in their meetings, this was not an unreasonable

decision by the Government, although the impression of extending help should not have been conveyed unless there was an intention to implement it. The "Register" declared that

> "the landlords as a class have been liberal, most of them agreeing to a remission, and some offering it unasked."(3)

Thus matters stood. The farmers were able to obtain plenty of seed-wheat from the South-East, and were favoured in 1868 with a successful harvest.(4)

While sympathetic towards cases of genuine distress, and prepared to make concessions to the squatters of the North, the Executive was not to be defied by backsliders with no real claim for exemptions. At the same time as the squatters of the South-East were petitioning for a reduction of Goyder's "excessive valuations", one of their number, McLeod of "Nalang", allowed his payment of assessment to fall far into arrears. Glyde, since the South-East knew nothing of drought, announced his intention, as Commissioner of Crown Lands, of "distraining" him, that is, selling up some of his sheep. The sale was put off for a few weeks, by the end of which time McLeod had seen fit to pay.(5) The new Waste Lands Regulations issued early in the year were quite favourable to the squatters, giving long terms for future leases.(6)

A modification in the Public Service was the arrangement that all payments in the various Government

offices should be made by the Treasury, and not, as previously, by the Department concerned.

> "This is an arrangement which recommends itself as being far safer and more simple than the one which has heretofore obtained. The account will be initialled by the head of the Department and sent on to the Treasury, where payment will be made at once."(7)

The Telegraph Department, also, was transferred from the Commissioner of Public Works to the Treasurer. A network of lines had by now been made, and the telegraph represented more of an asset than, as formerly, a liability.(8)

The election campaign opened with a stirring clash at the Hotel Europe between Reynolds and John Clark on January 24. Clark's charges against Reynolds were patently false, as, for instance, that he had made a compact with the leaders of the Political Association in 1860 to support protection for home industries. An examination of the political discussions of that time reveals no mention of the subject, which was unheard of in the colony until about 1865. One of the main planks of the Political Association, in fact, was Free Trade and the abolition of the Customs House with all duties. However, that apparently did not matter to Clark, if only Reynolds could be displaced from office. For the remainder of the elections, the Protectionists continued to use every weapon they could to prevent his return.(9) They had now split into two sections. On the one hand were the extreme

protectionists, such as J. Skelton and W. Mildred, these being called "rank Tories" by the "Register", and on the other were Liberal Conservatives like Clark and G. Bean, who desired only temporary encouragement for the establishment of native industries. W. F. Gray was the President of the reconstructed League, which, under the name of the Reform Association, leaned to the latter of these two sides.(10) At a meeting of the Association in the Wakefield Hotel, Wakefield Street, on February 17, Mr. Councillor Wright presided over 40 or 50 present. Clark explained the objects of the Association - the encouragement of colonial manufactures, no more Government immigration, and a Land Act. This meeting was a sample of others, canvassing the same objects, the attainment of which would, it was claimed, give employment to the youth of the colony and restore prosperity.

While the topic of Protection took a prominent place in the electoral addresses of the candidates, it was second only to the question of land reform. For seven years, Queensland had possessed agricultural reserves to protect bona fide farmers from the evils of the auction system, and opinion in South Australia was turning more and more to this solution of its difficulties. Agricultural areas became, in fact, the central pivot on which Strangways Act was built later in the year.(11) During

1867, in South Australia, unprecedented quantities of land that had passed the hammer on one day were taken up on the next on very reasonable terms. On August 8, $1\frac{3}{4}$ acres were sold at the public auction, but on the same day, "and doubtless after the sale", 2212 acres were bought by private contract. The sales of 1867 were small in acreage and much diminished in value. 1865 was the best year. 316,477 acres were sold then, as against 142,784 in 1867.(12) Another aspect of the Strangways scheme which was put forward at this time by Glyde in an election speech was Dutch auction, that is, progressively lowering the price at which land was to be offered until someone said, "I'll take it."(13) In the country districts the land agitation was, naturally, fiercest, leading to the editorial comment on February 28 that

> "demagogy appears to have transferred its headquarters to the country."

By March 24, half the candidates for election had spoken in favour of deferred payments.(14)

Probably for the first time since its settlement, Port Lincoln had an election meeting for the District of Flinders. Mortlock and Gleeson were the candidates who spoke there.(15) Eyre Peninsula was developing gradually. On January 9 we read of the "Lucy" sailing from Streaky Bay for Adelaide with a full cargo of wool, and on April 23 it was announced that O.K.Richardson, recently

retired from the Public Service, had been appointed S.M. of Streaky Bay Local Court. The North also was recovering. Blinman had, by the end of the year, three stores, two blacksmiths, a butcher, a baker and a wheelwright, two shoemakers and several eating houses. Soon a hotel would be built. Water was short, as there was only one well, and the water had to be carted from it. The area was a centre for revived mining activities, most prominent among which were the Yudanamutana workings, which had been abandoned in the drought. The Executive Council appointed a Local Court at Blinman on February 26, 1868.(16) Other place names now making their appearance in the Country Reports were Blyth Plains, Stirling North, Port Wakefield, Menindie on the Darling, Port Mannum and Balaclava.(17) Clare was erected into a Corporation on September 2, and hope for the Burra was revived with the recommendation of a visiting expert to apply open-cut methods there.(18) During 1868, a gold rush took place to Jupiter Creek in the Barossa area. Sawtell, the jeweller, was able to exhibit in his Rundle Street window, in January 1869, 1155 ozs. of South Australian gold won in these diggings.(19) This gold find came opportunely, for depressed conditions continued from 1867. Wallaroo was slack, with some of its mines closed, and men put off at the smelters. The traffic on the railways declined to such an extent that the revenue from the goods carried in the first half of

1868 was only half that of the corresponding period of 1867. This resulted in a vigorous retrenchment by the Government, manifested in the reduced grants to local governing bodies, the District Councils and Corporations.

In the midst of the election excitement came the news of Governor Daly's sudden death on February 19. It brought genuine grief, for his unassuming ways had recommended him to all. Whereas South Australia received the news of his appointment in a critical mood, on the score of his Catholic faith, and inundated the "Register" with a "flood of protesting correspondence", it came to appreciate him for his "personal amiability and political impartiality".

> "No other Governor ever took office under such a serious disadvantage. None gained so steadily in public favour when he came to be known as he really was. There has been no other at the close of whose career it could so truly be said that he left none but friends behind him."(20)

It was announced immediately that Lieutenant-Colonel F. G. Hamley was to be Acting-Governor, and he was sworn in on February 20 by the Chief Justice. He was obliged to communicate with General Chute, the Commander of the forces stationed in Australia, who had the option of assuming the reins of Government himself or delegating the duty to the senior officer of the force in Adelaide. He preferred the latter course. Since 1858, these had been the arrangements for the office of Lieutenant-

Governor, although a dormant Commission had been issued to Chief Justice Cooper on one occasion when it appeared that the military might be withdrawn in 1860. The latest Despatch on the subject was that of September 8, 1863, which left the final choice to the commanding General, but directed that, in case of emergency, the Government should be assumed by the senior officer on the spot. The possibility of having to rely on a military officer to act as Lieutenant-Governor had been one of the most oft-repeated pleas in the despatches praying for the return of the regular troops to South Australia during the years that they were absent.(21)

An Administrator was supposed, by the Colonial Regulations, to be entitled to only half the pay of a Governor. This was not acceptable either to Hamley or the South Australian Government, and on July 17, the Acting Governor wrote to Downing Street, enclosing a Minute of the Cabinet disagreeing with the ruling of the Secretary of State, transmitted on May 1. The Cabinet dissented on the score that the Colonial Regulations did not apply to cases where the salary of the Governor was fixed by an Act of the Provincial Parliament, and in which no mention was made of a reduced salary for an administrator. Hamley added that he had been obliged to incur heavy expenses in assuming the position. The reply of the Colonial Office reaffirmed the principle that only half the salary was

payable, and would not assent to the proposition of the Cabinet Minute, but it concluded by making an exception in the present case, and allowing the full salary.[22]

Other correspondence between the Colonial Office and South Australia, having a Constitutional significance, had relation to Acts that were disallowed, to the grant of honours, and to modifications allowing greater freedom of action for the colonies. Despatch No. 5, April 26, from the Secretary of State, remarked:-

> "I observe that the twentieth section of the 'Supreme Court Act 1867', (No.8), assumes to affix a criminal character to acts committed beyond the limits of the Colony as in its terms it includes false declarations made in affidavits sworn under sections 17 and 18 of the Act, and appears to give jurisdiction to the Supreme Court to try such offences."

The Act would therefore have to be amended as being ultra vires. A like objection attached to section 38 of the Marriage Act of 1867.[23] Another despatch announced the extension to the colonies, as a reward for meritorious services, of the Order of St.Michael and St.George. The Empire had been growing constantly, it said, there had been a modification in 1847 in the Order of the Bath, and recently a new Order of Knighthood had been created, the Star of India. The Order of St. Michael and St. George was intended for colonial service, having been originally instituted for the Mediterranean possessions by George III.[24] Another concession to the colonies was the modification of

the provision in the Royal Instructions that no Governor was to quit his colony without obtaining leave from the Home Government. In the case of Australia, because it was so far away, and in view of the relations existing between the colonies there, the Governors might now go to other colonies for a month at a time without this permission,

> "arrangements being made that the Public Service shall suffer no injury during their absence, and half salary being paid as usual to the Officer administering the Government, in case the absence of the Governor shall exceed 14 days."(25)

The restriction on Colonial legislation in regard to the qualifications of medical practitioners was removed by an Imperial Act. It would no longer be sufficient for a medico to be registered under the Imperial Act 21 & 22 Vict. c. 90, if the Legislature of any colony saw fit to require registration in the colony under conditions of its own. Previous colonial Acts on the subject had been void, as section 31 of the Imperial Act entitled those registered under it to practise in any part of Her Majesty's dominions without any condition being attached to such practice.(26) An Act for the registration of doctors was not, however, immediately passed by the South Australian Parliament.

Towards the end of April the elections began, being spread over several weeks in the different districts.

The Protectionists were successful in returning three candidates, D. Fisher, R. Cottrell and G. T. Bean. Bean topped the poll in West Torrens, with Strangways next. Cottrell was returned for the city with Reynolds, and Fisher represented East Torrens again. No country electorate showed Protection any favour. Skelton ran nowhere for Barossa, in consequence. All the members of the new Assembly promised land reform in one way or another. Half were for deferred payments, including R. Cottrell, G. S. Kingston, J. Carr, J. P. Boucaut, G. T. Bean, A. Hay, W. Sandover, D. Bower, D. Fisher, W. K. Simms, H. R. Fuller, J. Colton, W. Everard, J. B. Neales, W. Townsend, T. Playford, J. Cheriton and H. K. Hughes. Half of these again favoured free selection. Editorial comment considered that

> "the general character of the House is acknowledged to be satisfactory, and on no important question is there any buck-jumping to apprehend."

Since it was clear that the House had a mandate to reform the land laws, the above statement must have applied to the protection issue, so conclusively defeated.[27]

Even while the elections were proceeding, there was another demonstration of the necessity for some action on the land question. At Mt. Gambier, 15,646 acres were sold without competition for £15,695. It was believed that the agents acted for the station-owners at Robe,

where the land was situated. After the sale, at a monster meeting in the Oddfellows' Hall at Mt. Gambier on April 27, the largest meeting as yet held in the town, a memorial was adopted by the 600 present regretting the failure of the Government to halt land sales as it had been requested to do by a previous memorial. The result was the stopping of all land sales later in the year,(28) until the Legislature could come to some decision on them.

Following Captain Cadell's report and his return to Adelaide in February, the matter of the Northern Territory was allowed to hang fire until the Parliament should meet and declare its wishes. Reynolds, speaking at Victor Harbour on March 11, said that a scheme would be submitted to Parliament for refunding money to those land order holders who wished it and for increasing the area of land to those willing to accept an extension of time. This, declared the "Register",

> "endeavours to please both parties, and will certainly displease both!"(29)

Regarding the whole matter of the delays for the past two years, it stated -

> "The Chief Secretary is the only member of the present ministry not responsible for the postponement of the evil day."

Parliament met on July 31, and soon after, on August 6, Carr moved that the Ministry were to blame for the failure

to survey the land. He was not, however, successful in dismissing them. Reynolds was able to introduce the promised resolutions on August 18. He proposed (1) to enlarge the time for the delivery of land orders; (2) to grant 240 acres per section instead of 120; (3) to grant instead, and at their own cost of surveying, 320 acres to holders of orders; and (4) that those who did not wish to accept any of the foregoing propositions be repaid the sums they had deposited without interest. Carr led the opposition to the resolutions, and again moved a censure on the Government, which was once more negatived. Then Fuller moved an amendment advocating the desirability of surveying the land. This Strangways opposed, saying that it would necessitate all the machinery of Government being set up again as in the first case. Finally, the first and second resolutions were carried and the rest negatived.

> "The Ministerial Mosaic has been emphatically rejected, and the Assembly have substituted for it a clear, distinct policy of their own, in which every possible guarantee has been provided for its execution. Had half as much candour and decision been exercised in 1866, there might have been no occasion for them on Tuesday. The speaking was very much in the hands of new members, but it did not suffer on that account."(30)

By 25 to 7, the House decided that there should be no further unnecessary delay. The consequence was that the Government brought in a Bill on August 25 for the amendment of the Northern Territory Act, allowing, in its

original form, 240 acres for every 160 to which the orders entitled their holders. The provision allowing 240 acres was changed by the Legislative Council to allow 320 instead. For the sake of the constitutional principle, the Assembly, by this time under the leadership of Strangways, withdrew the Bill and substituted another allowing 320 acres. This passed all its stages in both Houses, thus giving Strangways and his Government the credit of clearing up, besides the land question, another of the problems which had been vexing South Australia for a number of years past.

While the first of these Bills was passing through the Assembly, S. Tomkinson, an influential member of the Chamber of Commerce, asked to be heard at the bar of the House in opposition to it. on behalf of the land-order holders. His petition was granted, but his speech availed nothing. On September 3, and months before the Bill was finally passed on November 19, the Government Gazette called for tenders for the survey of the land. These all proved unsatisfactory to Goyder, who was entrusted with the details of the work. It was finally decided that he should go himself in charge of the surveying party which, although it could not hope to finish the task by March, 1869, could, nevertheless, complete the work not long after that date if it applied itself with vigour.

Out spake the hardy little wight -
"I'll go, so don't be nervous;
But 'tis not for your silver bright;
'Tis for the public service."(31)

Actually, though, Goyder stipulated a handsome bonus for himself and his assistants before consenting to undertake the difficult and thankless task. By the end of the year he had made his preparations, which necessitated another Northern Territory Bill for raising a loan of £40,000, this amount to be a first charge on the lands and revenues of the Northern Territory. The original fund had dwindled to £9000. Meanwhile, Dutton, the Agent-General, had been having a lively time of it in London with dissatisfied land-order holders. Writing to a friend, he said -

> "I would not like to put in writing the language which has been used to me in my office on the same subject by people coming to me, insisting to have their money back."(32)

On November 19, a letter from the Northern Territory Association in Adelaide was laid on the table of the Legislative Council, stating that the directors demanded the immediate repayment of their money with interest. About the same time, A.E.Elder, a former resident of South Australia, and acting on behalf of the Northern Territory Company in England, obtained an attachment against the colony's funds in England. He came in for his full share of condemnation, and there was even talk of taking legal proceedings

against him for hurting the good name of South Australia. Goyder departed on December 29 in the "Moonta", leaving stores which were to be picked up and carried after him by a schooner from Melbourne, the "Sea Ripple".(33)

Once more, the Volunteer Force took a turn for the worse, but it was not the fault of the privates this time. It was due rather to dissensions among the officers and the active discouragement of the Government. On May 25, the colony learned that a Court of Enquiry of the Volunteer Force, comprising Lieutenant-Colonel Mayo as President, Captain R. J. Scott and Captain O. A. Babbage, had dismissed Captain Ferguson, on various charges, but principally for his obstructiveness towards his superior officer, Colonel Biggs. Other officers, too, were dismissed, leaving the public puzzled as to the state of affairs. It appeared, however, that Colonel Biggs was too dictatorial. For a mistake at drill, Sgt.-Major McBride, the artillery instructor, sent out by the British Government at the request of the colony, was dismissed. The artillery batteries showed their opinion of his dismissal by treating him to complimentary dinners before his departure. The excuse given by the Government that they were dismissing him mainly for the sake of retrenchment was probably the truth, for a few weeks later the Robe Cavalry were given notice of disbandment, in spite of

their vigorous protests.(34) At the bi-monthly drill on July 5, Captain Scott told the members of his company (No.1) that the Government had ordered a reduction of the corps to its minimum strength, and accepted a number of resignations on the spot. Next came the information that infantry drill-instructors were to be dismissed as superfluous.

On August 18, Captain Bagot moved in the Legislative Council that the Volunteers be disbanded. After the motion had been debated for some time, it was withdrawn. Bagot objected to the principle of payments, saying that the amount of the Volunteers' pay was "unprecedented" in any other part of the world, for it was almost equal to that of a captain in the army. The £20,000 a year spent on the force could be saved. He thought, also, that the regulations were too strict. Several other members agreed with him to the extent of suggesting that the force be disbanded for several years, and this was the subject of a motion by D. Fisher in the Assembly a few days after. He was unable, however, to find any seconder. The Assembly voted instead for a Select Committee to inquire into the state of the Staff Department and the necessity for an instructor of artillery.(35) This Committee, after taking evidence for months, announced in the new year, on January 19, 1869, that it had been unable

to agree to a report. Its failure to agree was probably due to the Chairman, Strangways, having been called to office as a member of the Ministry, and the others on the Committee not having the same strong objections to Colonel Biggs as had Strangways. The Ministry were apparently satisfied that Biggs was not the right man for the position, for the "Register" of February 4 announced that, since he would not avail himself of the opportunity given him of resigning, he would be dismissed.

In military affairs, the trend of thought in South Australia followed that in England. These were the days of the Liberal Government under Gladstone, which favoured, in Colonial policy, a course opposed to the expansionist aims of Disraeli and the Conservatives. Liberal thought could not see the use of supporting troops in the self-governing parts of the Empire, which should be prepared to defend themselves. Similarly, a growing body of opinion in the colonies opposed the disbursing of thousands of pounds, as South Australia had been doing each year since 1866 (when the regulars returned), to keep several companies in idleness. The views of this section were given in a letter to the "Register" of December 4, 1868, as were also those of their opponents, who considered that the presence of the military was necessary, if not for security, at least for a leaven to colonial society.

Cheriton's motion of January 8, 1869, for the discontinuance of the yearly vote for the upkeep of the Imperial soldiers was not seconded, but another of Fuller for the reduction of the military to one company was acceded to.(36) The Imperial Government resolved the question for the colony soon after, by withdrawing all troops from Australia in 1870.

The long-awaited resolutions on land policy were moved by Glyde, the Commissioner of Crown Lands, on Sept. 17. They were for a division of the waste lands into three classes before sale, graded in price, and for sales by sealed tender, instead of by public auction. Another clause imposed penalties for offering or receiving money for improper practices, as well as for intimidation of tenderers. Townsend moved that these resolutions were unsatisfactory, and Cavenagh followed with a direct vote of non-confidence, which was not adopted. The regulations, it was said, were merely another case of compromise, containing only a fraction of the reform which was needed. Not one speaker found them entirely satisfactory; so that they were all rejected. At the same time, the House resolved that it was expedient that the Waste Lands Act of 1857 be amended. In this anomalous situation, Ayers resigned. Hay was first sent for, as having for so long agitated the land question, but he refused to form a

Cabinet. Townsend was willing to do so, but was unable. The Governor next called on Hart. His ministry took office on September 24, being composed as follows:-

Chief Secretary - J. Hart.

Attorney-General - J. T. Bagot.

Treasurer - - N. Blyth.

Commissioner of Crown Lands - W. Townsend.

Commissioner of Public Works - W. Everard.(37)

The effort of this Government to produce a worthwhile land bill was ludicrous, although Hay's motion on Oct. 7 that it was unsatisfactory was carried by three votes only. Their scheme was to lease waste lands which had passed the hammer at 2/- an acre, with the right of purchase at £1 an acre, but without conditions of settlement and improvement. This would be merely to introduce a class of leaseholders for the purpose of mopping up the off-scourings of the auction-room, if indeed it did not put the land into the hands of the capitalists. It was no use giving men land which had passed the hammer, as it was inferior and in scattered blocks of perhaps a hundred acres or so. Agricultural areas, declared the "Register" of October 7, were the solution, and they must be of the best land.

> "The preliminary difficulties would be fewer, the chance of obtaining good farms would be greater, the stimulus to industry would be stronger, the Government supervision would be more simple, and the test applied to bona fide settlement would be more conclusive."

After this defeat for Hart and his Ministry, Hay tried again, but could get no support in the Legislative Council. So Ayers and all his former Cabinet, Andrews, Reynolds, Glyde and Santo returned to office on October 13.

> "Mr. Hay's abrupt surrender of the task on which he had entered so hopefully was disappointment enough, but the phoenix which rose out of the ashes of his undertaking seemed to cast a sardonic grin at the land reformers. 'The Ayers ministry back again before any really liberal opinion has been heard from the Treasury benches - impossible!' - some of our country readers will exclaim. But so the fates have decreed."(38)

Chastened by their experience, the Ayers Ministry submitted a programme of land reform that went far along the right road. It gave free selection at £1 an acre with deferred payments for 12 months. Agricultural areas were to be proclaimed and townships laid out in various districts. There was to be a 20% cash deposit and the rest of the purchase price was to be paid at the end of 12 months, during which one quarter of the land was to be fenced and cultivated. (Hay thought that this would be too difficult to do.) If the farmer failed to comply with any of the above requirements, the land was to be forfeited. No person was to be allowed to select more than 640 acres. Truly, Carr was right when he quoted in relation to the change of heart of the Ministry as a result of a few weeks on the Opposition benches -

> "Sweet are the uses of adversity,
> Which, like the toad, ugly and venemous,
> Wears yet a precious jewel in its head."

The above principles, however, were not acceptable to Strangways, who immediately gave notice of a motion of want of confidence, - not that he condemned the Ministry's policy altogether, but that he had another to offer instead of it, which he hoped would be more acceptable to the House and the country.(39) On October 20 he spoke for over two hours. Unlike the speeches that he usually delivered, this one was dull, according to the "Register", but it cleared up the issues. Although it was the speech of "a wire-puller feeling his way into a crisis", it demonstrated how uniform price (the £1 per acre of the Ministerial plan) merely led to dummyism. If two men had selected the same block, they ought to compete, without, however, calling in a promiscuous crowd, such as the auction room collected, to profit by their energy and experience. Strangways would retain the agricultural areas offered by Ayers, but instead of free selection at a uniform price he would have competition and credit. The whole province was keenly interested -

> "On the eve of the decisive battle let land reformers of all creeds join hands, and congratulate themselves on the victories already gained - - - Conservatism has been silenced."(40)

The House agreed to this vote of want of confidence in the Ministry, but voted also for a proposition moved by Fuller.

expressing disagreement with the land scheme of Strangways. Thus the battle resolved itself into a triangular contest of Conservatives, Strangways with a few supporters, and the new members who had formed themselves into a caucus. The explanation of the "half-ludicrous and wholly unconstitutional muddle" was the reluctance of the caucus to trust Strangways. They were not yet sure that his liberal land views could be relied upon, as he had so long opposed reform. It is true that he had raised the cry "Unlock the lands" at the elections of 1865 and declared the Scrub Lands Act but a step in the direction of real help to the farmers; he had not, however, followed any really consistent course up to the present. He could always be relied upon to oppose the Government in power and many had been the useful Acts inspired by him in other fields, but during his several terms of office as Commissioner of Crown Lands he had not shown any great alacrity on behalf of the agriculturists.(41) Speaking at an election meeting at Hindmarsh on April 3 earlier in the year, he had declared,

> "As to deferred payments, he was dead against them and if returned to Parliament, would oppose them as long as he possibly could. - - - Free selection and deferred payments he considered the worst of all the land systems which had been proposed."(42)

As a result, he had regained favour in the eyes of the "Register", which, for most of his career and on the sub-

ject of squatting remissions particularly, had regarded him very coldly. Now, he had evidently gauged pretty accurately what the country wanted, and was prepared to lead the reformers if free selection were dropped from the programme.

Affairs seemed to have reached a stalemate, and dissolution was the talk on everybody's lips. The Treasurer, Reynolds, announced that on Tuesday, October 27, the House would be prorogued preliminary to dissolution. Before that date, however, Ayers received a note from Acting-Governor Hamley, telling him that he had reconsidered the matter and decided that another effort to form an administration should be made. Hamley informed the Secretary of State -

> "A general election having so recently taken place, I determined to make a further trial."(43)

A Cabinet meeting was held, after which the Ministry tendered their resignation, and Fuller, the leader of the caucus, was entrusted with the task of forming a Government. The "Register", brilliantly edited at this time, said of the crisis -

> "Mr. Glyde calls out, 'Here we are again!' when he and his colleagues are the last men we should have expected to see on the Treasury benches. Mr. Strangways makes a rush at the citadel while his commander-in-chief (Hay) is reconnoitring under the despondent idea that it is impregnable. The caucus throws itself, like the clown in the pantomime, across the path of the Giaour, and seize his victorious scimitar. The defeated garrison rally

> to the cry of 'Dissolution!' and sallying forth in viceregal purple hamstring the caucus. Then a learned Effendi, who has been looking on from a distance, steps in and says, "You are all wrong together, you must begin again!" "

The above is an instance of the Governor having to act on his own judgment, and illustrates his viceregal function of a Deus ex machina when the ordinary working gear of the Constitution is thrown out of order. During the preceding three years in Victoria, such action had been required fairly often, but never before in South Australia. Colonial Governors had not the advantage of a Privy Council to advise them in a crisis, as had the Sovereign. However, Colonial practice had followed that of England, in regarding the nominal head of the administration, in this case the Governor, not as a mere figure-head, but as an authority who might intervene in just such an emergency as the present. It was rumoured that Fuller, in this case, had been sent for by Hamley on the recommendation of one of the Judges, no doubt Hanson.

When Fuller handed the Acting-Governor his proposed list of Ministers, Hamley noticed that Fuller's own name was not on it, because, being a Government contractor on the railway, he was unable to assume office. Hamley therefore declined to accept it, and sent for Strangways.(44) The latter was able to allay the fears of the caucus, and announced his Ministry on November 3. It included:-

J. T. Bagot, M.L.C. - Chief Secretary.
H.B.T.Strangways - Attorney-General.
H. K. Hughes - - Treasurer.
W. Cavenagh - Commissioner of Crown Lands.
J. Colton - Commissioner of Public Works.

Thus he introduced new blood to the leadership of public life. For the past six years or so, the ministries had been a variation on the theme of Ayers, Milne, Blyth, Glyde, Hart, Reynolds, Santo and Strangways, with Stow, Boucaut and Andrews interchanging as Attorney-Generals. It was the most complete change-over since Reynolds formed his Ministry in 1860, and that it was acceptable to the Parliament and country is clear from its retention of power until May 12, 1870, when Strangways reconstructed and went on to a further term of office. The whole social life of South Australia for the future was in the balance, for it was a question of whether this was to be a land of free-holding farmers or tenants. Consequently, the Assembly was content to allow Strangways such a grip on it as no-one had possessed before. Witness its ready acquiescence in his suggestion that he and Cavenagh be appointed a committee to prepare a new Waste Lands Bill. At that time, also, the "Register" dubbed him "the St. George of the land reformers", a title which has passed into the history of the State.

In the interval while they were waiting for the appearance of the Land Bill, the House had various matters to consider. On December 2, they debated at length the question of the letting or selling of the railways, and decided to maintain them as previously, that is, as Government property and as a public utility. The members feared that if a private company had possession of them, the monopoly and the anxiety of the company's directors to make them pay would lead to prices beyond the means of many of those most dependent on them, as, for instance, the farmers. The annual loss of £30,000 could be borne by the colony, and, in any case, who would buy the lines? There was no likelihood of any company offering to take them over. Here appears a reversal of opinion from that commonly held a few years before, just as in the matters of supporting the Imperial troops in Australia and providing adequately for the well-being of the Public Service.

Another problem which was raising its head again after being quiescent for years was that of the encouragement of the River Murray commerce. Traders on the Upper Murray preferred to use Echuca and the railway thence to Melbourne, rather than to send all the way to Goolwa. The facilities for handling goods were better at Echuca than at Goolwa, and the rates charged were quite low, including 1/- rebate per bale on all river-borne wool.

Victoria and New South Wales had composed their border customs differences to such good effect that the Border Customs Treaty not merely saved double duty as compared with that on goods going by way of South Australia, but obviated all delay and expense in clearing. The spread of agriculture in the neighbourhood of Echuca meant that flour could be bought cheaply there, as also Melbourne merchandise sent up by the railway. So the whole of the Upper Murray river trade had departed from South Australia. She still gained practically all that of the Darling, and consequently great interest was shown in Adelaide in the levels along that river and concern when the drought halted the steamers in 1867.(45) Yet the Government had all along spent money on Goolwa in a grudging, half-hearted fashion, leading to the editorial comment that

> "everything connected with the river trade is predestined for bungling."(46)

Nothing had yet been done towards the extension of the Victor Harbour jetty to Granite Island, although during the last two sessions the wharfage at Goolwa had been extended, and the charges reduced on the tramway. Lightering was still necessary at Victor Harbour and thus a vicious circle was set up. Inadequate facilities meant that overseas ships were not encouraged to call there, and the consequent uncertainty of having their goods shifted made people up the river hesitate about sending them down.

A deputation of those interested in the river trade waited on the new Commissioner of Public Works, Colton, on Nov. 26, pressing the work at Victor Harbour for lengthening the jetty, the money for which had long before been voted. The steamer "Goolwa" had already, in that season, made eight trips from Victor Harbour to Port Adelaide, and 9% of the total earnings had been spent in lighterage at Victor Harbour. A 700 ft. extension would give a depth of 12 ft., it was said. Captain Johnston also pointed out the need for a breakwater at the corner of Granite Island to lessen the swell. To the requests of the deputation, Colton replied that he would look into the matter. Action was to be delayed for a few years and when extensive works were at length completed at Victor Harbour in the mid-seventies, their effect was to be completely neutralized by the building of a railway from Morgan, at the North-West Bend, to Adelaide, thus diverting the Darling and Murray traffic by that route to Port Adelaide.

The Ayers Ministry introduced legislation early in the session for repealing Sutherland's Act. Regarding this, Reynolds, the Treasurer, said,

> "it was absolutely necessary for the Treasurer, whoever he might be, to have the control of the balance of the Immigration Fund, for the revenue of 1867 had fallen off enormously. He knew of no instance in which the falling-off from the estimated amount had been so great."(47)

Discussion of the measure continued when the land question permitted it. As soon as Strangways took office, he merged the Immigration Fund in the general revenue. Thus, Hughes' Estimates showed 1869 opening with an actual deficit of £21,558 instead of a nominal one of £193,000. The altered arrangement was provided for in a fresh Bill, the Waste Lands Sale Appropriation Bill No.2, which passed the Assembly on December 1. Sutherland's Act, it will be remembered, was opposed because it promoted immigration and diverted much money from public works, although, in fact, surpluses had been acted upon throughout as wanted. A final objection to it was the intricate system of accounting it caused.(48) The Legislative Council, being composed of employers and capitalists, was much in favour of Sutherland's Act and the continuance of immigration. They first of all made an amendment in the repealing Act. The Assembly thereupon stood firm and made an amendment on the Council's amendment, a course of action which the Council declared

> "would deprive the Council of the free exercise of its undoubted Constitutional right of considering the application of the proceeds of the sale of the waste lands of the Crown."

The continued altercation over the matter led to the editorial comment that Sutherland's Act was likely to be the colony's political Frankenstein, they who created the monster being unable to destroy it.(49) The Assembly

thereupon dropped Bill No. 2 and brought in Bill No.3, with the wording of the disputed part exactly as in Sutherland's Act. To this also the Council raised objection, saying that the Assembly should either have asked for a conference or abandoned the Bill. Baker saw in the business a lack of respect for the Council on the part of the Assembly. Morphett, the President, considered that the Assembly had no right to introduce another Bill instead of the first, unless it contained the amendments made by the Council, as had been the procedure with the Port Wakefield tramway bill of the last session. The ruling of the President was upheld by the House, which thus saw to it that Sutherland's Act should not yet be repealed.(50)

Strangways brought in his celebrated Act on November 25. It had its second reading on December 3, and passed through committee in the Assembly on December 21. What opposition there was to it was led by Hart. When it reached the Council, it passed its second reading with none opposing but Solomon. Its terms were very much as Strangways had sketched them on October 20, giving four years' credit with a deposit of 20%, and restricting the area per person to 640 acres. The agricultural areas named in the schedule were Mt.Muirhead flats in the South-East, the country north-west and south-east of Naracoorte, portions of the Bundaleer and Booyoolee Runs

where now Gulnare stands, the land on either side of the Broughton, including the Hummocks and Crystal Brook Runs, the south part of Yorke's Peninsula, and the Warrow area, north of Lake Wangary in the Port Lincoln district. The Governor and his Executive Council were empowered to proclaim other agricultural areas, of from 20 to 100 square miles, to be surveyed in sections of not more than 320 acres with reserves for townships, on the condition of the same being laid before Parliament for fourteen days prior to proclamation. The township and suburban lands in such areas were to be sold at auction, and not upon credit, as were the country lands. After the lands had been surveyed, notice was to be given in the Government gazette that they were open for selection at a certain price per acre for a certain time, at the expiration of which time they would be open for selection at a lower price, and so on until the price reached £1 an acre. The reduction of the price from period to period was never to be at a rate of less than 5/- nor more than 10/- an acre, and the periods were to be within the limits of one and three months. After two years, the lands remaining were to be sold by auction. Simultaneous applications for lands were to be determined by lot. There was to be no transfer of the agreement except in the case of death or insolvency, and no infant or married woman (except a married woman who had obtained a judicial separation) should be entitled to

hold. A bona fide applicant might employ an agent, but agreements contrary to the terms of this act were to be punishable by the annulment of the grant of the land. Conditions of residence and improvement were included.[51]

Here we see how skilfully the lessons learned from the other colonies were incorporated. The confusion of the early sixties in Victoria and New South Wales, resulting from free selection, and having as its final result the absorption of great areas of land by the squatters through dummyism, was avoided by the system of tender which replaced the open auction as regarded the lands in the agricultural areas. The whole process was under the control of the Government, bringing the day of the Social Service State nearer. Laissez-faire was discredited in the interest of the man of small means, who, unaided by the State, had for the last ten years or so been no match for those with wealth to back them. At the same time, the State was no sufferer, for the initial price of the good lands included in the areas would bring to the public purse a greater return than if they had been put up to auction.

Running parallel with Strangways Act was one which was first introduced into the Council, an Act for the prevention of frauds at auctions of waste lands, which also became law. It declared void any agreements prevent-

ing fair competition. The employment of more than one agent to bid or actat an auction was to be illegal, as also the agreement to pay any person more than 6d. an acre for bidding or acting. Any money or reward received under an illegal agreement was to be forfeited and recoverable by anyone suing for it. Proposals, made in the endeavour to induce an intending purchaser to enter into any agreement which would be illegal and void, were to be punishable by the forfeiture of twice the value of the lands, or £200, whichever should be higher in amount. (52)

A hitch occurred in Strangways Act before the Council had done with it. To a number of minor amendments made by the Council the Assembly assented, but a deadlock threatened on the stipulation of the Upper House that the squatters in the proclaimed areas be given nine months instead of six before any sale of their lands, so as to enable them to make arrangements for their sheep. It was vitally important to clear the Bill away before the end of the session. So resort was had to the machinery that had settled the great Privilege Question in 1857, namely, the Conference. For the Assembly, Strangways, Hay and Blyth were appointed and for the Council, Baker, Ayers and Elder. The "reasons" supplied by the Assembly for urging the Council not to insist on its amendments were cogent ones, explaining, as they did, that the adoption of the

amendment would cause the farmers to lose a year's crop. Consequently, they would be unable to meet their commitments to the Government, and the revenue would suffer in its turn. The Council considered these "reasons" in committee, and agreed to accept the six months' period. Nothing further remained except to agree to the third reading, and to obtain the Governor's consent to the Acts of the session. This was given on January 30, when Parliament was prorogued.

The effects of Strangways Act were far-reaching. Within a few years, agricultural activity had spread over the Mid-North, with townships growing up at such places as Gladstone, Georgetown, Caltowie, Jamestown, etc. Instead of the impression that the limit of wheat-growing lay a little north of Clare, doubt was freely expressed about the accuracy of Goyder's line as a boundary to the reliable lands. Farmers pushed out beyond it, and grew wheat by 1880 even north of Hookina. With the expansion in wheat-growing during the seventies and the bold railway policy inaugurated by Boucaut, there came a renewed demand for immigrants, who crowded in once more as in the prosperous days of the mid-sixties. Thus was laid the pattern of the South Australia we know today, where each area supports the industry for which it is most

suited and the squatter and the agriculturist live together on cordial terms, their quarrels at an end.

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## A.


Aborigines. 47, 269, 280, 302.
Aborigines, Protector of 263-4, 280-1.
Aborigines' Friends' Association 287.
Absentees 119, 125, 126.
Adam Bay 263, 280, 287, 313, 360.
Addresses to the Crown 34, 43, 113, 174, 175-9, 206, 255, 258, 260, 264, 342-50, 368, 385, 386.
Adelaide, City of 13, 31b, 159, 192-4, 203, 213, 215, 227-8, 249, 262, 329, 331, 351, 353, 362, 393.
Adelaide, County of 253.
Adelaide, River 263, 280.
Address in Reply 84.
"Admella" 333.
Admiralty, the 142, 332.
"Advertiser" 102, 131, 144, 145, 169, 186, 192, 195, 196, 200, 213, 243, 244, 252, 253, 268, 275, 278, 291, 293, 296, 307, 314, 318, 320, 328, 350, 366.
Agent-General 92, 153, 205, 317, 407
Agriculture 7, 31a, 85, 201, 250, 253, 273, 293, 296-7, 299, 302, 303, 323-4, 366-7, 376, 381-2, 388, 393-4, 396-7, 411-28.
Albury 382.
Alexander 131.
Aliens Act 37, 93, 258.
Allin, C.D. 23.
Anderson, A. 199.
Andrews, E.W. 387.
Andrews R.B. 16, 76, 114, 246, 247, 273, 278, 292, 370, 413, 418.
Angas, G.F. 14, 34, 56, 83, 173, 214, 250.
Angaston 86, 101.
Annual leases 121-2, 276-9, 290, 298.
Anstey 362.
Appeals, Court of, 22, 169, 170, 171, 309-311, 323, 343, 350.
Appropriation Bill 66, 71, 105, 265, 278.
Archives Department of S.A. 31.
Arnhem Land 249, 362.
Assembly, House of 7, 18, 30, 36, 42, 43, 50, 54-5, 59, 64-72, 77, 79, 84-5, 87, 89, 101, 104-5, 107, 110, 114-6, 121, 123-4, 128, 133, 141, 153-8, 172-3, 175, 183-5, 190, 192-3, 196, 202-3, 205, 206, 220-3, 240, 243, 245-8, 258, 264, 267, 269-70, 273, 275, 277-8, 295-6, 299, 300, 303-4, 317-20, 323, 325-9, 330, 332-4, 345, 352, 355-6, 360, 364, 378, 381-3, 385-6, 387, 405, 409, 411, 414, 418-9, 422-3, 426-7.
Assessment of Stock 4, 16, 20, 32, 118-123, 202-4, 214, 218, 265, 271, 277, 290, 356-7, 373-4.
Attorney-General 44, 46, 47, 69, 73, 77, 103-4, 116, 145, 151, 158, 170, 174, 175, 186, 207, 221, 237, 240, 246, 247, 257, 273, 274, 275, 291-2, 301, 320, 322, 330, 335, 340, 369-71, 412, 418
Auburn 101, 116.
Auctioneers 213.
Auditing of accounts 92.
Auditor-General 105, 112.
Austin, J.B. 184.
Austria 137.
Auld 255.
Ayers, Henry 3, 231, 241, 245, 246, 251-2, 262, 264, 270, 273, 275, 290-2, 297, 304, 317, 319, 360, 362, 367, 370, 377, 383, 385, 404, 411-12, 414, 416, 418, 421, 426.

B.

Babbage C 31, 87, 134, 408.
Bagot J.T. 30, 74, 75, 114, 133, 151, 186, 193, 266, 367, 387, 412, 418
Bagot, Capt. C.H. 409
Baker J. 31, 45, 65, 69, 70, 71, 74-75, 76-7, 120, 140, 164, 175, 194, 250-1, 264-5, 277, 298, 319, 356, 385, 387, 423, 426.
Bakewell W. 56, 114, 145, 241, 267, 372
Balaclava 398
Ballot 1, 24, 29, 146, 166, 195, 213.
Bands 253, 331.
Banks and credit 85, 125-6.
Barossa 56-7, 144-5, 156, 162, 193, 215, 291, 381, 398, 403.
Barker's Knoll 196.
Barkly, Sir H. 55, 62.
Barrington, Sir Jonah 343.
Barrow, J. 12, 102, 115-6, 123, 194, 253, 273-4, 333, 354-6, 367, 381, 383-5.
Bathurst burr 214-5.
Bayne 257.
Bean, G.T. 380, 396, 403.
"Beatrice" 263, 281, 288, 314, 316, 359.
Beautiful Valley 330
Ben Hall 351.
"Bengal" 288, 373.
Bible-reading in schools 189-190, 236.
Biggs, Col.J.H. 247, 362, 408, 410.
Blackmore, E.G. 38.
Blanchwater 77.
Blinman 184, 398.
Blyth, Arthur 3, 59, 72, 74, 77, 104, 133, 145, 174, 192, 194, 206-7, 220, 241, 243, 262, 275, 494-5, 300, 317, 326, 335, 357, 383, 412, 418, 426.
Blyth, Neville 10, 11, 33, 134, 220, 227, 381.
Blyth, Capt. 226, 247.
Blyth Plains 398.
Board of Trade 268.
Bonds 92, 377.
Bonney C. 46, 274, 291, 305, 319, 356.
Booborowie 297.
Boothby, Judge B. 10, 16, 25-8, 34, 113-6, 167-8, 171-9, 206, 212, 237, 240, 252, 255, 257, 258, 261-2, 305-11, 328, 340-50, 351, 370-2.
"Border Watch" 209, 213, 289.
Botannical Gardens 128.
Boucaut, J.P. 274, 291-2, 301, 308, 320, 330, 335-342, 346, 369-71, 403, 418, 427.
Bower D. 326, 383, 403.
Bowman 298.
Bremer 354.
Bright, H. 326, 383.
Brighton 354.
Brisbane 361.
British Parliament (see Imperial Parliament)
British Empire (see Empire)
British Government 35, 57, 59, 61, 94, 141-2, 155, 159, 165, 175, 178, 187, 210, 212, 223, 226-7, 237, 249, 251, 260-1, 270, 331, 345, 348, 367, 408.
Broughton River 324, 424.
Brown, J. 85.
Brown H. 130.
Browne, Dr.W.J. 184, 198-9.
Bryan 274.
Bundaleer 288, 423.
Bungaree 272, 278.
"Bunyip" 249.
Burfield, R. 313.
Burford, W. 33, 119, 120.
Burra, the 85-6, 116, 120, 127, 142, 152. 294, 296-7, 324, 353, 375, 398.
Burra & Clare (electorate) 11, 114-5, 192-4.
By-elections 11.

C.

Cabinet 50-64, 73, 103-5, 117, 185, 205-6, 224, 246, 252, 317, 348, 370, 400-1, 416.
Cadell, Capt. F. 361, 404.
Call of the House, 172.
Caltowie 427.
Camden Harbour 314.
Camels 184.
Canada 3, 81, 223,
Canowie 297.
Cape Colony 256.
Cape Jervis 200.
Captain Starlight 351.
Carleton, Mrs.C.J. 21.
Carnarvon, Lord, 347-8.
Carpenters' Association 208, 358, 399.
Carr, J. 355, 382, 403-5, 413.
Catholic Church 17, 79, 189, 190-1, 208, 358, 399.
Cathedral-acre grant 216.
Caucus 415-7.
Cavenagh, W. 3, 305, 411, 418.
Cemeteries 214, 216-7.
Central Road Board 6, 47, 88-9, 109-112, 134, 161, 218, 265, 295, 329.
Chalmers Church 358.
Chamber of Commerce 59, 205, 242, 243, 406.
Champion Bay 314.
Chartists 29, 147.
Cheriton J. 403, 411.
Chief Justice 116, 223-5, 256-7, 259, 370-2, 384, 399, 400.
Chief Secretary 16, 44, 46-7, 51, 58, 60-1, 63, 71, 73, 103-5, 111, 117, 134, 151, 170, 174-5, 197, 207, 225, 241, 246, 270, 275, 292, 304, 319, 320, 322, 327, 334-5, 362, 367, 370, 386, 404, 412, 418.
Chinese 78.
Church of England 216, 217, 354, 358-9, 383-5.
Chute, General 399.
Circuit Courts 112, 115.
Civil uniforms, wearing of 37.
Clarendon 152.
Clarence Strait 263.
Clark, John 138, 139. 142-3, 198, 291, 380-1.
Clark, J.H. 387, 395-6.
Clare 31a, 101, 116, 139, 142, 143, 162, 272, 278, 297-8, 353, 381, 398, 427.
Coglin, P.B., 138, 190, 199, 200, 382, 383.
Cole, G. 3, 33, 90.
Colenso Case 384.
Colley, R.B. 85.
Colonial Laws Validity Act 26-7, 168, 173, 254-5.
Colton, J. 326, 383, 403, 418, 421.
Colonial Office (see Downing St.)
Colonial Architect 47.
Commissions 17, 18, 195, 223, 225-6, 229, 249, 304, 309-11, 316, 319, 321, 331, 333-4, 342-3, 346, 351, 356-7, 370, 373, 388, 400.
Commissioner of Crown Lands 44, 46-7, 104, 134, 151, 170, 174-5, 186, 107, 246, 271, 273-9, 292, 294, 320, 335, 354, 370, 382, 394, 411, 412, 415, 418.
Commissioner of Police 153.
Commissioner of Public Works 5, 16, 44, 46-7, 65, 88-9, 104, 109, 110-12, 133, 151, 170, 174-5, 207, 246, 275, 292, 317, 320, 335, 370, 395, 412, 418, 421.
Commissioner of Insolvency 47, 94.
Commissioners of Railways 47, 85, 103-4, 111.
"Commodore" 86.
Comptroller of Convicts 152.
Conference 7, 66, 69, 70-2, 423, 426-7. (See Intercolonial Conferences)
Conservatives 4, 10, 33, 44, 45, 49, 65, 70, 144-5, 207, 221, 267, 293, 410, 414-5.
Consolidation of criminal code 21, 140.
Constitution Act 1, 2, 13, 19, 26, 37-8, 42-5, 52, 61, 64-72, 77, 102-3, 106, 143, 145, 154, 165, 169, 171, 174, 177, 179, 184, 219-223, 236, 239, 240, 247, 254-9, 262, 305-11, 318, 322-3, 334, 341, 347-9, 350, 383-8, 399-402, 406,

Convicts' Prevention Act 93, 260-1.
Coonatto 289.
Cooper, Chief Justice Sir C. 115, 176, 185, 223-5, 372, 400.
Coorong 210.
"Corio" 87.
Coroner 47.
Corporations 195-6, 208, 378, 398, 399.
Cottrell R. 403.
Council of City of Adelaide 196.
Council, Legislative 7, 12, 42, 45, 49-53, 56, 64-72, 75, 77, 84-5, 87-9, 94, 105. 107, 109, 110, 114, 123-4, 133, 154-5, 171-5, 184, 194, 197, 202-3, 205, 220, 236, 238, 245, 252, 254, 258, 264-5, 273, 277, 291, 298, 303-4, 318-20, 323, 330, 333, 345, 352, 355-6, 360, 383-8, 406-9, 413, 422-3, 425-7.
Courts (see Local, Appeals, Supreme)
Courts of Revision 91.
Crimean War 35. 100. 137.
Crown, the 68, 75, 84, 92, 155, 178, 185, 340, 349, 362, 383.
Crown Solicitor 47, 241, 342, 371-2, 385.
Crises, ministerial 8. 9, 23-4, 221, 292-3, 320, 350, 388, 412-18.
Crystal Brook 424.
Curator of Intestate Estates 47.
Customs (see tariff).

D.

Dale, W. 33, 198, 376.
Daly, Sir Dominick 4, 31b, 208, 212, 223-4, 230, 237, 239, 248, 256-7, 261, 270, 278, 288, 292-3, 308, 309, 320, 345, 347, 371, 399.
Daly (County) 31a.
Darling, Governor 166, 270.
Darling, River 197, 398, 420-1.
Date of Acts Bill 7, 124.
Davenport, S. 46, 65, 68, 77, 88, 298.
Dawes 306, 309.
Dean, Horace 56.
Deep drainage 85.
Defence 36 (see also Volunteers)
Dench 167, 169.
Denison, Sir W. 55, 57, 62.
Deputations 16, 131, 354, 357, 367, 377, 421.
Despatches from S.A. 60. 185, 204, 320, 347, 400.
Despatches from Downing St. 258, 261, 346, 348, 400-1.
Destitute Asylum and Board 354, 386.
Disallowance of Acts 37, 93, 164-6, 268, 368, 401.
Disputed Returns, Court of, 12, 13, 56-7.
Disraeli 410.
Dissolution of Parliament 172, 416-7.
District Councils 98, 111, 124, 213, 295, 378, 399.
Divorce Legislation 21, 37.
Dog Act 159-160, 239.

Downing St. (or Colonial Office) 37, 94, 100, 159, 166, 170, 175, 179, 208, 210, 226, 228, 239-40, 252, 254, 259, 261, 320, 342, 346-9, 400-2, 410.
Drapers' Assistants' Association 312, 363.
Driffield 238.
Drought 31a, 184, 253-4, 266, 276, 293, 303-4, 321, 355-7, 376, 388, 398, 420.
Dry Creek 353.
Duffield W. 3, 123, 244-5, 294, 300, 320, 325, 335.
Duffy, Charles Gavan 21, 30, 100.
Duke of Edinburgh, Prince Alfred, 383.
Dunn, J. 3, 12.
Durham 129.
Dutton, F.S. 3, 19, 77, 123, 134-5, 145, 159, 227-8, 275, 292, 298, 317, 407.

E.

"Eagle" 361.
Early closing movement 20.
East Torrens 11, 103, 138, 193, 381, 403.
Eastern Plains 373.
Ecclesiastical reserves 81.
Echuca 23, 419.
Eden Valley 381.
Education 2, 17, 55, 64, 189-192.
Elder T. 262, 426.
Elder A.E. 407.
Elections 12, 42-3, 55-6, 102-3, 142-7, 159, 236, 279, 288-91, 380-2, 396-9, 402-4, 415, 416.
Electoral districts 13, 29, 43, 192-4.
Electoral law 72, 78, 91, 165, 176, 178, 192-5, 219-20, 238-9, 254, 323.
"Ellen Lewis" 316.
Empire, British, 162, 260, 311, 401, 410
Encounter Bay 193, 291, 362.
Engineer-in-chief 385-6.
English, T. 291, 320, 335.
English law 21, 28, 93, 164-7, 169, 214, 254, 305-11, 340, 346, 363.
Equity 213, 351, 370, 372-3.
Escape Cliffs 281, 288, 313-316, 359, 360.
Estimates 46-7, 64, 135-6, 152, 197, 205, 245.
Everard, W. 403, 412.
Exhibition building 269, 383.
Executive 5, 6, 14, 19, 20, 26, 44, 72, 88-9, 104, 111, 112, 131-5, 141, 152, 186, 224, 226, 229, 277, 278, 288, 298, 304, 329, 342, 346, 348, 360, 363, 375-6, 377, 393-4, 400-1.
Executive Council 1, 6, 38, 43-8, 51, 53-4, 58, 60-3, 75, 92-3, 104-5, 111, 168-70, 175, 184, 218, 223-5, 245, 247, 250, 251, 257, 259, 270, 281, 305, 316, 331, 335, 342-50, 361, 362, 368, 371-2, 385, 398, 424.
Extra-territorial legislation 37, 94, 178-9, 268, 401.
Eyre, E.J. 31.
Eyre Peninsula 31a, 302, 330, 397.

F.

"Falcon" 331.
Federation 21, 37, 100, 241, 365, 367-9.
Female votes 196.
Fencing 254, 277.
Fenn, C. 83, 167, 172.
Ferguson, Capt. 408.
Fergusson's Range 324.
Field of Government Action 4.
Finniss, B.T. 1, 11, 43, 45-6, 49-51, 53, 58, 61-2, 65, 72, 75, 77, 79, 84, 88-9, 104, 122, 145, 226-7, 247, 262-3, 280-2, 287-8, 313-6.
Fire Brigade Act 214-5.
Fisher D. 3, 138, 381, 383, 403, 409.
Fisher, J.H. 65, 71, 164-5, 236-9, 254-5.
Flinders (electoral district) 193, 194, 262, 325, 397.
Flinders Range 184, 266, 293.
"Flying Fish" 196.
Forbes 166.
"Forlorn Hope" 313-4.
Forresters 352-3, 375.
Forster, A. 6, 70, 253, 274.
Fowler's Bay 31a, 187.
France 137, 158.
Franchise 13, 42-4, 70, 222.
Franklin Harbour 31a, 324.
Free Selection 21, 200-1, 355, 403, 410-4, 425.
Free Distillation 55, 74, 78, 89, 101, 119, 120, 144, 158, 326-7.
Free Trade 55, 90, 317, 319, 364, 378-81, 395.
Freeling A.H. 46, 68, 88, 203, 393.
Fuller, H.R. 403-4, 414, 416-7.

G.

Garibaldi 8.
Gawler 21, 31b, 84, 85, 101, 136, 142-3, 147, 228, 249, 297, 362, 381, 393.
Gawler, County of 253.
Gawler, Henry 174.
Gawler Ranges 31a, 324.
Gazette Government 111, 269, 315, 362, 372, 406, 424.
Geoghegan, Dr.D. 190.
Georgetown 427.
German immigration 79, 206, 382.
Gilbert River 116-7, 353, 375.
Gladstone 410, 427.
Gleeson, H.C. 397.
Glencoe 297.
Glenelg 229, 270, 331.
Glyde, L. 3, 10, 123, 135, 186, 194, 241, 246, 271, 273-4, 277, 289, 290, 300, 320-1, 343, 356, 367, 370, 382, 394.
Goldsmith, F.E. 263, 280.
Gold licences 19.
Gold Commissioner 47.
Goodall 311.
Goode, C.H. 17, 201, 298-9, 301-3.
Goolwa 47, 86-7, 104, 197, 419-20.
Gordon, A.L. 289.
Government Contractors in Parliament 102, 323.
Government Resident for Northern Territory (see Resident Commissioner).
Governor, the 16, 36, 43, 51, 54, 60, 63, 70, 75, 92-3, 102, 104, 117-8, 155, 169, 175, 176, 178, 185-6, 199, 220, 222-6, 246-8, 250-2, 256, 258-9, 262, 293-4, 306, 310, 311, 331, 345, 354, 357, 359, 367-8, 371, 384, 399-401, 416-7, 424.
Goyder, G.W. 9, 77, 197, 201, 203-4, 271-9, 289, 290, 302-3, 320-4, 356, 373-4, 406-7, 427.

Goyder's Valuations 11, 32, 125
271-9, 288-91, 293, 320-9,
357, 373-4, 394.
"Grace Darling" 354.
Granite Island 86, 377, 420-1
Graves 362.
Gray, W.F. 396.
Great Britain, Parliament of
67-71.
(See also Imperial Parlt.)
Great Britain, Insolvency Laws
95.
Great Northern Mining Co. 184.
Green 341.
Greenock 269.
Grey (County) 31b.
Grocers' Assistants' Association 312.
Grundy, E.L. 3, 9, 33, 144, 147,
156-7, 172, 190, 200, 215.
"Guardian" (Portland) 211.
Gulnare 424.
Gumeracha 193.
Gwynne, E.C. 25, 67, 74, 114, 116,
141, 171, 176, 212, 237-8, 252,
255, 257, 305-11, 341, 371-2.


H.


Hack, S. 187.
Hague, R. 167, 181.
Hall, G. 101.
Hallam's History 247.
Hallett 123.
Hamley, F.G. 364, 399, 416-7.
Hamley Bridge 352.
Hampton 105.
Hanse 83.
Hanson, R.D. 1, 2, 3, 16, 19,
20, 46, 53, 69-72, 75, 77,
78, 80, 84, 94, 100-1, 103,
105, 108-9, 114-5, 118,
121, 124, 129, 130, 132, 135,
136, 140, 144-6, 155, 164-5,
173, 176-7, 190-1, 240, 256,
258, 333, 346, 370-2, 417.
Hanson, W. 9, 85, 103, 111.
Harbours 5, 47, 78, 87-8, 108,
110, 111, 134, 151, 160-1,
331, 333, 352-3.
Hare, C.S. 152.
Harrison, R. 24.
"Harry" 86.
Hart, J. 3, 11, 15, 35, 74, 77,
104, 240, 246, 262, 273, 275,
278, 301, 320, 321, 324, 327,
335, 412, 413, 418, 423.
Haskell 56-7.
Hawker, G.C. 116, 122-3, 136, 201,
231, 272, 278, 289, 291, 298.
Hay, A. 3, 121, 140, 143, 147, 151-2,
170, 174, 381-3, 403, 411-3, 416,
426.
"Henry Ellis" 263, 280.
Henty, E. 210.
Hewitt, C.T. 271.
Hibbert 340.
Hinde 372.
Hindmarsh (County) 253, 393.
Hindmarsh (District) 238, 327, 415.
Hindu Laws 28.
Hodder, E. 274, 358.
Hogarth 367.
Home Government (see British Government).
Hookina 324, 427.
Horne, R.H. 211.
Horrocks Pass 121, 296, 330.
Hospital 333.
Hotel Europe 379, 395.
Hoyle's Plains 352.
Hubbe, Dr. 83.
Hughes, J.B. 76, 83, 108, 288.
Hughes, H.K. 403, 418, 422.
Hughes, W.W. 372.

"Humbug Society" 144.
Hummocks 424.
Hundreds 20, 278, 290, 297, 298, 302.
Hunt 168.
Hutchinson 163-5, 167.
Hutchinson, Capt. 263.

I.

Immigration, conduct of 37, 47-8, 55, 78-80, 92, 127-32, 136-146, 152-3, 204-6, 219, 236, 245, 267, 294, 376, 396, 421-2, 427.
Immigration, national quotas 24, 79, 294-5.
Imperial control 36-8, 78, 92, 142, 155, 178-9, 187, 400-2.
Imperial Parliament 26, 66-7, 74, 159, 168-9, 173, 177-9, 187-8, 237, 256, 258, 261, 264, 306-7, 309-10, 345-8, 357.
Imperial Statute Law 21, 188, 237, 240, 255-6, 258, 310-11, 331, 365, 369, 402.
Imperial troops 142, 226, 227, 247, 270, 363, 399-400, 410, 411, 419.
Impounding 124.
Indian Mutiny 138.
Indictment for murder Act 37.
Industrial and Provident Societies' Bill 266.
Industrial Schools 354.
Initiation of bills 220-3.
Insolvency 21, 94, 165, 213.
Inspector of Sheep 47, 122, 305, 356.
Insurance companies 86, 215-6.
Institute, the 253.
Instructions of Governor 75, 168, 171, 255, 258, 310, 402.
Intercolonial Conferences 22, 241-3, 260-1, 365, 367-8.
Invalidity of legislation 25, 237, 255 (see validity)
Ireland 79, 80, 81, 206, 294, 363.

J.

Jacobs J. 373.
Jamestown 427.
Jefferis, Rev. J. 216.
Jews 166.
Johnston, Capt. 421.
Joint-stock cos. 267.
Julia Creek 298.
Jupiter Creek 398.
Judges of Supreme Court 43, 56, 94, 167, 169, 171, 176-8, 212, 241, 255, 305-11, 322, 340-50, 370-2.
Jury, trial by 113-6, 165, 173, 214, 217-8, 228, 305, 330, 340.
Jury, grand 166, 173, 222, 258, 340, 341.
Justices of Peace 47, 121, 211, 215, 225, 241, 305-11.

K.

Kadina 31a, 183.
Kanyaka 276, 289, 293, 304, 356.
Kapunda 31b, 84, 116, 162, 206, 228-30, 296, 362, 367, 383.
Keith, Sir Arthur B. 44.
Kent Town 215.
Kerney Brothers 352.
Kiel 83.
Kingston (town) 31b.
Kingston, G.S. 192, 222, 269, 290, 325, 367, 386, 403.
King William St. 137.
Kulpara 31a.

L.

Labouchere 101.
Labour Party 3, 146.
Laissez-faire 4, 91, 201, 425.
Lake Hope 375.
Lake Torrens 134, 293.
Lake Wangary 330, 424.
Lancashire 264.
Land Agents 81-2, 202, 299.
Land Disposal 18, 20, 30-2, 81, 92, 101, 118, 139, 143, 151, 198-201, 274-9, 292-3, 296-303, 354-5, 381-3, 396-7, 403-4, 411-28.
Land fund 78, 79, 92, 119, 218-9.
Lands Titles Office 163, 167, 174.
Lang, Dr.J.D. 80.
Law Officers of Crown in S.A. 154, 155, 185, 225.
Law Officers of Crown in England 165-168, 171, 173, 176-7, 255-8, 307, 350.
Leeworthy 163, 165, 167.
Letters patent 188, 237.
Levi P. 249, 262, 373.
Liberalism 1, 4, 396, 410.
Liebelt 168.
Light (County of) 12, 31b, 255, 294.
Light (electoral district) 193.
Light River 296, 353.
Light's Passage 88.
Lindsay, J. 175, 200, 207, 278.
Litchfield 207.
Liverpool River 362.
Loans 45.
Local Courts 173, 305-311, 398.
Log-rolling 15.
Lords, House of 67-8, 69, 71, 343.
Loyalty of the province 34-6.
Lunatic Asylum 153, 333.

M.

McBride 408.
McCulloch 261.
Macdermott, M. 76, 133, 140, 152.
Macdonnell, Sir R.G. 11, 42-64, 74, 102-3, 117, 132, 137-8, 168, 170, 176-7, 184, 187-8, 195, 204, 208, 223, 226-9, 237.
Macdonnell, Lady 228.
Macdonald, J. 138, 139, 379-80.
McEllister, E. 26, 144, 167, 190.
McLeod 394.
McKinlay, J. 315-6, 359-60.
Magarey, T. 145, 215.
Mais, H.C. 386.
Manhood suffrage 1, 29, 204, 219, 220.
Mann, C. 311.
Manton, J.T. 263, 313, 315, 360.
Maori War 223.
Mara, A. 113.
Marine Board 151, 160, 268.
"Maro" 101.
Marriage laws 17, 37, 93, 124, 254, 310-11, 357-9, 401.
Martin, J. 326.
Masters' and Servants' Act 267-8.
Maturin, W. 85.
Mayo 408.
May's Parliamentary Practice 8, 223.
Mayor of Adelaide 195, 208, 351.
Meadows 269.
Medical Practitioners 402.
"Melbourne" 197.
Melbourne 22, 30, 52, 57, 160, 197, 210, 213, 260-1, 313, 355, 367-9, 419, 420.
Melrose 203, 330.
Memoranda 60, 61,62.
Memorials 16, 90, 116-7, 131, 268, 304, 367, 404.
Menindie 398.
Middleton 354.
Milang 197.
Mildred, H. 136, 380, 396.
Militia 141, 363.
Milne, W. 3, 74, 77, 120, 128-9, 207, 240, 273-4, 275, 326-7, 335, 418.
Ministry, the 24, 35, 45, 47, 49-64, 68, 72-4, 76-7, 102-5, 117-8, 134, 151-4, 159, 161, 170, 174-5, 184-7, 205-7, 222, 226, 237, 243-8, 252, 262, 263, 265, 270-1, 273, 275, 277-8, 288, 290, 291-3, 301, 304, 308-9, 314-5, 317-21, 328, 334-5, 361, 369-70, 378, 383, 404, 408-18, 420.
Mintaro 116, 353.
Mining Licences 19, 213, 375.
Money Bills 6, 7, 43, 50, 64-72, 203, 204, 221-2, 330, 426.
Money Orders 213.
Montefiore Hill 377.
Moonta 31a, 147, 183, 369, 372.
"Moonta" 408.
Moorhouse, M. 80, 145, 174, 198.
Mosquito Plains 209, 297.
Morality, political 14.
Morgan 421.
Morphett, J. 145, 151, 156, 170, 291, 391,423.
Morphett Vale 101.
Morris 122, 202-3.
Mortlock, W.R. 397.
Mt. Arden 289, 356.
Mt. Barker 11, 12, 193, 327, 362.
Mt. Browne 302.
Mt. Deception 303, 356.
Mt. Gambier 31b, 209-13, 228, 289, 296-7,381, 393, 403-4.
Mt. Hopeless 31.
Mt. Margaret 375.
Mt. Muirhead 423.
Mt. Pleasant 381.
Mt. Remarkable 293, 296, 299, 324.
Mt. Schanck 297.
Mt. Serle 373.
Mudla Wirra 297.
Murphy, Dr. F. 190.
Murphy 138.
Murray, A. 255, 326.
Murray (district) 13, 20, 116, 146, 192, 193-4, 210, 354, 383.
Murray (trade) 23, 45, 50-5, 85-7, 100, 157, 196-7, 243, 361, 364, 419-21.

N.

Nairne 325.
Napoleon Bonaparte Hotel 137.
Napoleon, Louis 35, 76.
Narracoorte 31b, 209, 297, 423.
National Rifle Association 228-31.
Naturalization 93 (see aliens)
Navy 35, 331-2 (see Admiralty)
Neales, J.B. 11, 14, 15, 64, 75, 77, 90, 118, 123, 135, 321, 335, 403.
Needham 300
Nelson, Major 141.
Nethery 341.
Neville 305-6.
Newcastle, Duke of 35, 155, 177, 224-5, 239, 345, 348.
New South Wales 4, 21-3, 47, 52, 55, 62, 66, 82, 93, 101, 126, 157, 166, 187, 188, 205, 210, 222, 241-2, 291, 298, 349, 351, 364-5, 420, 425.
Newspapers 15, 24, 56, 166, 172, 198, 208, 215, 231, 242, 253, 297, 316, 351.
New Zealand 37, 223, 226, 227, 251, 260-1, 368.
Nightingale fund 138.
Noarlunga 193.
Nonconformism 1, 17, 216-7.
Norfolk Arms Hotel 274.
North Adelaide 138.
North American Colonies 256, 258.
North Terrace 253.
North-West Bend 86, 421.
North, the 31a, 121, 293, 304, 321, 330, 333, 352, 355-7, 373-5, 398.
North the Far, 77.
North Road 162, 296.
"Northern Star" 206-7.
Northern Australian Co. 249, 262, 362, 407.
Northern Territory, 188, 248-51, 262-4, 279-82, 287-8, 313-6, 333-4, 359-62, 404-8.
Norwood 33, 139.
Nott, Dr. G. 147, 156.
Nuriootpa 269.

O.

Ocean postage 23, 50, 57-62, 72, 242, 261, 367-8.
Official Assignee 47.
O'Halloran, Major T. 88, 117.
O'Halloran, Capt. 316.
O'Halloran 300, 301.
"Oneida" 50, 58.
Onkaparinga 193.
Opera, the 253.
Opposition 73, 104, 111, 271, 343, 345, 415.
Order of St.Michael and St.George 401, of the Bath 401.
"Orion" 211.
Orphanages 354.
Osborne 145.

P.

Panama 368.
Parachilna 330.
Parallel legislation 20.
Parkin, W. 145.
Parkin, Commander G.H. 331.
Parklands 131, 141, 229, 383.
Parliament - practice of 6, 9.
Parliament, supremacy of 25-8, 38, 255.
Parliament, papers 86.
Parliament, parties 2, 186.
Pascoe, J.J. 31b.
Pastoral licences 76, 251. (See Squatters)
Pastoral Association 123, 271-2.
Payment of members 11, 33, 139, 142, 144, 146, 147, 156-7, 217, 293, 319, 333-4, 385-6.
Payne 167, 169.
Peacock, T. 145.
Peake, E.J. 108, 110, 133, 140, 152.
Pekina 355-6.
Penola 31b, 209, 211, 296, 297.
People's Convention 30, 139.
Perth 313, 314.
Petheridge 137-8.
Petitions 16, 90, 189, 204, 205, 261, 287, 357, 369, 375, 383.
Philharmonic Society 253
Philosophical Society 253
Pichi-Richi 121, 296, 330.
Pinda 293.
Platt 115.
Playford, T. 403.
Ploughing matches 101.
Police 153, 351-2, 387.
Political Association 20, 33, 132, 137-47, 205, 376, 378-80, 395.
Pollitt, Rev. J. 216.
Poonindie 302.
Pope, the 8.
Popham, Dr. 113.
Popular party 3, 157, 275, 298, 328, 415-7.
Port Road 162.
Port Adelaide 11, 15, 17, 36, 57, 64, 87, 138, 145, 151, 160-1, 193, 194, 229, 268, 270, 312, 331, 353, 362, 367, 421.
Port Augusta 184, 266, 268, 276, 296, 330, 375.
Port Darwin 263, 313-16.
Port Elliott 15, 47, 86-7, 196-7.
Port Fairy 210.
Portland 210-13.
Port Lincoln 31a, 299, 302, 330, 397, 424.
Port Macdonnell 31b, 209, 211, 212, 296, 393.
Port Mannum 398.
Port Paterson 263.
Port Wakefield 85, 298, 330, 352-4, 375, 398, 423.
Port Wallaroo 183.
Post Office 32 (see Ocean postage) (also money orders)
Pratt 226.
Precedency 17, 37, 178.
Preceptors' Association 153.
Premier 77, 175.
President of Legislative Council 64-5, 153, 236, 254-5, 319, 388, 421.
Preston 34.
Price, Grenfell 315.
Primogeniture 84, 254.
Princeland 209-13.
Prince's Wharf 109.
Private Executions 21.
Privilege, Parliamentary 59, 64-72, 75, 156, 300-1, 386, 426.
Privilege Act 18, 68, 105-7, 300-1.
Privy Council 105-6, 170, 224, 322, 346-8, 372, 417.
Proportional representation 194.
Protection for home industries 55, 290, 318, 322, 364-6, 379, 395-6, 403.
Public Service 5, 6, 47, 133, 136, 151-3, 158, 161, 206, 225, 318, 386, 394-5, 407, 419.
Public service examinations for entry to 21, 386.

Public Service, leave of absence from 37, 93.
Public Service, regulations for, 104.
Public Works 23, 56, 78, 85, 89, 103, 108-12, 127-8, 132, 137, 151, 219, 375-8, 421-3.

Q.

Quarrell 306, 309.
Queen, the 67, 93, 256-9, 269, 347.
Queensland 23, 188, 210, 241, 365, 396.

R.

Radicals 10 (see Political Association)
Ragless, J. 373.
Railways 5, 45, 84-5, 103-4, 107-8, 116-7, 140, 144, 152, 162, 197, 265, 295, 352-4, 366-7, 375-7, 385, 393, 398, 419, 427.
Rapid Bay 200.
Real Property Act 20, 25, 27-30, 72, 76, 78, 82-4, 101, 162-5, 167-9, 173, 195, 208, 237-9, 254-9, 328, 330.
Redmond Barry, Judge 349.
Redruth 296.
Reform Association 396.
"Register" 83, 101, 124-6, 135, 144, 151, 156, 162, 217, 220, 228, 239, 253, 273-6, 307, 323, 328, 356, 360, 365, 387-8, 394, 396, 399, 404, 410, 412, 414, 415, 418,
Registrar of Deeds 47, 82, 101, 163, 167.
Registration of Deeds Act 237-9, 251-2, 256, 265, 271, 311.
Regulars (see Imperial troops)
Regulations, Government, 18, 76, 122, 146, 230, 250, 263, 270, 277-8, 290, 304, 315, 362, 384.
Reid 386.
Religion, Grant-in-aid of 2, 55.
Religion, Ministers of, sitting in Parliament 2.
Religion, ecclesiastical precedency 383-5.
Relious denominations 17, 32, 216-7, 354, 357, 383-5.
Religion, use of West Terrace cemetery 216-7.
Repugnancy of legislation 25, 95, 164-7, 173, 177, 254-9, 305-11, 327.
Reservation of Acts 37, 93, 155-6, 159, 165, 168, 176-8, 195, 239, 255-8, 261, 311.
Resident Commissioner 250, 262, 263, 264, 281, 314.
Responsible Government 6, 27, 36, 42, 44, 47-64, 74-5, 104-5, 110, 117-8, 140-1, 152, 169, 170, 219, 223-5, 240, 246, 252, 261, 269, 274, 318, 329, 333, 348-9, 350, 386-7.

Resolutions 9, 63, 71, 72, 79, 80, 85, 102, 132-3, 206, 221, 225, 264, 274, 318, 325, 326, 332, 342, 364, 365, 380, 386, 405, 411.
Returning Officers 13, 91.
Revenue, general 79, 85, 89, 118, 120, 158-9, 183, 219, 220, 236, 245, 250, 265, 294, 296, 303, 327, 386, 421, 422, 427.
Reynolds, T. 3, 14, 59, 77, 103-4, 107-10, 132, 134-5, 139, 144-7, 151, 157, 160-1, 170, 175, 183, 186, 205-7, 220, 274, 290, 292, 317, 324, 326, 328, 343, 350, 364-5, 367, 370, 377, 381, 395, 403-5, 413, 416, 418, 421-2.
Richardson 211, 397.
Riddock, J. 289, 296.
Rifle Clubs 228-31.
Riverina 23.
Roads 15, 16, 72, 78, 88, 108, 110, 111, 134, 152, 161-2, 218-9, 265, 295-6, 302, 329, 330.
Robe, (Governor) 2.
Robe, (Town) 78, 212, 362, 403, 408.
Roberts' History of Australian Land Settlement 297.
Robertson's Act 21, 30.
Roman Law 28.
Roper River 361.
Roseworthy 352, 353, 375.
Rounsevell, W. 12.
Royal Geographical Society 253.
Royal Navy (see Navy and Admiralty) 142, 332.
"Ruby" 197.
Rundle Street 398.
Russell, Rev. Canon 377-8.

S.

Saddleworth 353.
St.Patrick's, West Terrace, 189, 358.
St.Vincent's Orphanage, 354.
Sale of Poisons Act 214.
Salisbury 16, 101, 289.
Sandover, W. 403.
Santo, P. 145, 174, 220, 246, 273, 275, 300, 317, 370, 418.
Sardinia 137.
Sawtell 398.
Scotch Thistle 214-5.
Scotland 79, 81, 295, 362-3.
Scott, R.J. 408-9.
Scrub-lands 354-5.
Seal, the public 103, 225.
Secession 349.
Secretary of State for the colonies 35, 42, 48, 61, 101, 155, 168, 176, 185, 187-8, 204, 212, 224, 230, 237, 259, 292, 309, 343, 346-9, 400-2, 416.
Select Committees 17, 18, 48, 72, 84, 89, 100-1, 105, 107-8, 116, 120, 123, 161, 171-3, 184, 190-2, 194, 202, 217-8, 258, 298-9, 302, 319, 323, 343, 352, 387-8, 409.
Separation League 210-3.
Servants' Home 268.
Short, Dr. 138, 217.
Simms, W. 403.
Singapore 368.
Skelton, J. 380-1, 396, 403.
Smedley 268.
Smithfield 327.

Snagboat 87.
Solicitor-General 74-5, 240.
Solomon, E. 12, 423.
Solomon, J.M. 128, 172.
South Australia, histories of 24, 31b, 49, 274, 358.
"South Australian" 281-2, 287.
South-East, the 23, 24, 31b, 122, 192, 194, 209-13, 296-7, 300, 329, 330, 371, 381, 393-4, 423.
Speaker, the 15, 18, 71, 153, 201, 206, 220, 222, 272, 278, 325-9, 334, 386.
Spencer's Gulf 324.
Squatters' Parliament 14, 147, 208.
Squatters 16, 20, 50-2, 81, 85, 119-23, 198-200, 202, 211, 236, 249-51, 253, 271-9, 288-91, 297-9, 302, 304, 318, 320, 324-9, 356-7, 373-4, 382, 394, 416, 425, 426, 428.
"Standard" (Mt.Gambier) 381, 393.
Standing Orders 105, 107, 325.
Stanley (district) 194, 291.
Stanley (county) 253, 352.
Stipendiary magistrates 47, 211, 263, 305-11.
Stirling North 398.
Stocks 115.
Stony Creek 329.
Stow, Jefferson 282, 313-4.
Stow, R.I. 170, 174-5, 186, 207, 237-8, 240, 246-7, 271, 273-5, 289, 291, 306, 311, 340-1, 418.
Strangways, H.B.T. 3, 10, 108, 115, 134-5, 151, 154, 170, 175, 184, 186, 207, 248, 269, 275, 279, 288, 292, 294, 300, 324-8, 333, 340, 343, 355, 357, 384, 403, 405-6, 410, 411-18, 422-8.
Strangways Act 7, 21, 31, 31a, 201, 396-7, 423-8.
Strathalbyn 197, 228, 334, 354, 362.
Streaky Bay 187, 203, 398.
Stuart, J.M. 31, 188, 248, 249.
"Sturt" 87.
Sturt (electoral district) 193.
Superannuation 6, 153.
Supply 264, 278, 293.
Supreme Court 23, 25, 47, 84, 94, 112-6, 163, 164, 167-9, 171, 173, 213, 236-40, 252, 255, 257, 265, 306-9, 340-51, 370-2, 401.
Surveyor-General 46-7, 75, 88, 201.
Sutherland, D. 145, 200, 218, 295, 329.
Sutherland's Act 214, 218-9, 376-7, 421-3.
Swan Hill 324.
Sydney 160.

T.

Tarcowie 324.
Tariff 22-3, 32, 37, 47, 52, 118-120, 126, 139, 151, 157-9, 236, 241-6, 252, 290-1, 311, 317, 318, 322, 349, 364-9, 379-81, 420.
Tasmania 24, 66, 105, 241, 369.
Taxation 13, 32-3, 118-23, 139, 144, 159, 219, 220, 243-5, 271-9, 317, 365.
Telegraph 100, 108, 152, 183, 188, 296, 395.
Testamentary Causes Bill 7.
Third Judge and Circuit Courts Act 112, 346.

Thistle Act 214-5, 239.
Thomas, W. Kyffin 387.
"Thursday Review" 144.
Timor 288.
Tolls 162.
Tomkinson, S. 262, 406.
Tonnage duties Repeal Bill 64-72, 160.
Torrens, R.R. 18, 19, 28-30, 43, 46, 53-4, 58-9, 64, 72, 75, 76, 82-4, 90, 100-1, 116, 137, 141, 163, 238, 245.
Torrens Weir 112, 133, 147.
Torrens Island 229.
Torres Strait 368.
Town Hall 32, 363, 376.
Townsend, W. 129, 136, 139, 156-7, 172, 200, 277, 301, 319, 326, 343, 351, 403, 411, 412.
Traction engines 184.
Tramways 45, 84, 330, 334, 3[illegible]-4.
Transportation 259-61.
Treasurer 44, 46-7, 55, 60, 73, 104, 151, 159, 170, 174-5, 206-7, 243, 245-6, 247, 275, 292, 317, 320, 335, 370, 395, 412, 416, 418, 421.
Trinity Board 47, 151, 160.
Trinity College, Dublin 76.
Trustees and mortgagers 215.
Tungkillo 329.
Tumby Bay 314, 330.
Tuxford, W. 291.

U.

Ulooloo 324.
Umpherstone, J. 211.
Unemployment 125-32, 136-47, 152, 254, 376-8, 396.
United Kingdom 79.
U. S. A. 35, 143, 166, 229, 264, 307.

V.

Valentine, C.J. 305, 356.
Validity of S.A. legislation 167, 171-3, 176-9, 236-40, 251, 254-9, 262, 305-11, 342.
Valuator of runs 202, 204, 288-90, 356.
Victor Harbour 86-7, 197, 377, 404, 420-1.
Victoria (electoral district) 193, 194, 291.
Victoria River 249.
Victoria (colony) 4, [illegible], [illegible], 55, 57, 61, 62, 66, 75, [illegible], [illegible], 101, 123, 126-8, 139, 140, [illegible], 152, 157-8, 160, 198-9, [illegible], [illegible], 209-13, 222, 227, 229, [illegible], 264, 267, 270, 290-1, [illegible], [illegible], 307, 312, 322, 349, 354-7, [illegible], 417, 420, 425.
Vinegrowers 89, 101, 327.

Volunteers 36, 37, 137, 141-2, 208, 217, 225-31, 246, 253, 262, 269-70, 330-3, 362-4, 408-11.

Vivian, Major 363.

W.

Wakefield system 5, 78-9, 82, 92, 129, 201, 219.
Wakefield Hotel 396.
Wallaroo 31a, 147, 183, 192, 194, 270, 398.
Walsh 311.
Walters G.S. 92.
War Office 142.
Ware 257.
Warburton P.E. 31, 351, 352.
Ward, E. 263, 280-1, 287.
Wark's Act 90, 101.
Warrow 424.
Waste Lands Act 19, 78, 81, 121, 143, 146, 198-202, 278, 290, 304, 354-5, 381-3, 394, 411-28.
Waterhouse G.M. 22, 73-4, 102, 151, 174-5, 205-7, 241, 249, 250, 252, 265, 333.
Waterworks 5, 47, 85, 108, 112, 133, 152, 184, 268, 296.
Watts, A. 278, 325.
Way, S. 298.
Waymouth St. 138.
Wearing 154, 342, 371-2.
Wentworth 100.
Western Districts of Victoria 23, 209.
Western Australia 93, 187, 251, 259-61, 351.
Westminster 8, 74.
Western Plains 350.
West Terrace cemetery 216.
West Terrace hotel 138.
West Torrens 193, 279, 291, 403.
Wharf Hotel 312.
Wheat 23, 198, 253, 272, 352, 364-6.
White's Rooms 55, 172, 260, 291.
Williams, J. 278, 300, 325.
Williams, Capt. 56.
Wills 213.
Wills family 216.
Willochra 304, 330, 356.
Willunga 101, 228, 305. 362.
Wilpena 293, 356.
Wirriandra 304.
Witnesses 107.
Workingmen 16, 131, 137-8, 146, 147, 204, 245-6, 266-7, 312-3. 377-9.
Wrecks 86, 87.
Wright, Councillor 396.
Writs 46, 55, 102, 184, 185-7.
Writs of Election Act 187.

Y.

Yankalilla 86, 362.
Yatala 144, 193, 227, 248, 289.
"Yatala" 263, 288.
Yorke's Peninsula 31a, 299, 302, 362, 424.
Young, Sir Henry 52, 69, 218.
Younghusband, W. 77, 87, 104, 109, 117, 194.
Yudanamutana 184, 398.

Z.

Zollverein 241, 365.