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

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PART I.

I N T R O D U C T I O N

It is an unfortunate fact that we have no complete constitutional history of the State and Parliament of South Australia. That of Boyle Travers Finniss, bearing the title of "The Constitutional history of South Australia", stops short at 1858. "The Law of the Constitution", by E. G. Blackmore, could not be called a history. Indeed, in the introduction to it, the author disclaims any intention of historical purpose, although the explanatory notes affixed to the various Acts are most useful as an outline of the growth of our Constitution. The various histories of South Australia of the last century, by Edwin Hodder, Anthony Forster, J. P. Stow, F. Sinnett, W. Harcus and J. Pascoe are inadequate for one reason or another. Those of Sinnett and Harcus, for example, were propagandist in purpose, written for overseas Exhibitions to attract migrants and capital to the colony. That of Anthony Forster, besides the fact that it was issued in 1866, before the end of the period with which we are concerned, is partisan, leaning to the side of conservatism and wealth. The best of them for

an overall survey is Houder's, which really is a history, the result of laborious research. It takes in the general history of the colony from its foundation to the last decade of the century. It is therefore necessarily condensed and gives only an outline of the political life of the time. All of these writers were really too close to the events they chronicled to be able to assess them clearly or to speak plainly. The protagonists were in most cases still alive, and men preferred to bury the vexed questions of the immediate past, such as the Boothby quarrels and the move on the part of the South-Eastern districts for separation. The latter is nowhere mentioned, and when occasionally nowadays someone urges the advantages of closer union of that area with Victoria, he is probably quite unaware that the South-East was much nearer to breaking away from South Australia in the early days of its settlement than it has ever been since.

Within the past twenty years, Mr. R. M. Hague, LL.B., of the Crown Law Office, has applied considerable research to the legal history of South Australia, in particular to the case of Mr. Justice Boothby, which he has treated in detail in his "History of Law in South Australia". This excellent work is in typewritten manuscript in the Archives. He has also published a

work on the Court of Appeals, having particular reference to the first ten years of Responsible Government. These have been of great assistance to the present writer in making clear the intricacies of the legal jungle in which Mr. Justice Boothby and his abettors involved the colony.

The principal sources for this thesis have been the newspapers of the period, the "Register" and "Advertiser" particularly, the Governors' despatches and those sent from the Colonial Office, the Minutes of the Executive Council, the Parliamentary debates and Parliamentary papers of South Australia, and the correspondence of the Chief Secretary's Office now in the possession of the South Australian Archives. Biographical details have been drawn in large part from "The Representative men of South Australia", by George E. Loyau, and other books of the last century.

Finniss' history, mentioned above, is of fundamental importance in gaining an insight into the transitional period of the change-over to Responsible Government. He had a foot in each period, as it were, for he was the Colonial Secretary in the Governor's Executive Council under the semi-elective institutions that preceded the Constitution Act and then was appointed Chief Secretary by the Governor as soon as Responsible Government came

into operation in October, 1856. He was thus able to observe at close quarters Governor MacDonnell's attitude to the new order. The present writer is of opinion that the picture he presents is substantially correct, although research has revealed several particulars that call for a different interpretation from that given to them by Finniss. As he lost office in August, 1857, and concluded his history with the first session under Responsible Government, ending on January 27, 1858, his history does not treat of the subsequent relations of the Governor and his Council. These can be traced from the Minutes of the Executive Council. They show a progressive recession of the Governor from active political life and a diminution in the number of occasions when cross purposes led to a protest either by the Governor or by his Council.

Apart from discussing the relations of the Governo and the Executive Council, the present work aims at showing the development of opinion among the colonists generally over the twelve years' period, the relations between South Australia and the Imperial Parliament in legislation, in Imperial control of extra-territorial matters and in defence, and especially the adapting of the institutions inherited from our British ancestors to the needs of a new country and the special circumstances of life in it.

Towards the end of the sixties, the problem of land settlement becomes all-important. Indeed, Strangways Act has been chosen as the end of this period, not arbitrarily, but because it marked the inauguration of a new system of land purchase, and with it, a modification in the social life of the community.

It may be objected that the first 25 years of Responsible Government saw practically no change in the Constitution. By 1868 there had been only a re-arrangement of electoral districts in 1861 and an increase in the Governor's salary in 1866 - nothing of any importance. It seems to the author, however, that Constitutional history has as much to do with those experiences of men which lead to subsequent changes as it has to do with the actual changes themselves. Opinion is fluid, progressing all the time. Besides this, it is in the Imperial Statute book that one will find the principal enactments of the time modifying the Constitution of South Australia. Four Imperial Acts, culminating with the famous Colonial Laws Validity Act, were all directly elicited by the constitutional experiences of South Australia. To have obtained from the Imperial Parliament a definition of the meaning of repugnancy and a statement of the limits within which colonial legislation was to be unfettered was a sufficiently

imposing contribution for one colony to the stream of constitutional progress within the Empire.

The writer wishes to express his thanks to Mr. J. McLellan of the Archives Department, Miss A. Lucy of the Newspaper Reading Room of the Public Library, Mr. E. W. Lanyon, the Parliamentary Librarian, and their staffs, for their assistance and encouragement during the researches connected with this thesis. He wishes also to thank Mr. R. M. Hague for his reading of the work in manuscript and for his valuable suggestions thereupon.

C O N T E N T S

of their declaration - comment on year - quarrels in Northern Territory - relief expedition - failings of Finniss and his subordinates.

CHAPTER 7. THE COLONIAL LAWS VALIDITY ACT AND CONCESSIONS TO THE SQUATTERS BEYOND GOYDER'S LINE. Pages 287 - 33

(Jan. 1, 1865 to April 30, 1866)

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CHAPTER I.

GENERAL REMARKS.

By 1856, no place in the world possessed more liberal institutions than South Australia. She had achieved manhood suffrage, abolition of plural voting, triennial parliaments and the ballot, while the dependence of the Executive on the Legislature was rendered complete by the clause in the Constitution Act which limited the holding of office in the Executive Council to three months, unless the holder had a seat in Parliament.(1) There was a buoyancy in the mood of optimism with which the State embarked on self-government that can be traced to the prevailing Liberal philosophy that was accepted by the majority quite unquestioningly. Admittedly the strong admixture of Nonconformism among the population had much to do with this, but it spread far beyond their ranks. The faith in progress is mirrored in the speeches of the politicians and the editorials of the journalists, as well as in the confident secularism of leaders like R.D.Hanson and B.T.Finniss. The politician, not the clergyman, was to frame policy. The clergy might help men to save their

souls, but were excluded from social planning. The State and the Church had been separated since 1851, when the first Council to include an elective element reversed Governor Robe's grant in aid of religion. Further than this, the Constitution Act of 1855 was framed to include a clause forbidding any minister of religion to sit in Parliament.(2) Hanson's faith in education from the secular standpoint is very well illustrated by his speeches in 1861 in defence of the status quo in education,(3) and he spoke for the overwhelming majority of South Australians.

POLITICAL PARTIES.

It is this agreement in outlook that goes far to explain the fact that there were no real parties in Parliament. Indeed, the party spirit was deplored by Hanson in the Assembly,(4) though he must have been perfectly acquainted with its fundamental importance in the working of the British Constitution. (As he was in office at the time in the first ministry under responsible government, he had good reason to abhor any combination that would threaten the ministry.) It is noticeable that a change of ministry seldom meant any great change in policy. The bills that were before the House went forward in most cases, and the new ministry, which might have been active in opposition to a measure a few days before, would now be

found espousing it as government policy. As in Canada at the same time, coalition ministries were common enough. Thus, on February 19th, 1862, A. Blyth and W. Milne had no trouble in joining the Waterhouse ministry after moving a vote of want of confidence in it a few months previously.

There is discernible, nevertheless, a division into two main groups, divided more on the basis of "interests" than of principles. We see this particularly in the squatting debates which take up so large a part of the Parliamentary proceedings of 1864 and 1865. Strangways, Glyde, Reynolds, Grundy, Daniel Fisher, Hay, Cole and Cavenagh were looked on as being representatives of "the people". Henry Ayers stood in a middle position between them and Milne, the Blyth brothers, Hart, Dunn, Duffield, Dutton, Hanson and others. There is roughly an alternation of power between these groups throughout the period, with the popular element emerging triumphant in 1860 for a time under Reynolds, again in 1865, and very decidedly in 1868, when it was returned with a mandate to modify the Wakefield system of land disposal. The popular party did not exactly represent labour, any more than the Labour Party does to-day, but the others did certainly represent property.

FIELD OF GOVERNMENT ACTION.

Legislation to dispossess the squatters, beginning in 1858 with an Act for the Assessment of Stock, showed the South Australian break with individualism. Like so much of our legislation, it was not original, being copied from Acts of New South Wales and Victoria. Almost from the beginning, the Australian colonial Parliaments were battle-grounds of the old laissez-faire Liberals against the newer social conscience. The conservatives, fearful in so many cases of the resumption of their pastoral runs for agricultural settlement, opposed expenditure on railways and roads and such public utilities as would open up the country. The common man, on the other hand, having insufficient resources to establish means of communication on his own account or to compete with the squatting nabobs on equal terms, developed the habit of looking to the State for help. Thus arose that system of detailed regulation of so many aspects of our life which has induced visitors to Australia to speak of us as the most government-ridden people in the world. We do not, however, see our government as a tyrant. The Australian looks on the government, for the most part, as a parent, from whom he has been led to expect ever-increasing bounties. This attitude of dependence on the State was sufficiently well developed by the end of Governor Daly's term of office to lead him to sound a warning, in his last public utterance,

on its dangers. Writing of the tendency to widen the field of Government action, the "Advertiser" of January 11th, 1869, remarks on the great change in opinion from twenty years previously in matters such as education and means of communication. Among the reasons advanced by the editor to explain this fact are (1) that the government of the country in that time had been brought more under popular control and so people were not so afraid of the Executive; and (2) that private enterprise had become increasingly discredited from the excesses of greedy capitalists and their indifference to human misery - the latter applying more to the old lands of Europe, and the railway companies of England being cited in illustration.

THE PUBLIC SERVICE.

To implement the various public works undertaken by the Government, it was necessary to expand the civil service. When depression came, as in 1859 and 1867, the demagogues among the politicians invariably raised a cry for retrenchment in the civil service, but the fact remains that it expanded constantly. Along with an increase in numbers, there is evident a gradual grouping of departments under responsible heads. In 1858 it was the turn of the waterworks, in 1859 the railways, in 1860 the harbours, and last to be gathered under the wing of the Commissioner

of Public Works was the Central Road Board in 1866. Earlier attempts to extend government control over this last had met with strong opposition, especially from the country areas, as the Executive was still regarded with some distrust. From a perusal of the Minutes of the Executive Council, one gains also an idea of the progressive developments in the organization of the public service itself, starting from the agreement at the first meeting of the Council under Responsible Government as to the disposal of the various departments among the ministry, continuing through the attempts to introduce a system of superannuation, and arriving at the close of the period at the conviction among the people generally that the time had come to copy from the Imperial service and that of the neighbouring colonies their regulations for entry into the service and promotion therein. Despite the assertion made by Forster that promotion was by seniority, we have the evidence of the debates of 1867 and 1868 as to a general dissatisfaction with conditions and the method of bestowal of places.(5)

PARLIAMENTARY PRACTICE.

Those early years of Responsible Government saw the question settled as to which House should have the control of Money Bills. It is true that the conflict

resulted in a compromise, but the Legislative Council conceded, for all practical purposes, the Assembly's claim that the Council had no power to alter a Money Bill. It might, however, suggest amendments, or reject the bill altogether. The period 1856-1868 ended as it began - with a conference between the Houses. There was not here the intensity of feeling which induced such bitter deadlocks in Victoria in 1865 and 1866. When the Legislative Council insisted on its amendments in Strangways' Act of 1868, standing firm for a nine months' term of notice to the squatters in the new agricultural areas before they were to be obliged to make way for the farmers, the Assembly, rather than lose the bill, sought a conference, at which a reduced term of 6 months was agreed on. Occasionally a bill was shelved because of the inability of the two Houses to reach agreement. A Date of Acts Bill miscarried for this reason in 1858,(6) and a Testamentary Causes Bill in the session of 1866-7.(7) Occasionally, if the Assembly was particularly anxious that a Bill should go through, and it had been amended by the Council in any clause having reference to the expenditure of money, the original Bill was dropped, and another introduced in the Assembly incorporating the amendments of the Council. Thus was the constitutional principle preserved of the initiation of Money Bills in the Assembly.

In the method of introducing legislation, the several readings of bills and parliamentary practice generally, South Australia took for its ideal the practice of Westminster, hammered out by hundreds of years of experience and reverenced by these men of British stock as the foundation of their liberties. The appeal in all matters of procedure, then as now, was to "May's Parliamentary Practice". Sometimes one wonders why chaos did not result from the constantly changing ministries and the absence of any party cohesion to make for stability, but the answer lies in the ingrained conviction that British institutions were the best possible, and that adherence to the traditionally British modes of action would pull the country through any crisis. Majority rule, even though the majority was transient and much time was wasted in regrouping when the majority fell out, was good-humouredly and unquestioningly accepted as the basis of democratic government. The Parliamentary system was sacrosanct to these men, and they would have regarded the Marxian renunciation of it as outright heresy. Was not all Europe straining to obtain Parliamentary institutions, Garibaldi for instance, issuing forth every now and again from his island of Caprera when the time appeared opportune for another blow against the Pope or the Bourbons? And how question the system which had made Britain the

leader of the world in commerce and power? If the debates in Parliament were held up by an interregnum, there was still the public service to carry on, with men of outstanding ability like Goyder or William Hanson directing it.

MINISTERIAL CRISES.

A large part of the debates, as indeed was the case for many years to come, was taken up with ministerial crises. There were at least a couple a year from 1863 on, with the exception of 1867. Then would come a spell of a week or so, followed by the announcement of a new ministry and ministerial explanations of policy. Doubtless members welcomed the recess, in order to attend to their private business. Another characteristic of the chaotic state of parties was the challenge so often thrown out by ministers to their critics to come on and see how little there was to be derived from "the sweets of office". They had no liking for office, they declared, their only desire was to serve the country. With the Damocles' sword of an adverse vote always hanging over them, they had to watch cautiously the state of opinion in the House and out of it, to initiate legislation in the form of resolutions rather than bills, and trim their sails so as to propitiate as many members as they could reasonably

manage to do. Members felt themselves perfectly at liberty to change from support of the Government to the Opposition side. There was always an unattached section on which no government could rely. Of these, E.L.Grundy may serve as an example. Pedantic, though essentially tolerant in his views, he was incurably facetious in his term as member for Barossa in the second Parliament from 1860 to 1862. His speeches, except on the Boothby question, when he spoke with unusual earnestness in defence of the judge,(8) were interludes in the serious business of the House, though sometimes they illustrated the point at issue better than the more laboured productions of other members. With this refusal to take matters too seriously and his scholarly independence of mind, he was not one on whom governments could rely in their calculations. Others not to be harnessed to the chariot wheels of any political leader were Strangways and Glyde. They had a foot in the camps of both conservatives and radicals. Except for the ministry, politics for most of the members was a spare-time occupation. They were serious about their duties in general, but not being paid for their services, they could afford to treat their constituents in a cavalier fashion, if their own private views underwent change through altered circumstances during the three years for which they were elected. All honour, therefore, to Neville Blyth, who

was returned in 1865 after promising his constituents at East Torrens that he would oppose any alteration of Goyder's valuations of the pastoral runs, but being convinced by the continuation of the drought that concessions were necessary, resigned his seat to see if the electors were favourable to his determination to vote now for the government policy of modifying the valuations, and, in consequence, lost his seat.(9) In the absence of payment, however, any member not returned suffered no great harm. The man who was anxious to remain in public life, if defeated in one constituency, could betake himself to another, for by-elections were of frequent occurrence. Neville Blyth, mentioned above, was returned for Encounter Bay in 1868. When the city rejected Finniss in 1860, he had no difficulty in being returned for Mt.Barker. J.B. Neales had to cool his heels for a time after that election, but a vacancy in Burra and Clare gave him an opening in 1862. Captain Hart was likewise returned for Port Adelaide in 1862 after he had failed in his appeal to its electors in 1860. At first, indeed, resignations were so common that the newspapers complained of members withdrawing, and there was for a time in 1858 some likelihood of no candidates presenting themselves for several by-elections. In the later sixties, the competition grew keener, as Governor MacDonnell forecast it would as soon as the population became denser.(10)

ELECTIONS

In general, the electors were fairly apathetic. Returns showed that about a half only of those on the rolls voted at the general election in 1860, and the proportion fell to about 1/3 in 1862. Usually, it was about one half. Expedients of various kinds were tried, such as the obligation imposed on every householder to supply the names of all voters residing under his roof, and the newspapers were diligent in "reminding the electors of their obligations" on the eve of elections, but the inconvenience of going to the polls and interrupting work was a deterrent for many. Then, too, there was a good deal of bungling in the conduct of the elections. Because their seconding was not done properly, there was talk in 1861 of appealing against the election of J.Barrow and E.Solomon to the Legislative Council.(11) When W. Rounsevell was first elected for Light, a petition against the election revealed that the ballot-box had been opened during the election and the papers counted, and that the poll had been closed for an hour at lunch-time.(12) That the ballot was not the panacea for all election abuses was abundantly demonstrated in 1868, when the Court of Disputed Returns declared John Dunn disqualified for the duration of the current Parliament from contesting the constituency of Mt. Barker, on the score that he had secured

his election by bringing in non-residents from as much as 70 miles away to vote for him. Other counts against him were those of treating the electors and even, through his agents, of buying their votes.(13) Some of the returning officers had hazy notions of their duties, and after nearly every general election the Court of Disputed Returns had work to do.

In the division of the colony into districts, there was a genuine effort to attain perfect equality in voting power for the electors. Not until 1879 was there any suggestion of representation on any other basis than population, apart from the abortive bill to amend the Constitution in 1862, which envisaged a double vote for property owners in return for a direct tax on their land. South Australia approached as nearly as any place well could to perfect electoral opportunities, particularly after the 1861 Electoral Act. Before that, the city of Adelaide, with 6 members, was supposed to have an advantage, though an average of the number of electors for each member showed it mid-way only on the list of constituencies in relative fairness of voting power.(14) Nevertheless, its members were reduced to four, the Murray constituency abolished, and the several other changes left very little to complain about for some years to come.

POLITICAL MORALITY.

No section of the commercial world had such a monopoly of representatives in Parliament as to be able to legislate for its own interests exclusively. The Parliament of 1863-4 might perhaps be called "The Squatters' Parliament", but the fact remains that the Executive were bound by a resolution of the Assembly, taken before prorogation preparatory to dissolution, to take no action on the expiring pastoral leases until the new parliament had met. In reply to the complaint of G. F. Angas that self-government had been the ruination of the colony, the "Advertiser" was able to point to the composition of the Legislature. It consisted of capitalists, bank directors, great mining proprietors, wealthy millers, merchants, lawyers, squatters, large landed proprietors, shipowners, contractors and "heads of the people" generally.(15) There was sufficient variety of interests in that list to ensure justice for all and to shield those unjustly attacked. Any suggestion of peculation by responsible ministers was viewed seriously. It was to the most admirable aspects of the British Constitution that the colonists looked, and holders of office were required to be above suspicion. At least two ministers had to resign, J.B.Neales in 1859 and T.Reynolds in 1862, because information was brought to light showing that they had

abused their office. In a relatively small community whose intellectual fare consisted very largely of the parliamentary reports and political comments which practically filled the daily newspapers, the recurring governmental crises were keenly watched, and the electors did not soon forget a false step on the part of one of their political protagonists. For years, Neales had the mining leases scandal thrown at him when he took the public platform.

On the other hand, "log-rolling" on behalf of one's constituents was condoned - indeed it was expected, so long as it was not plainly at the expense of the country generally. The granting of a sum of money for a railway or a road in the north would be sure to elicit a notice of motion for consideration of the claims of the southern districts, and members were considerably exercised, after the revised schedule of Main Roads in 1861, in having those roads restored which had been struck off the list. One must smile at the earnestness with which Captain Hart, the member for Port Adelaide and owner of large commercial interests there, declares that Port Elliot can never be a safe harbour, while as for Port Adelaide - there you have the natural port for South Australia![16] No district wanted its member to be speaker, as that meant a vote lost, and no voice in the debates pushing the interests of the Burra or Mt.Barker or the South-East, as the case might be.

A meeting at Salisbury on June 6, 1859, requested R. B. Andrews to resign his seat, as his representation of the district was practically nominal, he having appeared in the House as seldom as possible.

PETITIONS and DEPUTATIONS.

The presentation of petitions by members preceded the business of the day, and generally there was at least one petition. On important public questions, such as the removal of Mr. Justice Boothby or the revision of the schedule of main roads, there might be a large number. It was a common thing for a petition to be rejected on the score of informality. Every district was a pressure group forcing its policy on the Parliament either by petitions presented by its members or by memorials to the Executive or by deputations to the Chief Secretary or the Commissioner of Public Works, as the case might be. Occasionally, as with the workingmen in 1859, a deputation might wait on the Governor, who would explain to them that he was unable to act apart from his responsible advisers, but would do all in his power to help them. Powerful interests "lobbied" then as always. It is not known what pressure the squatters exerted on Hanson in 1858 to make him modify his Assessment of Stock Bill so as to grant concessions to them in return for their acceptance of the

Bill imposing on them additional contributions to the revenue. Religious groups made their complaints known by petition, the Catholics repeatedly after 1860 for the abolition of State aid to education, and the Nonconformist bodies for a revision of the Marriage Law in 1866 and for equality with the Church of England in the table of precedency on state occasions in 1867.

COMMISSIONS & SELECT COMMITTEES

If the Government of the day was uncertain how to act or desired further information on a subject, it had resort to a Select Committee or a Commission. The advantage of the latter was that it could extend its sittings even though the Parliament was in recess. The "Register" comment,(17) regarding the Select Committee, that "it relieves a milk-and-water ministry from a great deal of nasty responsibility", and "furnishes rising statesmen with a stepping-stone to the Treasury benches" is hardly just, for the proceedings of the Select Committees of those days are a treasure-house for the student of the social life of the times. They elicited by the method of question and answer a wealth of information that the debates would never have furnished. Their recommendations were not always acted on immediately. For instance, the amalgamation of the various Boards at the Port in 1860 followed the suggestions of a Committee of 1859, and Goode's Select Committee

on the disposal of land in 1865 had to wait until 1868 for its recommendations to be applied. As showing the cost of these Committees, in the session of 1860-7 there were 8 in the Assembly, 2 of which had to be reappointed as Commissions during the following recess. The total expense was £1469/8/-.(18) Half of these costs was for printing, the other was divided between reporters and witnesses. Fees to the witnesses were prescribed by the Speaker under the Privilege Act, and were allowed to those who were summoned from a distance of over 5 miles. Travelling expenses were 6d. a mile and 10/6 was allowed for each day that the witness had to remain in Adelaide. The members appointed to the Select Committee received no fees. With Commissions, the practice varied, and the acceptance of fees by members of Parliament serving on paid Commissions evoked many a debate on the score of acceptance of an office of profit under the Crown. Both Select Committees and Commissions tended to increase in number, as was only natural when Parliament was taking an active part in an increasingly wide field of subjects.

GOVERNMENT BY REGULATION.

The Executive's power of issuing regulations without reference to Parliament was contentious ground throughout. It was the suspension by the Torrens Government in September 1857 of the regulations relating to the

issuing of pastoral leases that led to the downfall of the Ministry. Shortly afterwards, the Hanson Government piloted through the Assembly a Waste Lands Act which gave the Executive the power to alter the regulations concerning pastoral leases on condition that the altered regulations were first of all laid on the table of the House for 14 days. Even so, Hanson's variation of the Waste Lands Regulations in Dec.1857 called forth a protest from the "Register",(19) which maintained that "matters not half so important are fiercely debated in the Assembly". In the Waste Lands Act of 1857, the Government was given power to make regulations for the issue of depasturing, mining and gold licences, in order that situations could be dealt with as they arose. The Act was assented to by the Governor on Nov.19. When, therefore, the Commissioner of Crown Lands, F. S. Dutton, announced a week later that the Government intended to alter the regulations for granting pastoral leases for unoccupied land, the ministry were acting quite legally.(20) Really, the charge of illegal action against Torrens was only a pretext to unseat him, for he had been under the impression that the Executive had the same powers over the Waste Lands as had rested with them prior to the Constitution Act. In return for the grant of a civil list, Her Majesty's Government had made over to all the colonial legislatures the control over the crown lands within their borders. It is

noticeable that Hanson was supported in his motion of censure by all the squatters in the House, no doubt piqued by the restraint exercised over their activities at this juncture. The Legislature probably rejoiced in exercising its new powers of dictating to the Executive, and Torrens' failure to propitiate it was a lesson to Hanson, who was careful in future to defer always to the House and test its feeling on contemplated policy. The power of declaring hundreds was left to the Executive, even when the declaration of hundreds along the Murray in 1860 occasioned dissatisfaction among a section. An Act of 1861 made it discretionary for the Executive to declare hundreds as occasion arose, provided fourteen days' notice was given to Parliament.

PARALLEL LEGISLATION.

It would be a mistake to regard South Australian legislation apart from parallel developments in the neighbouring colonies and the old country. For very few of South Australia's early Acts can the claim of originality be made. The Real Property Act is, of course, the great exception, which may lead one to the mistaken view that our forefathers were innovators over a larger field than was the case. The early closing movement and the eight hours day, political associations, land reform schemes and the assessment of squatters were all canvassed in Vic-

toria before here. Whereas the first modification in the system of selling crown lands in South Australia was the Strangways Act of 1868, there was free selection in New South Wales from the time of Robertson's Act in 1861 and in Victoria from Duffy's Act of 1862. Examinations for entry into the civil service were introduced into Victoria by Duffy before 1860, and our bill for the private execution of criminals was modelled on the practice of the other States. In divorce legislation, the consolidation of the criminal law, amendment of the commercial law and similar legislation, a large number of our Acts were directly drawn from recent Imperial Statutes. The complaint was made, indeed, that South Australian legislation on Insolvency was drawn from English law which was already out of date.(21)

FEDERATION.

Of Federal sentiment there is little enough sign. If there had been any strong tendency in the direction of closer union among the Australian colonies, one would expect to find it reflected in Mrs. C. J. Carleton's prize-winning "Song of Australia", which carried off the 10 guineas offered by the Gawler Institute in 1859 for a national song.

"There is a land where floating free,
From mountain top to girdling sea,
A proud flag waves exultingly, exultingly, -
And Freedom's sons the banners bear,
No shackled slave can breathe the air -
Fairest of Britain's daughters fair,
Australia!"

One finds no summons to federation here. Imperial sentiment, yes. Australia as it was - that was good enough for the men of that time. For a while in 1857, it looked as though the colonies might agree on common action, but the Assembly in New South Wales, jealous of Victorian preponderance since the gold ruches, opposed even a conference. Again, it was the failure of New South Wales to co-operate in the new uniform tariff agreed on by the Intercolonial Conference in Melbourne in 1863 that caused South Australia to abandon her attempt to put it into practice. Even though South Australia was always willing to send delegates to a conference, it does not appear that she was any more prepared than the other colonies to surrender any real powers to a central Assembly. The appointment of delegates was generally made in a mood of - "It can't do any harm, so long as we give them no real powers of committing us to united action". When, in 1861, the Waterhouse ministry circularized the colonies on federal action, it was principally because it was in a dilemma over an Appellate Court

to review the decisions of the Supreme Court. "Co-operation, not federation, was the goal of the Australian patriot", very justly remarks C.D.Allin.(22) South Australia was too small for that intense jealousy and rivalry towards its neighbours that Victoria and New South Wales displayed towards each other. There were enough causes of complaint, however, in the mail contract, the Victorian efforts to capture the Murray trade by way of Echuca and its railway, the draining away of population to the larger states when they commenced extensive public works in the late fifties, and the Victorian exclusion of South Australian wheat by a tariff barrier in 1867. The instability of governments must not be forgotten among the reasons militating against federation. It was never certain how long a policy could be relied on, and a new government might neutralize all the efforts of its predecessors. There were also strong forces tending to further disjunction. In the Riverina, the Western Districts of Victoria and the South-East of South Australia there was a determined effort just after 1860 to break away and form new states. Queensland did not achieve separation until 1859. In all the states, the principal interest lay in the economic exploitation of untouched resources and in the development of public works rather than in abstract statecraft. A narrow localism, too, is evident in the

gleeful animadversions in the newspapers on governmental crises in adjacent colonies, the annoyance at R.Harrison's criticisms of Adelaide in his "Colonial Sketches" of 1862, and the glossing over in the histories published from time to time of quarrels and inconvenient subjects, such as national quotas in immigration or the movement for separation in the South-East. At first, there was self-satisfaction in the contemplation of the political troubles of Victoria and Tasmania, but when ten years of self-government revealed that there had been sixteen ministries in South Australia with only half that number in Victoria and one third as many in Tasmania,(23) the editors sought comfort in the orderly conduct of the elections under the ballot system, "notwithstanding that the appeal made to the country on the squatting question was to the full as exciting as the Reform or Corn Law agitations in England".(24) The frequent changes of government were better than having "a secret bureau of nominees, the incommunicable depositaries of national affairs, who have only to make things pleasant among themselves and defy alike public vigilance and public indignation."(25) Finally, these crises acted as "safety valves".

BOOTHBY and REPUGNANCY.

Two questions, the one constitutional, and the other administrative, make this period one of unexampled interest. The constitutional question arose from the passing of the Real Property Act of 1857. This Act, providing as it did for the transfer of land and proof of title by registration rather than by the cumbrous traditional methods, involving the preservation of a chain of title-deeds, struck at the profits which the lawyers had so long enjoyed in that field, as these gentlemen could now be dispensed with in the transfer of property. They would have taken their medicine quietly enough but that their cause was espoused by several of the judges, Mr. Justice Boothby especially and Mr. Justice Gwynne to a lesser extent, who threw the administration of the Supreme Court into confusion for six or seven years by their propensity for discovering invalidity in divers acts of the local Parliament, first of all in the Real Property Act and then in others which had a bearing on it. The struggle may be viewed as one between Mr. Justice Boothby and the Parliament for supremacy, but it was hardly as simple as that. Mr. Justice Boothby never based his objections of invalidity on the supremacy of the judiciary over the legislature, but on repugnancy to English law.

He would keep the colony in leading-strings to the Imperial Parliament, convinced as he was in his pompous, arrogant way that benighted colonials could not see more clearly than the men at the heart of the Empire. His reasons were often mere sophistry to bolster his ego, illustrating his incredible stubbornness and self-importance. They put the colony, however, to tremendous inconvenience and the suitors of the Supreme Court to maddening delays, expense and uncertainty. In short, he set himself and his intelligence above the Parliament of South Australia, above the Imperial Parliament and even above the Queen. "An obstinate and determined bully", the expression used by McEllister in the Legislative Council in reference to him in 1861, was not too strong in the circumstances. The result of the protracted conflict was the removal of Mr. Justice Boothby by the Executive and the very important Colonial Laws Validity Act of the Imperial Parliament of 1865, which completed the work of the various colonial Constitution Acts by admitting the power of the Legislatures of the self-governing colonies to legislate on any matters not covered by direct British statute law extending expressly or by implication to the colonies. Its importance can hardly be exaggerated, as, without it, any of the later Acts of the self-governing colonies could have been challenged as had been those of South Australia

till its passing. Through the legal intransigence of the judge, the whole concept of responsible government had been called in question. Not only the Government's power to make laws but its right of appointment to judicial office was challenged. The Colonial Laws Validity Act has therefore been rightly called the "charter of responsible government", securing to the colonies for the future the power to proceed along those lines which constitutional developments were indicating.

The whole Boothby affair is a striking example of legal obstructionism, of preference for the letter above the spirit. No doubt the study of the law, with the respect it builds in men for precedent, tends to encourage this frame of mind. Two of the three South Australian judges of the time were clearly determined to wreck the Real Property Act. They considered that its provisions were dangerous to the stability of society, and they, as trained legal minds, had the duty of saving their less intelligent neighbours from the consequences of their own folly. This was the germ of the extraordinary course on which Mr. Justice Boothby entered in 1860. In other words, he would not recognise the constitutional developments of the last few years. That was to put himself outside the stream of popular thought, and wilfully to turn his mind to a tortuous policy, that could end only in his

removal from the bench. When a legal code comes to be regarded as sacred, and developing morality or social practice is forbidden to touch it, then stagnation occurs. It has been the good fortune of Western civilization to be the heir to the great Roman system of law, in which usage which was reasonable was never allowed to develop, as with Eastern codes, into usage which was unreasonable. The Hindu Laws of Menu, lacking revisionary machinery, hampered Indian social development and bred the unreasoning caste system. Part of Mr. Justice Boothby's intransigence is due to the influence of the period of English law under which he was trained. He was already matured before the great movement set in for its reform about 1850. All that ossified system that Dickens caricatured was the milieu of his training, so that he was, by 1860, out of touch with legal developments even in England.

THE REAL PROPERTY ACT.

The Real Property Act, no less than the Colonial Laws Validity Act, was of more than local significance. Rightly do the histories of Australia take particular notice of the Torrens Act, as it is often called, for its challenge to accepted legal practice was startling. A legislature that had been long established would never

have broken through the meshes of prejudice and precedent that surrounded the ancient mode of conveyancing of land. Its ministers would have quailed before the thought of the professional scorn such a move would invite. It is generally the way that in youth we attempt what in maturer years we would hesitate to undertake. The youngster's vision of the desired end gives him the energy to overbear any opposition. The older man will calculate the odds against him and be intimidated by his clearer realization of the obstacles. So it was with the early days of responsible government in South Australia, and, for that matter, in the other colonies also. All the programmes of liberal reform, the Chartist demands for voting by ballot, manhood suffrage, equal electoral districts, etc., were to have their tryout in the South, and their successful application there was to be the proof to which their supporters in England would appeal in their continued agitation for electoral reform. The adherents of the traditional way of doing things, whether in legal, administrative or constitutional matters, held out against the current of liberal opinion in South Australia, but they were in a minority. Hence it would be inexact to apply to the originator of the Real Property Act the similitude of "the prophet in his own country", for public opinion was strongly in favour of his Act, as was shown by the

petitions in its favour when the Bill was passing through the Houses, the public meetings held to urge its acceptance and the interest with which its adoption in the other colonies was watched.

LAND LEGISLATION.

The other leading question of the day, that previously referred to as an administrative question sharing the foreground of public interest with the Real Property Act, was land disposal in favour of the small man. Very early in the history of responsible government, land hunger led to scenes of riot in Melbourne, and the formation of a People's Convention to neutralize the influence of the squatters.(26) Such was the agitation that Duffy's Act of 1862 allowed free selection and deferred payments. In New South Wales, Robertson's Act gave similar concessions in 1861. The question of a like Act was debated in the South Australian Assembly in 1861, and a bill was introduced to that end by J. T. Bagot. The enemies of change, however, were well supplied with reasons for opposing the measure, and it failed to pass the second reading. Throughout the sixties, it became more and more difficult for the small man to buy land. Figures indicated that those leased areas which were put into the market from time to time passed into the hands

of the squatters who had formerly leased them. The statistics which show 1865 to have been a record year for cash sales of land should not lead us to think that the buyers were all intending agriculturists. A class of land agents, or "sharks", as they were more generally called, were the squatters' allies in the unpopular practices of stifling competition in the auction room by combining against the purchaser of limited means. Intimidation, also, was employed. It was the great merit of Strangways' Act that it nullified and outlawed these practices with the assistance of a companion Act for the prevention of Frauds at Auctions.

A consideration of the maps in the Archives Department showing the lands leased or sold in 1857 and ten years later, in 1867, conveys no impression of a very marked expansion of settlement in South Australia in that time. By the middle fifties, the pastoralists had extended their stations up to Mt. Hopeless, the map showing John Baker's name for a lease in that area. Further expansion was halted by the "Great Horseshoe" of salt lakes, Torrens, Eyre, Blanche, Gairdner, which were then thought, following Eyre's unsuccessful attempts to reach the centre of the continent in 1840, to be impassable. After Babbage, Warburton and Stuart had demonstrated, between 1858 and 1860, that the lakes were not continuous

and that good land lay to the north, the pastoralists pushed across into the new areas, but development was paralyzed by the great drought which held the North in its grip from 1864 almost continually to 1869. There were leases on the lower end of Yorke's Peninsula by 1857, but large parts towards the top were not even leased. The mineral discoveries at Wallaroo, in 1859, and Moonta in 1861, changed this area quickly; so that by 1868 the hundreds of Wallaroo, Kadina and Kulpara in County Daly at the top of Yorke's Peninsula had been proclaimed, with leases covering the rest of the peninsula. One of the areas set aside for agricultural settlement by Strangways' Act was on the lower part of this peninsula, which was soon to be taken up entirely by the farmers.

During the decade, there was little advance on Eyre Peninsula, except that, by its end, four, instead of two, hundreds had been declared between Pt.Lincoln and Tumby Bay, and pastoral leases were extended over most of the areas where water was to be found, that is, all along the west coast to Fowler's Bay and around Franklin Harbour and the Gawler Ranges. Agricultural settlement had reached Clare before 1856, but it had advanced little beyond that frontier town by 1868. This was due in part to the land system, which enabled the squatters to buy up those portions of their runs which were put on the market,

partly also to the difficulties of transportation along the rough roads to the railheads at Kapunda or Gawler, and partly to the consolidation of areas, such as the County of Light, which were changing over from copper mining to farming. It is in the South East that we find the greatest development. There the towns of Penola, Kingston, Narracoorte and Port MacDonnell were all laid out between 1858 and 1860. County Grey, the southernmost county in South Australia, witnessed the rapid rise of Mt.Gambier and Port MacDonnell and a great expansion in wheat exports through the latter town, which was declared a port in 1860. Great quantities of land were sold in these areas, and at first to bona fide agriculturists. With good reason does J.J.Pascoe, in his "History of Adelaide and vicinity", entitle his chapter dealing with this period, "The Producers", for during it the area under crops was trebled, and the profits of the pastoral industry were in like proportion. The fifties and sixties were, indeed, the golden age of squatting in South Australia. After that, the newly-acquired facilities for agricultural settlement pushed the sheep-men out into the poorer country, where the profits were less spectacular, and the seasons more variable.

The advance in the agricultural and pastoral industries was reflected in the growth of Adelaide. When Governor Daly died in 1868, the "Register", reviewing his

period of rule, remarked that he found the city stucco and left it free-stone. Most of the religious denominations had imposing city churches built by the time of his death, the Town Hall was completed in 1866, and the Post Office several years later.

TAXATION.

The Assessment of Stock Act and Goyder's Valuations have already been mentioned. In the hope of augmenting the revenue by taxing those who were best able to pay the impost, a rather heavy levy was thereby placed on the pastoral industry. Most of the taxes received by the Government were indirect, in the form of Customs Duties. The tariff was not supposed to be protective, for, until the middle sixties, hardly anyone dreamed of questioning the merits of free trade. The tariff schedule varied in the different colonies. In South Australia, except for the years 1860 to 1863, it was called an ad valorem tariff, or one in which the duty levied depended on the value of the goods coming in. There were also fixed duties on commodities regarded as luxuries, tea, sugar, and spirits, for example, though the friends of the poor constantly pointed out that tea and sugar were more of a necessity than it was pretended. One can see that there was in all this little of the later concept of progressive taxation. When they spoke of "income tax", the men of the last

century thought generally of a land tax, and such advocates of direct taxation as W. Burford thus understood it here. Neville Blyth, speaking at Norwood, on February 19, 1865, voiced the objection against income tax oftenest heard, namely, that there was no means of finding out the income of a large class. Indirect taxes did, at least, reach everyone, and a property tax might cause the destruction of that class of people on whose industry the prosperity of the colony depended. He spoke of an income tax as a "premium to dishonesty", and regarded a property-vote (extra votes to those taxed) as a sine-qua-non of a property tax, which "would fling down the ladder by which they got it, and remove the property tax".(27) This may be regarded as special pleading, but the conservatives all held similar views.

PAYMENT OF MEMBERS.

The Barossa experiment of 1860-2 of paying its member, E. L. Grundy, by means of subscriptions in the district, was not very successful. Payment of members was warmly espoused by radicals like W. Dale and G. Cole in the 1860 elections, and was the subject of one of the remarkable sections of the manifesto of the Political Association of the same year. The old bogey, however, of influencing a member's vote by gifts and money,

was dragged up in Grundy's case,(28) just as service on a paid Commission was construed as accepting an office of profit under the Crown. The man of limited means was thought by very many to be incapable of representing the people, for, if he had no property, they said, he was too much exposed to bribery, whatever intellectual and moral gifts he might possess. Whether there was any reason or not for the charge that "old Grundy" was paid by G. F. Angas for his vote on the Boothby resolutions in 1861, the reactionaries made the most of it to illustrate their contention that the man without property was not sufficiently independent to represent the people. Thus, had they only known it, they were demonstrating further the inevitability of a uniform payment of members out of the general revenue, as was to come later.

IMPERIAL TIES.

There was never any question of the loyalty of the province. That is sufficiently shown by the addresses sent to the Crown on special occasions, for example, the marriage of the Princess Royal in 1858, and the death of the Prince Consort in 1862. The greatest proof of all is the submission with which the decision of the Imperial Government was received which refused to accede to the request of both Houses for the removal of Mr. Justice Boothby in 1861. Feeling had run very high

during the passing of the addresses for his removal; yet the despatch conveying the decision of the Secretary of State was acccpted by the South Australian Parliament without question. It is true there was a veiled threat of secession in the Hart ministry's reply of 1867 to the Duke of Newcastle,(29) when the Home Government refused a second time to remove the judge, but it can hardly be taken seriously. The Government had no mandate from the people for speaking as it did, and we may regard the threat as a last effort to exert pressure on the Home Government for a favourable decision. Under the goad of extreme financial distress we find a section of the workers in 1859 muttering of republicanism. They may be pardoned for it, since hungry men cannot be expected to reason as clearly as those who are well fed, and they had really a good deal of which to complain in the mismanagement of the conduct of immigration. With the restoration of prosperity, there was no more of such talk, and the murmuring was left to the propertied classes, unable to rid themselves of Boothby, that "old man of the sea" whom it seemed they could never shirt. A contributing factor to the loyalty of the colonists was, of course, the security which the all-powerful British fleet afforded them. They had experienced a scare in the Crimean War. Again, in the late fifties, Louis Napoleon, and soon after, the U.S.A. during

the Civil War, had them on tenterhooks. Consequently, great military activity was apparent in all the Australian colonies. Volunteer Companies were formed in the centres of population, company drill and later, battalion drill occupied much of the spare time of the young men, and, in all this, South Australia was not behindhand in providing for her own defence. The Governor, at the request of the Legislature, wrote home repeatedly in 1860 for heavy artillery to protect the Port, and the colony undertook to pay for these big guns. Later, in 1862, it is true that the Assembly refused to vote £4,000 for the purpose,(30) but by that time the danger appeared past of a conflict with the Americans, and the ardour for military drill had given place to an enthusiasm for rifle shooting. We must remember, also, that the British colonies had always been accustomed to being protected at the Imperial expense. They had not yet learned to assume the responsibilities as well as to take the advantages of self-government.

IMPERIAL CONTROL.

Although Imperial control was slackened in internal matters by the granting of a Constitution to the Colonies, and the colonial Legislatures had at their disposal the tariff, the land policy, and, before long, their own defence - the Imperial troops having been withdrawn for

service in New Zealand for a number of years in the sixties, and retiring altogether from Australia in 1870 - the colonies were allowed no powers in foreign policy or extra-territorial legislation. The constant vigilance of Downing Street resulted in a large number of colonial Acts being disallowed because they were ultra vires. At least one instance, and sometimes more, occurred in nearly every session. From the legislation of the first session in 1857-8, three Acts were reserved by the Governor for the Queen's assent, he being unable to assent to any Acts of an extraordinary nature, or such as affected the Constitution, the tariff, or the "rights and privileges of Her Majesty's subjects" beyond the borders of the colony. Among the Acts disallowed may be mentioned an Act to legalise a marriage with a deceased wife's sister, - disallowed repeatedly, 1857, 1860, 1863, and finally assented to in 1870 - a Divorce Act and a Federal Council Act of 1867, the 1863 Aliens Act and an Indictment for Murder Act of 1861. While there were regular troops stationed here, the Home Government insisted on the commanding officer of the Imperial troops being also in command of the Volunteers. At the same time there was progressive slackening in Imperial control of immigration, the wearing of civil uniforms on losing office, precedence, leave of absence, and the taking of affidavits beyond the limits of the colony. It was a period of readjustment,

for, as E.G.Blackmore remarks, the Constitution Act contained but portion of the Constitution. It was silent on

> "the office and appointment of the Governor, the power of Her Majesty to issue Instructions having the force of law, the obligation of the Governor to conform thereto, the law as to assent and reservation, the allowance and disallowance of Bills, the extension of Imperial Statute Law to the Colonies, the relation of the Imperial Parliament to the Provincial Legislature as a law-making body, the creation of an Executive Council."(31)

In short, the Parliament of South Australia was not sovereign: it had to find out the extent of its powers by trial and error.

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REFERENCES

ABBREVIATIONS:

S. of S.	The Secretary of State for the Colonies.
S.A.P.D.	South Australian Parliamentary Debates.
S.A.P.P.	South Australian Parliamentary Papers.
c.	column (in S.A.P.D.)
C.S.O.	Correspondence of the Chief Secretary's Office.

1. Acts of the Parliament of South Australia. No.2 of 1855-6. Section 32.
2. Ibid. Section 36.
3. S.A.P.D. 1861. column 137 and 218.
4. S.A.P.D. April 29, 1857, column 48.
5. S.A.P.D. Dec.5, 1867, c.1279; "Advertiser", Oct.30., 1867; S.A.P.D. Dec.15, 1868, c.1134.
6. S.A.P.D. Dec.22, 1858, c.931.
7. S.A.P.D. Jan.11. 1867, c.1500.
8. S.A.P.D. Oct.9, 1861, c.997.
9. S.A.P.D. July 9, 1867, c.34.
10. Gov. Macdonnell to S. of S. - Despatch No.396, June 18, 1860.
11. "Advertiser", April 11, 1861.
12. "Advertiser", Nov.3, 1865.
13. "Register", Oct.10, 1868.
14. "Advertiser", May 7, 1861.
15. "Advertiser", March 9, 1866.
16. S.A.P.D. April 29, 1857, c.46.
17. Jan. 6, 1868.
18. Ibid.
19. Jan.5, 1858.
20. S.A.P.D. Nov.26, 1857, c.673.
21. "Register", Feb.28, 1868.
22. "The early Federal movement of Australia", p.409.
23. "Register", Aug.29, 1866.
24. "Advertiser", April 7, 1865.

25. Ibid.

26. S.H.Roberts. History of Australian Land Settlement, p.235.

27. "Advertiser", Feb.20, 1865.

28. S.A.P.D. Aug.31, 1860. c.504.

29. Gov. Daly to S. of S. No.9, 1867, Feb.25, enclosing Minute of Executive Council of previous day.

30. Daly to S. of S. No.62, Nov.11, 1862.

31. The Law of the Constitution of South Australia, E.G.Blackmore, Intro. p.XI.

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CHAPTER 2.

THE FIRST SESSION (to Jan. 27, 1858)

Immediately on the receipt of the despatch from the Secretary of State for the Colonies conveying the news of the Royal Assent to the Constitution Act (No.2 of 1855-6), Governor MacDonnell proclaimed responsible government, on October 24, 1856. Under the new system there were to be two Houses of Legislature, the House of Assembly and the Legislative Council. The former, or popular house, was to be chosen by manhood suffrage, every adult male who was natural born or a naturalised subject of Her Majesty being entitled to vote if he had been on the electoral roll of any district for six months. There was also no property qualification in the case of candidates for the Assembly, elections for which were to be held every three years. For the Legislative Council there was a property qualification for electors, consisting either of freehold worth £50, registered leasehold of £20 per annum, or occupancy of a dwelling-house of the clear annual value of £25. Members of this House were to be elected for twelve years, six of them retiring every four years, the order of retiring being fixed by lot after

the first election. In case of a single election to fill a vacancy the name of the member then elected was to be placed last on the roll and he was to be the last in the order of retiring. There were to be thirty-six members of the Assembly, elected by districts, and the Council was to consist of eighteen members, returned by the electors of the whole colony voting as one constituency. The salaries of the Governor, the judges and the responsible ministers were fixed in the schedules attached to the Act, as were also the pensions due to the former members of the Governor's Executive Council should they be deprived of office under the new order. Judges were to hold office during good behaviour, and might be removed by Her Majesty upon the address of both Houses of the South Australian Parliament. The Governor had power to dissolve the Assembly, but not the Legislative Council. All money bills were to be initiated in the Assembly, and such bills and all money votes, resolutions or appropriations had to be recommended by the Governor by message to the House of Assembly.

This Constitution was to continue in force for nearly a quarter of a century without any important alteration, until in 1881, the constitution of the Upper House was revised. It is clear that it suited the majority of South Australians, although Finniss and Torrens attempted even in the first session to have that part of

it revised which constituted the whole State as one constituency for the Legislative Council, and the topic of the reform of the constitution recurred constantly year after year. In 1862, the reactionaries, temporarily in the ascendant, sought to give plural votes in return for increased taxation, but they did not succeed. Sir Arthur Berriedale Keith remarks(1) on the determined effort shown in the South Australian Constitution Act to enforce responsible Government, instancing (1) the pensions for the retiring officers of the old council, (2) the provision that the Chief Secretary, the Attorney-General, the Commissioner of Crown Lands, the Treasurer and the Commissioner of Public Works, the five responsible ministers recognised by the Constitution, were not to hold office for more than 3 months after the first election unless returned to Parliament, and (3) a like prohibition on the Attorney-General at any time holding office for more than 3 months if not a member of Parliament. The most striking section in the Act was section 33:-

> "No officer of the Government shall be bound to obey any order of the Governor involving any expenditure of public money; nor shall any warrant for the payment of money, or any appointment to or dismissal from office, be valid, except as herein provided, unless such order, warrant, appointment, or dismissal shall be signed by the Governor, and countersigned by the Chief Secretary."

In South Australia, therefore, the connection between the Parliament and the Executive Council was made much closer

than in most other places by the provision,(2) referred to above, that certain persons, namely, the responsible ministers, should ex officio be members of the Executive Council and that they must not hold office for more than 3 months without a seat in Parliament. Hence, the difficulty never arose here, as it did elsewhere, of having the Executive Council overloaded with ex-ministers and other persons who were not office-holders.

Sir Richard MacDonnell appointed, as his first responsible Ministry, the former members of his Executive Council. This he felt to be the best course, because they were trained in the conduct of public affairs and the public service might suffer from the appointment of an entirely new body of men unacquainted with the conduct of business.(3) He hoped, also, according to B. T. Finniss, to obtain in this way an administration which would be favourable to items of his own policy, such as the opening up of the Murray for trade and the extension of transport facilities by tramways rather than railways. In company with Conservatives like John Baker, the Governor thought the building of railways too costly for a young colony, preferring to have them built by private enterprise rather than by the raising of a loan on the resources of the province. It must be admitted, too, that the old Legislative Council, partly nominee, was still in existence, and

would remain until the issuing of the writs for the new Parliament. It was called together on Nov.11, 1856 and sat till Dec.11 of the same year, passing no measures of importance except one providing the finances necessary to carry the colony into the next year. So the position was an anomalous one, and it is hard to see how Sir Richard could have acted other than as he did.

B. T. Finniss, the former Colonial Secretary, became Chief Secretary, R. D. Hanson (Advocate-General) was appointed Attorney-General, R. R. Torrens continued as Treasurer, A. H. Freeling, R. E. (Surveyor-General) became Commissioner of Public Works, and Charles Bonney Commissioner of Crown Lands. Four days later, at a meeting of the Executive Council,(4) the resignation of Freeling as Commissioner of Public Works was accepted, but Samuel Davenport was not appointed in his place until March 20, 1857. At this meeting of Oct. 28, the Governor pointed out to the Council their responsibility for the items in the Estimates.

> "Owing in some degree to the illness of the Colonial Secretary, these had been in great part framed by himself. Yet as there remained sufficient time for the Ministry to form their own Estimates, it must be understood that whatever Budget might be introduced the next session, the Ministry alone would be held responsible for its items - as he wished to introduce nothing there except in accordance with their advice."(5)

The Ministry decided at the same meeting to follow the model of New South Wales in distributing the various Departments among them. It will be of interest to see what were the branches of the public service at that time. Under the Attorney-General were the Departments of the Supreme Court, Registrar of Deeds, Crown Solicitor, Coroner, Commissioner of Insolvency, Official Assignee, Curator of Intestate Estates, Benches of Magistrates, Justices of Peace and Stipendiary Magistrates. The Treasurer had control of the Customs, Harbour Department, Trinity Board and the Collectors of Internal Revenue. Under the Commissioner of Public Works were the Departments of the Colonial Architect, Harbour Trust, Superintendent of Port Elliot and Goolwa Tramway, Central Road Board, Water Works Commission, Commissioners of the Gawler Town Railway, Undertakers of the City and Port Railway, and District Road Boards. The Commissioner of Crown Lands and Immigration had charge of the Departments of the Surveyor-General, Chief Inspector of Sheep, Immigration Agent, Aborigines, and the Gold Commissioner. All other Departments not above enumerated and all external correspondence were the care of the Chief Secretary.

That Sir Richard MacDonnell fully understood the meaning of Responsible Government is plain from the statement mentioned above, which he made to his Council regarding the Estimates. It appears also from other

sources. On March 6, 1856, the Governor, in sending home a request from the Legislature for agricultural labourers, farm servants, shepherds and miners to be sent out as migrants, had added a suggestion that railway workers might also be included. The Secretary of State did not comply with the request for railway workers, but asked instead[6] if the addendum was "a mere expression of opinion, or a direct recommendation to the Secretary of State". MacDonnell replied[7] that it was a recommendation, made after consultation with his Executive Council and the Chairman of the Committee appointed by the Legislature to inquire into Immigration. Illness had prevented him from settling doubts by submitting the question to the Legislature, and he concluded -

> "I now abstain from making any further recommendation on the subject, as the whole question of immigration to this Colony, and the Agency whereby it is to be conducted, must be one of the first topics considered by the new Parliament."

It is clear from the above that the Colonial Office did not feel themselves authorized to comply with the Governor's recommendation, and administered a mild reproof, which was not lost upon him. Again, we have the following from a later despatch of MacDonnell[8] -

> "The Governor takes officially no part in the Cabinet deliberations of the Ministry, the Minutes of the Executive Council consist at present of little more than the record of such resolutions as are submitted to the Governor by the Cabinet of the day for his formal approval."

In view of this, how are we to reconcile Finniss' statements in his history that the first Ministry under responsible Government had a very difficult time of it with the Governor, who sought, by interviewing the ministers separately, by censuring them in his despatches home, by seeking to cajole them into pursuing the same line of policy as they had followed under the former institutions, and by intriguing with the Conservatives in the Legislative Council, to neutralize responsible government? Finniss states that his readiness to correspond with the Secretary of State and the other Australian Governors on policy, - and this without reference to his responsible ministers, - "required the utmost vigilance of his Ministry to modify and regulate."(9) He also says -

> "It was really a struggle between the Governor upholding his former prerogative rights and his Ministry, who had to contend with the influence which the Governor had exercised in his private intercourse with members of Parliament; with the prestige which still attached to his position out of doors."(10)

The answer would seem to lie in the character of Sir Richard MacDonnell himself. Though aware of the changed circumstances of his rule, he found it difficult, with his ardent nature and his long training in active administration, to take a back seat and witness unmoved such incidents as the calm acceptance by the South Aus-

tralian Ministry of the Victorian refusal to send the South Australian mails on the "Oneida" in January 1857. He thought that the Ministry were sacrificing the interests of the colony, and could not refrain from seeking to persuade them to take steps to vindicate the honour of South Australia. No man cares to see the result of his labours dissipated, or his policy reversed, and MacDonnell considered that he was within his rights in trying to bring pressure to bear on the Ministry to accept his view of the best solution for the Murray Duties problem, a view from which they diverged. As a matter of fact, the Assembly and the country generally were of the same mind as the Governor, and it might have been better for the Finniss Government if it had been a little more ready to listen to Sir Richard's advice and not demonstrate so repeatedly its independence of the Governor. One cannot resist the feeling that there is a large element of self-justification in Finniss' history, and one is not inclined to take very seriously his statement that the Governor's interference almost caused the subversion of Responsible Government, at the time when the Council tried to neutralize responsible government by claiming the right of amending a Money Bill. Finniss reasons that, if the Assembly had not asserted itself, it "would have enabled the Governor to coerce the Assembly by frequent dissolut-

ions that would have left permanent power with the Upper House."(11) No Governor could ever hope for such power. He speaks also, on p.383 of his history, of Sir Richard MacDonnell as having possessed, prior to the grant of Responsible Government, "unlimited powers", when, in fact, he could not legislate without the sanction of the Legislative Council.

As was to be expected, there were mistakes on both sides in the beginning, and that Finniss, the Chief Secretary, was at fault on one occasion appears from the Minutes of the Executive Council for January 13, 1857. On that day, His Excellency read a memorandum explanatory of his reasons for refusing to allow the meeting of the 17 December preceding, which purported to be a meeting of the Executive Council, to be entered on the minutes of the Executive Council as such. It was held during the Governor's illness, and it was called by the Chief Secretary without the Governor's warrant. In doing this, the Chief Secretary had exceeded his powers. The Governor might depute the presidency of a meeting, at which he was unable to attend, to the senior member, but the initiative must come from the Governor. Further,

> "the meeting exceeded its authority, even if convened by the Governor, in passing in an absolute form resolutions as to appointments and matters on which, in the absence of the Governor, the power of the Council is limited to tendering its advice.
>
> "Such resolutions are not merely opposed to the Royal Instructions, but also to the existing

> Constitution Act - and would if allowed enable a Minister to dispense altogether with consulting the Governor - who would thus be reduced to a useless cypher."(12)

A conflict of wills appeared early over the matter of the Murray River Duties. The Murray had been opened for navigation only since 1853, and Governor MacDonnell was as anxious to secure its trade for South Australia as had been his predecessor, Sir Henry Young. To this end, he had introduced in the Legislative Council on March 5, 1856, in fulfilment of an undertaking he had given to the Victorian Government, a bill to allow South Australia to collect the duties on Murray-born goods, destined for Victoria or New South Wales, on any scale determined by those colonies. The House took the view that such legislation would simply make South Australia a revenue collector for the other colonies, and it imposed instead the South Australian tariff. Problems soon arose in consequence. For example, the Victorian duty on tobacco was 2/- a lb., while that of South Australia was 1/- a lb. It paid Melbourne merchants, therefore, to take tobacco out of bond in Melbourne, send it round by way of the Murray, and finally sell it in Melbourne at a greater profit than if they had paid the Victorian duty. Naturally enough, Victoria began to protest, and a lengthy correspondence ensued between the two Governments. Sir Richard, feeling himself

bound, no doubt, by his promise to Victoria, repeatedly strove to induce his responsible ministers to take some action to reintroduce to Parliament the question of collecting the Victorian or New South Wales tariff on goods going up the Murray.(13) This they were unwilling to do, through fear of a second reverse for the policy, or perhaps, simply through reluctance to show too much enthusiasm for a subject which the Governor so strongly espoused.(14) For a time it appeared that customs houses would be erected on the Murray at the border, for Victoria claimed that she was losing £50,000 a year by the tobacco traffic, and she gave notice in February, 1857, that the agreement existing with South Australia was to terminate on March 1.(15)

During March and April an exchange of memoranda took place between Governor MacDonnell and the Ministry, in which he sought to persuade them to action on the Murray duties by reminding them of their former acceptance of his view. This acceptance they denied, stating that although Finniss, Torrens and Hanson had been formerly obliged to support the Governor's policy before the old Legislative Council they had all expressed their dissent from it in Executive Council.(16) In reply, MacDonnell refuted their claim to have dissented in Council(17) from his views. Then they changed their ground, stating that they

> "do not deem that it can in any way advance the question if they enter into further controversy, either on the main objection, which His Excellency advances to the course proposed to be taken by the Ministry, or on the interpretation which is to be put on the conduct and views of such of them as were Members of the Executive Council under a form of Government which has ceased to exist - - - - The Ministry now, as in their last Minute, distinctly disclaim all responsibility for the acts and policy of a former administration: they maintain that the principle involved in this position is inherent in the very nature of responsible Government."(18)

They were on safe constitutional ground there, as they were not free to frame their own policy under the conditions of their former service under the Crown. The rebuke which they administered to the Governor was, therefore, fully justified.

The upshot proved that Sir Richard had better estimated the change in popular opinion than had the Cabinet, for when a Bill was introduced in the Assembly by the Ministry on May 26 to enable South Australia to collect the New South Wales duty on goods passing up the Murray, it met with no opposition in either House.(19) From a despatch of MacDonnell,(20) it appears that the way to the happy issue of the tangle was expedited by himself and the Governors of New South Wales and Victoria. After explaining how Torrens maintained that South Australia could not bear a tariff alteration to bring her into line with the other colonies, he adds -

> "I was more fortunate in obtaining the able assistance and willing concurrence of Sir W. Denison and Sir H. Barkly in giving effect to my views. Through their influence, after a long and full explanatory but unofficial correspondence, I was enabled to inform my own Ministry that what the latter believed impossible, was not only possible but had been actually accomplished, and that New South Wales with the concurrence of Victoria was prepared to leave the collection of the Murray Duties in the hands of this Government - provided the latter engaged to collect whatever duties the former might appoint."

The above reference to his correspondence with the neighbouring Governors as "unofficial" is worth noticing, as an illustration of Sir Richard MacDonnell's anxiety to disclaim any interference with the functions of his responsible advisers, and his acceptance of the position of a spectator, not of a shaper of policy.

The writs for the first Parliament under Responsible Government were issued on February 2, 1857, and the elections were held on March 9. The results as regarded the Assembly were known within 2 days, and showed all the members of the Ministry to have gained seats, as well as a representative group of the leading men in the colony. The issues before the electors may be summarized from the speeches made at the great meeting held at White's Rooms on January 22, where the leading politicians put their claims before the electors.(21) Contentious questions were free distillation, state aid to religion and to education, protection or free trade; more especially, immigration at the expense of the state and the continuation

of public works. Long election notices from the candidates appeared each day in the newspapers. Particularly in the District of Barossa was the contest acrimonious. There Horace Dean and G. F. Angas were going hammer and tongs. Their quarrel was an old one, and was complicated by the mystery surrounding Dean's past. Was he really a doctor, as he claimed? He had called himself at different times Dr. Dean, Captain Haskell and Captain Williams. The "Register" was finally compelled to announce on February 28 -

> "Advertisements have been sent us so far transcending ordinary electioneering licence, that we have felt humiliated at finding our columns thus made the vehicle of gross personal attacks. We have been threatened with actions if particular advertisements are inserted."

It refused to accept any more personal advertisements of this nature unless a sufficient sum of money was deposited to cover the possible risk of a lawsuit.

On April 21, the session was opened. At once the Court of Disputed Returns (consisting of a Judge of the Supreme Court and four other members) had business to do. A petition was lodged by W. Bakewell, one of the defeated candidates in Barossa, against Dean, who had been elected. (Angas secured a seat in the Legislative Council.) The court sat on May 4, 6, and 7, and Dean's election was declared void on the ground that he had obtained naturalization - being American born - by false

pretences, his real name being Haskell. Nothing daunted, he stood again, and was again returned by Barossa on June 1. Once more the Court of Disputed Returns declared him not elected and gave Bakewell the seat, stating that the good of the province as a whole over-rode the wishes of any section of the people.(22)

During the early months of 1857, there was a further clash of opinion between His Excellency and the Cabinet, involving important constitutional issues. It was in relation to the Ocean Postage question. An Act had been passed in the previous year (in response to a circular from Governor Denison of New South Wales) voting £12,000 a year as South Australia's share towards a monthly steamship run for the mail of the Australian colonies. In the meantime, Victoria undertook to guarantee the payment of £185,000 annually on behalf of the other colonies. Melbourne to be the port of departure and arrival of the ships. South Australia was to be served by a branch service between Port Adelaide and Melbourne at a further cost. The Home Government undertook to pay the other half of the subsidy to the steamship company. Postages were to be collected and retained at each end. When South Australia was informed of this arrangement in September, 1856,(23) there was general annoyance that the outward mail should be carried past her doors, and that she should lose the advantages which her geographical

position gave her. To the Victorian note asking for South Australian acceptance of the contract, the Chief Secretary replied that his Government was not prepared to contribute unless South Australia could have direct communication with the United Kingdom on both the outward and homeward voyage. The Victorian Government then took the step, at the end of January 1857, of removing the South Australian mails from the "Oneida", the mailboat, until R.R. Torrens, the Treasurer, who happened to be in Melbourne at the time, pledged his Government to introduce a Bill for shouldering a part of the general subsidy. The Chief Secretary, Finniss, in a letter of Febuary 2, ratified this pledge.(24)

At an Executive Council meeting of February 2, Governor MacDonnell was anxious that a protest should be lodged against the Victorian action. Torrens considered the Victorian Government justified, seeing that the additional amount of subsidy, due to the South Australian repudiation of the contract, would fall on that state. The rest of the Ministry being unwilling to notice the alleged discourtesy of the Victorian Government, His Excellency stated that he wished it placed on record that their omission did not consist with his view of what was due to the Colony.

> "A silent acquiescence would appear to him inconsistent with the maintenance of this Colony's position, as liable to receive no orders in such

> a matter from any but the British Government alone, and not from Victoria, as the former was the sole party having any relations with the Contractors, or who could dictate to this Colony what mails the owners of the 'Oneida' should take or reject."(25)

On April 28, the Government introduced their Bill for South Australian participation in the Ocean Postal Service, only to have it rejected by the Assembly on May 6. T. Reynolds advocated a plan emanating from the Chamber of Commerce for direct communication with England for about £24,000 annually. He thought this better than paying up to £17,000, as he reckoned the price would be, to have the mail carried past their doors. Arthur Blyth said it would have been better if Torrens had not interfered in Melbourne. If this bill was to redeem the Treasurer's promise to Victoria, it was an infringement of the rights of the House. Torrens replied, with heavy sarcasm:- "To repudiate a transaction, and at the same time take the goods, might be mercantile, but it was not statesmanlike." He pointed out that the scheme of the Chamber of Commerce would not give them as speedy a mail as by Melbourne. They would be paying 4 times the amount to get their mail 10 days later. From his experience, he knew that the attempt to combine mail carrying with emigrant transport, as was suggested, would mean no punctuality in leaving England. Besides, £24,000 was not enough to "grease the machinery of a mail steam fleet". However, the Ministry were voted down by 16 to

14. Not till late in the year, and only after experience made it clear that there was no other way of sending the mails, did the Legislature accept the Mail Contract, the Act being assented to by the Governor on November 19.

On May 7, MacDonnell enclosed in a Despatch (No.156) a certified copy of the Minutes of the Executive Council meeting of February 2, in which he had protested against the Victorian action, adding "I am desirous of recording my early dissent from a policy which could either tacitly or expressly sanction so palpable a breach of courtesy to this colony." He taxed his Ministry with their failure to remonstrate on the occasion, contending that "the conduct of the Melbourne Government was upheld and defended by the Cabinet".

When he made known to the Ministry later in the month, on May 25, the contents of this despatch, they were moved to remonstrate in a memorandum of June 5, which they asked the Governor to enclose in his next despatch. They claimed that the views expressed by the Chief Secretary and the Treasurer at the meeting of February 2 were given in their individual capacity, and not as the pre-arranged policy of the Cabinet conjointly.

> "The Cabinet would further request the attention of His Excellency to the inconvenience which they venture to believe must result from the course pursued in this instance by His Excellency. The present is a matter upon which the Government and Legislature of this Colony may have to take action

> in conjunction with Her Majesty's Government in England, and yet the policy of the Ministry is impugned and a line of conduct suggested by His Excellency to the Secretary of State as that which should have been followed, without the knowledge of His Excellency's responsible advisers, whose policy it might contravene, and whose position before the country it might seriously embarrass."(26)

This statement of the Ministry was a very clear intimation of their view that constitutional practice required the Governor of a self-governing colony to refrain from censuring the policy of his Ministry on matters of purely colonial interest, and it was effective, as no further case arose in which MacDonnell sought to interfere. He was stung, it is true, into making some very caustic remarks on the memorandum in which his trained legal mind enabled him to find sundry quibbles and evasions. The contention of the Ministry, for example, that he had never brought the conduct of the Melbourne Government before the "Cabinet" he showed to be a pitiable pretext, since the Constitution recognised no such body as the Cabinet, and

> "the most solemn mode whereby a Governor can bring any matter before the Ministry of the day is by drawing their attention to the subject in Executive Council."

He took strong exception also to the statement of the Chief Secretary, made in a despatch to the Chief Secretary of Victoria of May 18, that the delay of the Ministry in protesting was due to

> "Sir R. MacDonnell, who supposed that the Victorian Government were acting under some authority from the Home Government in taking so strong a step as the stoppage of a Public Mail."

This was evidently the opposite of the truth, however much Finniss might protest that the Governor's name, used in official correspondence, was not intended to signify any personal responsibility.(27) The whole ministerial memorandum of June 5 is, in fact, devious, suggesting that the Governor knew more of the terms of the contract than he chose to tell them, and also making it appear that he censured them after they had taken steps to protect to Victoria, which was not true, since no censure was sent by the Chief Secretary to the Victorian Government until May 18.(28) The fact remains, however, that theirs was the responsibility, not his, according to the principles of Responsible Government.

Finniss has a full account of further developments, in which the Cabinet resolved

> "that no matter of public policy should be discussed in Executive Council unless previously agreed on in Cabinet,"

and

> "that any written memorandum referred to members individually by the Governor should be brought under the notice of the Cabinet by the first minister to whom it was sent."(29)

They declined, on May 25, to advise him to meet the Governors of New South Wales and Victoria, as he was

anxious to do, since they feared that his impetuous nature might commit the Colony to some line of policy of which they might not approve.

Sir Richard MacDonnell, apparently anxious to extend the olive branch, referred again in Executive Council on June 22 to the position of the Governor in connection with all contemplated action of the Ministry, whether Legislative or Executive. He merely contended, he said, for the principle that the Governor was entitled to be kept cognisant of all intended Ministerial action in matters of importance, not being of a strictly Departmental character. To prevent any doubt on the subject, he introduced a short Resolution to the meeting, with which the members present expressed their concurrence. It read -

> "That as a general rule every bill proposed to be introduced into Parliament as a Government measure should be laid before the Governor-in-Chief by the Chief Secretary, in order that His Excellency may take such action thereon as he may deem fit, and that every Executive measure of importance involving the policy of the Government should be communicated in like manner, when practicable, in order that His Excellency, being cognisant of all such proposed Ministerial action, may advise with the Ministry thereon before final decision."

Thus was there an end to ill-feeling, and the Governor declared, after 8 months, his acquiescence in the generally accepted view of Responsible Government. An instance of his altered attitude appears in the Minutes of the Executive Council for September 7. Sir Richard was anxious

to have a sum of money placed on the Estimates for educational prizes to lads educated in South Australian schools, without reference to denominations. When the Ministry (that of Torrens) were unwilling to consent and stated that they were sure the Assembly would vote against it, he immediately let the matter drop.

Meanwhile the two Houses of Legislature were perilously close to a deadlock. The dispute arose over the Tonnage Duties Repeal Bill which was early passed in the Assembly and sent to the Council on May 7. The repeal of Port charges had been introduced by Neales on Nov.19 to the short session of the previous year, but had been left for the consideration of the new Parliament. The bill sought to do away with tonnage dues, which in any event only brought in £2,000 a year.(30) Thus it was hoped to make Port Adelaide more attractive for foreign ships. A second part of the bill sought to recoup the revenue by the leasing of wharf frontages. In the Council the Bill was admitted to its second reading on May 19 only by the President's casting vote. On its consideration in Committee on May 21, the first clause, that which contained the repeal of the tonnage dues, was struck out, and so the purpose of the whole bill was nullified. It was a challenge to the Assembly, on whose reading of the first section in the Constitution

Act the Legislative Council had power to reject but not to alter a Money Bill. On June 9, the Commissioner of Public Works, S. Davenport, moved in the Council the recommitment of the Bill, so as to avoid the breach of a constitutional principle and of the privileges of Parliament. His appeal was greeted with ironical cheers and he could get no seconder. Before the Bill was read a third time, John Baker, the leader of the Conservatives in the Council, succeeded in having its title altered by striking out the reference to the repeal of the tonnage dues. In other colonies, he contended, Upper Houses had altered and amended Money Bills and their amendments had been acceded to by the Assemblies.

On June 10, in the Assembly, Finniss complained of a breach of privilege in the amendment of the Bill in an essential particular, and he called on the House to maintain the principle of control over Money Bills as part of their privileges. A motion was carried unanimously, asking the Council to reconsider the Bill.

The viewpoint of the Council was ably put on June 16 by the President, J. H. Fisher. They must be guided by the terms of the Constitution Act, he said, which gave neither House greater powers than the other, except in regard to the initiation of Money Bills. So he held that the Council had as much power over the Bill in question after it was transmitted to it as the Assembly

had while it was passing through its readings in that House. He cited cases in New South Wales, where the Council was nominated, and yet claimed the right of altering a Money Bill, and where once at least the Assembly had assented to an amendment, but with qualifying remarks appended. The Victorian Constitution Act expressly refused such power to the Council, though allowing it to reject a Money Bill. He argued that Victoria thought it necessary to insert this clause if the Council was to be excluded from amending. The absence of such an express clause in the South Australian constitution he considered a sign that such a prohibition was not operative here. In Tasmania, the constitution was in exactly the same position as in South Australia. There, the Council had altered several Money Bills, even the Appropriation Bill. The House had agreed to a Conference, and the Assembly had consented to the amendment.

In deciding for the Council, he expressly stated that he took no stock of what the intentions of the framers of the Constitution Act might have been. He relied only on the expressed sense. "Although the spirit of an Act is to be regarded no less than its letter, yet the spirit is to be collected from the letter."(31) He reviewed the events from 1853 on, leading to the Constitution Act, with particular reference to the debate on Nov.27, 1855,

in the Legislative Council. He then went on to consider whether there was any analogy between the Parliament here and that of Great Britain, and denied any analogy. In England there were 3 Estates, the Queen, the Lords and the Commons. South Australia had 2 Estates, the Queen and the Commons. The Lords were members of their House by a right inherent in their persons, and they were supposed to sit in Parliament on their own account and for the support of their own interest. The Legislative Council here had not the privileges of the Lords, e.g., voting by proxy and entering a protest with reasons when they differed from a decision of their fellows. The privileges of the Legislative Council were restricted by the 35th section of the Constitution Act to the privileges of the House of Commons, "showing a continuous and obvious intention by express terms to place the privileges of the Legislative Council and House of Assembly upon the same footing and equality." The Commons in England had been given by the people the power of framing laws, but that power was here given to both Houses. There was similarity to England in the check which the 2 Houses exercised upon each other, and that was all, although he admitted that it was the practice of the Imperial Parliament for the Lords not to interfere in Money Bills.

E. C. Gwynne, another lawyer, gave further objections to the supposed analogy between the Council and

the House of Lords. The former was not nominated, it was not a permanent body, nor was it subject to the influence of the Crown. Before 1671 the Commons had not possessed entire control over Money Bills, but the Assembly here jumped at once to the assertion of the same rights which had been so long unclaimed at home. He accused the Assembly of tacking in the Tonnage Duties Bill, a practice which even the Commons had given up on protests from the Lords. He referred to the 35th section of the Constitution Act, which declared it lawful for the South Australian Parliament to define its privileges, provided that no such privileges should exceed those of the Commons. The powers of the Assembly, he said, were not yet settled, and required a future Act. Finally, the course which the Assembly was pursuing was not likely to promote mutual respect and confidence between the 2 Houses.

Much more was said by the other members of the Council, and all, except Freeling and Davenport (the 2 members of the Ministry) tended to the same opinion. A motion was carried by an overwhelming majority, declaring that the Council denied having committed any breach of privilege, and that it was again returning the Tonnage Duties Repeal Bill, in the interests of the people, to the Assembly that it might concur in the amendments. The House also expressed their regret that the Assembly had not

adopted "the more Parliamentary course of requesting a conference between the 2 Houses on the point in question."

In a 3 days' debate commencing on July 22 (having been adjourned from June 12 to July 21) the Assembly rose to great oratorical heights in rebuttal of the Council's claims. The various objections were summarized by Hanson, the Attorney-General, who delivered his speech on July 24. He upbraided the Council with conduct that would be considered dastardly in private life, viz., the repudiation of a contract because they saw a loophole in the wording of such contract. When it was remembered that under the first Constitution Act of 1853, which contained this identical section in dispute, the Council was to be nominated, how could it be thought that there was the intention to give it control over Money Bills? He referred to a speech of Sir Henry Young in opening the session of 1853, when he said, in reference to the Constitution Bill, "It has been provided that the Assembly thus constituted shall have the same control over revenue and expenditure which is possessed by the Commons House of Parliament in England." Further, it was never mentioned in debates on this subject that anyone ever thought of conceding to the Council, as now constituted, any other power over Money Bills than that possessed by the Lords. Baker and others had suggested, at that time, that the clause should be

altered to make it quite clear that all power with respect to dealing with Money Bills was vested in the Assembly. How could Baker now support the Legislative Council in their claim? Hanson himself had always opposed the equality of powers of initiation in the Houses back in 1855, because he saw that a Governor might select all his Ministers from a conservative Upper House if he thought that it would be likely to promote the interests that he favoured. Having it thus in his hands to play off one House against the other, he would hold all the power in the state. The speaker referred to his own words of Nov. 27, 1855, reported in the "Register" of next day, viz. that the House which was to represent the Conservative interest should have power to refuse but not to alter Money Bills. He favoured a conference to restore peace, reiterating that it could not be expected that the Assembly would give way to the Council. The claim of Forster in the Council that that House represented the people, because it had 10,000 voters, he showed to be based on fallacious reasoning, because that 10,000 were included in the larger number who elected to the Assembly also. The purpose of having the whole Province as one constituency to elect the Council on a restricted franchise was twofold - (1) to represent the conservative interest; and (2) not to be an immediate reflex of the sentiments of the people, since delay was desirable in times of excitement. That very fact made it analagous to the

House of Lords, and that had been the intention of the framers of the Constitution.(32)

On August 25, Baker, now Chief Secretary, proposed in the Legislative Council a conference between the Houses. A Message was sent on the same day to the Assembly with a restatement of the Council's claims as embodied in 13 Resolutions on August 6.(33) These represented a modified version of Fisher's views, toned down to more conciliatory language, e.g. Resolution 11 -

> "The advantages that would result to the country from the revision of Money Bills by this Council would more than compensate for any delay which would arise from any such revision."

In the new Resolutions of August 25 the Council sought a recognition of its power to <u>suggest</u> any alteration in any Money Bill,

> "and in case of such suggestions not being agreed to by the House of Assembly, such Bills may be returned by the House of Assembly to this Council for reconsideration, in which case the Bill shall either be assented to or rejected by this Council, as originally passed by the House of Assembly."

Moreover, the Council waived what it considered its right to deal with the details of the ordinary annual expenses of Government as embodied in the Appropriation Bill.

The Assembly agreed on September 9 to a Conference. Three members from each House were appointed and met on September 29 in the Speaker's room, where the Council's representatives delivered the reasons of the

Council. On October 14, Hanson, back in office as Attorney-General, moved that a Select Committee be appointed to consider the Council's reasons, and Hanson, Torrens and A. Blyth were appointed to form a Committee. They presented their report, and it was discussed on November 17 in the Assembly. Its effect was the acceptance of the compromise outlined in the Resolutions sent on August 25 from the Council. Thus the dispute terminated, and the machinery of the Conference, then instituted, has existed since.

The first Ministry fell on August 10. They were never a homogeneous body, and they laboured under the "penumbra, if not the dark shadow, of nominecism"; so that the Assembly continued towards them the hostility that the old Legislative Council had felt it incumbent on itself to display towards the Executive. The Ministers were out of touch with the general feeling of the House on the Steam Postal question, and their defeat on the Electoral Law Bill on July 31 and the Postal and Main Roads Bills on August 7 convinced them of the futility of continuing. The impression had long existed that they were not united and this was strengthened by Torrens' introduction of his celebrated Real Property Act as a non-Government Bill on June 4. He took this course because Hanson considered that the labour of forcing it through Parliament in the teeth of the lawyers' opposition would be too great, and Finniss was of the same

mind. Their attitude was known outside the Cabinet, as is clear from Waterhouse's amusing remarks on June 4, in which he made fun of that "happy family", the Ministry. Referring to Torrens, he said -

> "The hon. gentleman had likened himself to Hercules, and it was to be hoped he would exert his strength, and that he would, with the lion's skin, ward off the darts aimed with legal subtlety at him by the Attorney-General, and with his club demolish the Chief Secretary. (Hear, hear, and laughter.) He (Mr.Waterhouse) confessed that he had some hesitation as to how he should act in the matter. He was disposed to support the Bill, but he was afraid the result would be to upset the Ministry. (A laugh.) He was afraid the effect of carrying that measure would be to carry the Treasurer on to the place of the Chief Secretary, and that estimable officer and the amiable Attorney-General to the Opposition side of the House. (Continued laughter.) That was not altogether a thing beyond the bounds of contemplation, for the hon. Treasurer had said that a seat on the Ministerial bench was an object of laudable ambition to any man, and of course it must be still more laudable to aspire to the chief place on the Ministerial bench. (Laughter.) Hon. members had no doubt often reflected on an interesting peculiarity of the bird called the cuckoo - (hear, hear) - how it dropped its egg in the nest of birds of quite a different feather, and suffered it to be hatched in strange society - how the interloper fraternized with the unconscious nestlings until it attained sufficient strength to overpower and eject them, and, then, true to its nature, it tumbled them out and left them to perish neglected and forgotten. He did not, of course, hold with the comparison; but there were some who maintained that the hon.Treasurer was a political cuckoo - (a laugh) - and that he was at present in strange association, and only wanted to gather strength to bundle his colleagues out of the Ministerial nest. For himself, he must declare that he would regret such a catastrophe. He would regret to see the occupants of the comfortable seats opposite ousted, and 'lodging upon the cold ground'."(34)

(This speech of Waterhouse is a good example of the considerable powers of oratory possessed by the more enlightened

among our legislators in the early years of Responsible Government. In its apt illustrations, its humour, its logical progression and its disclaiming of any intention to wound while at the same time ridiculing the divisions in the Ministry, it might well serve as a model of the perfect political speech. Few, indeed, of the members of the British Parliament at Westminster could have spoken with better effect.) Added to the other subjects on which it found itself out of sympathy with the majority in the House, the Ministry's refusal to listen to the rising volume of complaints against the restrictions on colonial distillation of spirits earned it further unpopularity.(35) It was not displaced by a direct vote of want of confidence, but announced on August 10 its conviction that it could no longer carry on successfully the business of the country.

Waterhouse, as a determined opponent of the late Government, was first asked by His Excellency to form a Ministry, but he was not prepared to do so, and Baker was called on. He announced his Ministry on August 21. It comprised:-

J.Baker, M.L.C., - Chief Secretary.
E.C.Gwynne, M.L.C., - Attorney-General.
J. Hart, - Treasurer.
W.Milne, - Commissioner of Crown Lands.
A.Blyth, - Commissioner of Public Works.
J.T.Bagot, - Solicitor-General.

When the Houses met on August 25, Hanson claimed that Bagot was a "stranger in the House", as he had accepted an office under the Crown. Although it had been announced that Bagot had taken office without salary, Hanson contended that the office of Solicitor-General was essentially an office of emolument, and profit might as easily accrue in the shape of fees as of salary. He also disputed the right of the Governor to make such an appointment, as there were already 6 members in the Executive Council - the Surveyor-General being still a member by virtue of the Governor's instructions, and those instructions limiting the size of the Executive Council to 6 members. Neales denounced the precedent of appointing to ministerial office, without a salary, as such a course would tend to throw the administration of the country into the hands of moneyed men, independent of salary, and less responsible to the people. Finniss saw in it a plot against Responsible Government. It was evident that Baker had no chance of holding office, for he had made himself conspicuous in the Privilege Debate as one of the most extreme supporters of the unpopular claims of the Legislative Council. When Torrens moved, on August 26, a vote of want of confidence in the Ministry, he dwelt on the necessity for a settlement of the strained relations between the two Houses, and emphasized that Baker could not be trusted to bring the matter to a happy

conclusion. "A perfect Napoleon" was his description of Baker, from whom he declared they might expect a coup d'Etat. This, of course, was an exaggeration, but the Chief Secretary's contempt for the views of the majority of South Australians was sufficiently well-known to lend it a semblance of truth. After very bitter exchanges, the Ministry were turned out.

Torrens was clearly the next man to be given the task of forming a ministry. His anxiety to lead the colony was common knowledge. His ability - he was an M.A. of Trinity College, Dublin, - and energy, as well as his colourful part in the early history of the state and the renown he was gaining from his Real Property Bill, all indicated his claim to a trial. Unfortunately, he had made so many enemies by his sarcastic sallies in Parliament that his uprightness could not avail to keep him long in power. During the month that he held office, from Sept. 1 to 30, he was associated with the following Ministry -

R.R.Torrens - Chief Secretary,
R.B.Andrews - Attorney-General,
J.B Hughes - Treasurer,
M.Macdermott - Commissioner of Crown Lands,
S.Davenport, M.L.C. - Commissioner of Public Works.

As has been mentioned earlier,(36) he was displaced from office for his action in suspending the regulations relat-

a flood of applications for runs in the Far North, following the rosy reports brought back by Goyder from his expedition to Blanchewater,(37) and it seemed impolitic to the Government to grant so much land at the current low rental. The Assembly, however, took objection to government by proclamation when Parliament was in session.

The next Ministry, under the leadership of Hanson, achieved stability and lasted until May 9, 1860.

W.Younghusband, M.L.C. - Chief Secretary.

R.D.Hanson - Attorney-General.

J.Hart - Treasurer. (Till June 12 1858. Succeeded by B.T.Finniss.)

F.S.Dutton - Commissioner of Crown Lands. (Till June 2, 1859. Succeeded by J.B.Neales till July 5, 1859, then by W.Milne.)

T.Reynolds - Commissioner of Public Works. (Till June 12, 1858. Succeeded by Arthur Blyth.)

The following interchange in the Legislative Council on October 7, 1857, is of interest.

Mr.Baker. - Was the Hon.Mr.Hanson Premier or Attorney-General?

The Chief Secretary. - There is no such office as Premier - no such office recognised by the Constitution Act.

Mr.Baker. - Would the resignation of the Hon.gentleman himself, or the resignation of the Attorney-General, involve the resignation of the Ministry?

The Chief Secretary. - That would depend entirely on circumstances.

Henceforth until the end of the session the country witnessed a business-like despatch of Bills, for

Hanson had succeeded in drawing into his Cabinet the leaders of various groups in the Parliament. The principal subjects dealt with by the legislature were (a) the appointment of an Immigration Agent; (b) the Waste Lands; (c) the law of Real Property; (d) the communications of the colony; (e) public works, including the dredging of the harbour and the construction of roads; (f) the Distillation laws and (g) the electoral laws. A Bill to limit Chinese immigration had already been passed on September 15, thus satisfying the people of Victoria, who had witnessed the landing of 10,000 Chinese at Robe between January and May. By landing in South Australia and making their way overland into Victoria, they were evading the heavy poll-tax imposed on them if they landed at a Victorian port. The new Act levied a tax of £10 a head on Chinese entering South Australia, and remained in force until 1861, when considerations of British diplomacy and the easing of gold-rush conditions led to its repeal.(38)

(a) The question of immigration was bound up with that of the Land Fund. The Wakefield principle required that half the land fund be devoted to bringing out emigrants, and the other half to public works in the colony. Under the Imperial government, this principle had been applied until the granting of self-government, with periodic deviations due to labour conditions in the colony. The

Finniss Ministry early sounded, by means of Resolutions, the views of the House on the continuation of the Wakefield system, and the debates revealed a great variety of opinions.

> "Some would not advance 1/- to import labour, but trust to self-paying emigrants for the gradual settlement of the colony. Others would not advance money, but they would repay it if the immigrant could come out in the first instance at his own expense."(39)

It was finally agreed to merge the Land Fund in the General Revenue, and not to appropriate any fixed proportion to immigration purposes, but to make an annual allocation thereto, as circumstances required.(40) Persons bringing out, at their own expense, immigrants who could have been brought out with assistance were to be reimbursed. No mention of allowing Germans to share in the benefits of the scheme was made, for, although it was admitted that the Germans made good colonists, the Assembly feared to disturb the predominantly British character of the population. It was probably also a fear of increasing the influence of the Catholics which impelled the adoption of a quota system whereby migrants from England, Ireland and Scotland were to be introduced in proportion to the populations of those divisions of the United Kingdom. The denominational motive was denied in the House, and justification for the new arrangements was found in the difficulty experienced

in 1855 in absorbing into the economy of the colony the disproportionately large number of Irish females who arrived in that year; but it is well known how strongly the denominational motive weighed with Dr. J. D. Lang in his efforts for a like regulation in Victoria, and most likely it was operative also in the present case. Another Resolution declared in favour of one immigrant ship a month. To secure the enforcement of these Resolutions, a Bill was introduced on July 21 for the appointment of an Immigration Agent, who should relieve the English Emigration Commissioners of the responsibility for the final selection or rejection of intending migrants. The first to occupy the position was M. Moorhouse, who afterwards held a seat in the South Australian Legislature.

Purchasers of land had formerly been allowed to nominate one person for a free passage for every £40 they spent. Many purchasers had no interest in bringing out relatives, as a result of which a traffic in nomination certificates had grown up. Complaints were raised of the assiduity of the Irish in obtaining from compliant friends of English or Scottish nationality their unwanted certificates, which they then sent home to Ireland for the benefit of their relatives. The Hanson Government accordingly varied the regulations, abolishing land purchasers' rights of nomination and requiring a sum of £5

payable in the colony for a certificate enabling even the most eligible class of male emigrants to obtain assisted passages. Hence it comes about that from January 19 to June 1, 1858, there were 295 applications only, whereas in the corresponding period of 1857 there were 1,178.(41) Of the 3,239 assisted migrants sent out in 1857, those nominated in the colony numbered 1,985, of whom only 559 were English and Scottish, whilst 1,426 were Irish.

(b) The Waste Lands Bill contained nothing that was new, except that it expressly stated that no reservations were to be made for ecclesiastical purposes, and thus removed what had been a cause of much heartburning in Canada. The Government was still permitted to survey blocks of 640 acres, but wherever practicable surveys in 80-acre blocks were to be made for the benefit of humble purchasers. Lands were to be sold by auction, but those that had passed the hammer might be bought privately. No pre-emptive rights were to be given to squatters, whose leased land might be put on the market at any time after 6 months' notice, nor were they allowed any rights of renewal of their leases. Already hard things were being said about land agents, or "sharks", who went to the office after sales and made application for the whole of the land which had passed the hammer. This injured poor men, who were supposed to be able to buy at £1 an acre, but instead had to pay a fee to the land agents in

addition to the price they might require for land. When at an auction a man tried to compete, these jobbers told him "I intended to bid for that, but I will not do so if you pay me a commission." Thus fair competition as envisaged by the Wakefield theory was a fiction. In N.S.W., legislation had been passed to make such practices illegal under the name of conspiracy, but public opinion here was not yet fully aroused, and it required the experience of another decade to impel the Legislature to action.(42) For a long time, indeed, it was matter for congratulation that

> "South Australia had not followed the cry in the neighbouring colonies for cheap land, nor had glutted the market by throwing large quantities into the market. To reduce the price too much or overwhelm the market would only create great territorial monopolies, giving land away to capitalists and speculators."(43)

(c) The second reading of Torrens' Real Property Bill came on for discussion on November 11. When introducing it on June 4, he had explained that it would simplify the existing cumbrous and complex law of transfer of real property and reduce its expense. It would save the interminable searching back through all the intermediate holdings to the original grant from the Crown. His Act would set up a permanent record of past transactions, all of which would appear on a certificate held by the owner, and on a duplicate in the registry office. By enacting that at each transfer, the fee-simple was to

be surrendered to the Crown and a fresh grant from the Crown issued to the new proprietor, there was an infallible means of preventing all the past confusion. He referred to the Hanse towns, in which such a system of registration had been in vogue for over 600 years and to the simplicity of shipping transfers under a similar system.

Torrens had the enthusiastic backing of the "Register", and the able assistance of Dr. Hubbe, a Doctor of Laws of Kiel, who translated for Torrens the Hanseatic land laws, engaged in controversy in the "Register" with C. Fenn and published at the expense of G. F. Angas an account of the Continental system of conveyancing. A copy of this pamphlet was put before each M.P. while the Bill was under debate. The Bill itself was drafted by Hubbe, though there can be little doubt that Torrens is entitled to the credit for originating the idea and carrying it through by his energy.(44) Practically the whole colony was in favour of the Bill, and, indeed, reform was long overdue. Torrens told, on Nov.11, of a property in the city appraised at £1,000, which, through an uncertainty in the title, was sold for £300. J.B.Hughes narrated that it

> "had cost him £25/8/6 to get the deeds of 5 acres of land deposited, although there was no disputed title. In another case he had to pay £39/16/2 for conveying a piece of land not worth £20."(45)

Unwilling, perhaps, to allow Torrens all the glory for the measure, Hanson introduced a parallel Bill intended to secure the recording of deeds at the Supreme Court, and to abolish primogeniture. His principle was really antagonistic to that of Torrens, inasmuch as Torrens desired to abolish the system of transfer by deed, and the Government Bill did not. Torrens called the double legislation a "monster like Siamese twins". Hanson's Bill soon dropped from sight, while the Real Property Bill, passed by the Assembly on December 15, was carried victoriously through the Council before the end of the session. Some objection was raised to the compulsory nature of the Act, requiring as it did all land alienated from the Crown after July 1, 1858, to be subject to it. Lands alienated before that might be brought under the Act if the owner wished.

(d) A Select Committee of the Legislative Council went into the question of the comparative merits of railways and tramways. Though its members were reluctant to admit it, the weight of evidence favoured the former. Finniss and his Ministry were ardent supporters of railway building, and they brought in on June 2 a Bill for the continuation of the Gawler line to Kapunda. In the debate on the Address in reply to the Governor's opening speech, the members of the Assembly had shown their approval of such an extension. When the Kapunda Railway

Bill passed the Assembly, it was thrown out by the Council on October 27, on the score that too much money had been borrowed already for public works. However, after Resolutions had been passed in the Assembly on November 4 condemnatory of their action, and it had been pointed out that the squatters and bankers in the Council were principally to blame, as being the classes who would suffer from agricultural expansion on the one hand and competition in the money market on the other, the Council were more inclined to consider a revised Bill. This took £60,000 from the money already allocated to the deep drainage of the city, devoted it to the railway and added £40,000 out of the general revenue. The Gawler railway was opened on October 6, 1857, and immediately had the effect of diverting the Burra ore traffic from Port Wakefield, which had been proclaimed a port in 1850.(46) In accordance with previous legislation, the Railway Boards of the Port and Gawler Railways were amalgamated early in 1857, and the Board of management for both railways then consisted of W. Hanson, R. B. Colley and J. Brown,(47) W. Hanson being Chief Commissioner and engineer. W. Maturin was at the same time appointed Chief Commissioner of Waterworks.

The project of a railway to connect the city with the Murray was fated to be long delayed. Numerous

meetings were held in 1856.[48] to discuss the scheme. Towns in the south, such as Yankalilla, were against it, dubbing it "premature", and talking of the "enormous outlay" and the "precarious market" that it would serve. Their attitude was natural enough, as they could not hope to benefit from it, but would be taxed for its construction. Angaston and the Burra were each in favour of it, provided that it passed through those places. For 20 years to come, the development of the Murray trade was to be retarded by the rival claims of a railway to tap the river at the North-West Bend and the clamours of Goolwa and Victor Harbour for the construction at the latter place of a deep-sea port. It became clear during 1856 that Port Elliot was unsafe. Several wrecks occurred there, through vessels either being blown from their moorings, as with the "Commodore", or not having sufficient space to work in and out, as happened to the "Harry". Attention began to turn to Victor Harbour, where there was plenty of room for a dozen vessels. It was protected by Granite Island and had a sandy beach on the lee. Insurance Companies refused to give premiums for ships trading at Port Elliot.[49] The question of the deep-sea port and the navigation of the Murray mouth was the subject of many Parliamentary Papers,[50] as there were hopes that ocean-going steamers might be able to navigate the mouth of the

river and so avoid the double handling of goods involved in transhipping them at Goolwa and sending them along the tramway to a port on the ocean.

During 1857, the steamer "Corio" passed the Murray mouth regularly each week, plying between Goolwa and Port Adelaide. In October, it is true, it ran aground, and was not refloated for some time. A year previously, the "Sturt" had suffered the same fate, with the loss of 2 lives, and the voyage was always extremely hazardous. On December 1, 1857, John Baker asked in the Legislative Council if the Government intended to provide facilities for the shipment of sea-borne goods at Victor Harbour. The Chief Secretary, W. Younghusband, replied that £8,000 had already been voted for a snag-boat intended for the clearing of the River Murray, and the Government could not spend more at present. Next day, Babbage presented a petition in the Assembly that Victor Harbour be declared a port. On December 16, the doom of Port Elliot was sealed by the refusal of the Assembly to appoint a Select Committee to inquire into the causes of the wrecks there. The general opinion was that no amount of expenditure could render it safe for shipping.(51)

(e) A steam-dredge from England for dredging the Port Adelaide harbour arrived in February, 1857, and was assembled by October. It was put to work breaking up the limestone crust of the outer bar, where it was intended

to cut a passage 2,000 ft. long, 300 ft. wide, and having a depth of 15 ft. at low water spring tides, which would allow ships of deep draught to shelter in Light's Passage while lightering cargo.

Road-making, as always in young states, was a problem, as it cost £500 a mile to make a macadamized road and £200 a mile per year to maintain it. Only about 120 miles of made road were in existence, spreading out for about 30 miles along each of the main highways. The Central Road Board, which was charged with the care of the roads, was a body, the majority of which was elected by the District Councils, and its members claimed exemption from the control of the Executive. On Dec. 2, 1856, Finniss had attacked, in the Legislative Council, the Central Road Board, claiming that it had no responsibility and was overawed by the presence of 40 chairmen of district councils, who could attend and discuss, but not vote. As a protest, Major O'Halloran resigned from the Road Board at their next meeting, after reproving the Chairman (Freeling, the Surveyor-General) for his failure to defend them in the Council.(52) Next year, Davenport, the Commissioner of Public Works, was obliged to confess that he could not give the Parliament a report on the roads because the Road Board had not supplied him with the materials for doing so. Thus he was prevented from assuming responsibility, seeing that he was denied even a knowledge of

their proceedings. All the other public departments had responded cheerfully to his desire for returns once a month showing their work on hand, etc., but the Road Board had decided that "not as a matter of right, but as a matter of courtesy, they would furnish the information." However, they had not done even that.(53)

The Assembly was willing to give the Executive control over all the public departments, but the Public Works Bill, directed to that end was defeated in the Council on September 15, mainly because the members could not see any inefficiency in the current methods or likelihood of more efficiency if the departments were brought under the Commissioner of Public Works. Already in August the Bill of the Finniss ministry had been turned down, which sought to bring the Road Board under the Commissioner of Public Works. During July, there had been public meetings all over the province, protesting against the intended abolition of the Road Board, the assessment of land for the maintenance of the roads, which, however, would still be constructed out of the general revenue, and, in general, the taking of power from the hands of the people and placing it in the hands of a "dictator".(54)

(f) A rising tide of complaints from vinegrowers secured a relaxation of the distillation laws at the end of the session. A Select Committee of the Legislature in 1856 had declared against free distillation, from the

injurious effect it would have upon the revenue, a large part of which was raised by the duties on foreign spirits. The embargo on local distillation did seem hard, however, especially as the growth of the vine was extending so rapidly. Why should not growers be allowed to manufacture spirits from the refuse of their grapes? it was asked. To forbid them to make full use of their produce was a violation of the principles of Free Trade. Opposed to any concessions was a large body of temperance advocates, who were well represented in Parliament by such men as G. W. Cole and J. B. Neales. Others, like Torrens, despite a number of petitions and memorials, questioned whether many, apart from the vignerons, desired free distillation, as the loss to the revenue involved in granting it would have to be compensated by additional duties on other articles than spirits. The Act which was passed in January, 1858, known commonly as Wark's Act, from the name of the mover, was a moderate solution of the question, for it allowed controlled distillation while safeguarding the revenue. The operator of a still was required to have a licence, and notice had to be given of his intention to use the still. The spirits had to be placed in bond before being sold, and a duty of 6/9 was levied on every gallon of spirits distilled.(55) For some years the

agitation for free distillation continued, but grew less as the necessity for an adequate revenue was better realised, and as laissez-faire principles became discredited.

(g) The Electoral Act passed at the same time abolished the system which had prevailed, whereby it had been necessary for every elector to obtain from the Returning Officer a certificate of eligibility before he could cast his vote. The certificates were no real security against fraud, for one man might borrow a neighbour's certificate. Too often people, through forgetting to bring their certificate, or mislaying it, found themselves debarred from voting. Quarterly courts of revision were replaced by annual. (In 1859 they were made half-yearly.) The method of recording votes was changed; in future an X was to be placed opposite the name of the favoured candidate, instead of obliterating the name of the candidate not favoured, as had been the previous practice. Instead of it being left to an elector to ensure that his name was placed on the roll of voters, notices of claim were sent to householders for distribution among the eligible occupants of each house.(56)

When the session closed on January 27, 1858, South Australia had taken a long step in the direction of the complete management of her own affairs. In many

instances, such as in the method of auditing the public accounts, she had been content to retain the existing arrangements, and the Imperial experience of land disposal seemed satisfactory enough for her to adopt it with little alteration. In immigration, however, there was a marked departure from the Wakefield theory, as half the Land Fund no longer had necessarily to be devoted to importing labour. The former arrangements, by which the Agent-General for Crown Colonies looked after South Australian commercial interests in England, was also varied. At the beginning of 1857, the South Australian Government decided to make the Agent-General directly responsible to the Treasurer of South Australia, without the interposition of the Secretary of State for the Colonies. Barnard, who was the Agent-General for Crown Colonies, was agreeable to act for a time under these conditions, but it was evident that he could not long continue to be responsible both to the Imperial and Colonial authorities; accordingly, the Executive Council appointed in January, 1858, its own Agent-General, G. S. Walters. His duties were not at all in the nature of those of an ambassador, as the Governor was the only channel of communication between the Crown and the South Australian Legislature. The Agent-General had to deal mainly with commercial matters, such as the selling of bonds, the purchasing of requisites and the supervision of immigration expenditure. Leave of

absence for its officers was another field in which the Parliament of South Australia undertook to frame its own regulations, since appointments in the colony no longer ran in the name of the Queen but of the Governor, who was bound to appoint, in regard to positions of the first class on the public service list, with the advice and consent of his Executive Council.(57)

Three Acts were reserved by the Governor for the Queen's assent, (1) the Convicts' Prevention Act, aimed at the exclusion of felons coming from Western Australia, so long as their sentence lasted; (2) the Aliens' Naturalization Act, allowing aliens to hold real property in the colony and facilitating naturalization; and (3) the Act to legalize a marriage with a deceased wife's sister. Only the last was disallowed, as being repugnant to English statute law. It is a good illustration of the principle of repugnancy, for the Statute of 4 & 5 William IV prohibiting such marriages was not passed when the colony of New South Wales was founded, and thus the original common law of England was in New South Wales and its offshoot, Victoria, the only law on the subject.(58) In South Australia, however, the new law attached from the proclamation of the colony in 1836. As intercourse between the colonies was constant, it is understandable that South Australia should be anxious to have the law assimilated to that in other colonies, for persons considered as married in the

neighbouring colonies might be considered unmarried here. Although the Parliament made repeated attempts, it was not able to obtain a favourable decision until 1870, as narrated at the conclusion of Chapter I.

Another Act, after being assented to by the Governor, was declared by the Home Government to require amendment before it could be left to its operation. This was the Insolvent Act. As it was in the main a statement of the developments in the practice of the Supreme Court regarding insolvency over the last few years, the colony had not expected that any objection would be taken to it. The Act provided for a separate jurisdiction for the Insolvency Court, over which a Commissioner was to preside. The Legislative Council was not willing to allow this officer the title or the emoluments of a Judge of the Supreme Court. The section of the Act to which exception was taken was that giving power to the Court to require an insolvent to hand over possessions which he held outside the province; this, said the Home Government, involved a claim to extra-territorial jurisdiction, which could not be allowed. The Secretary of State wrote that the offending section would not be acceptable even if the operation of the Act were confined to Her Majesty's dominions, let alone made applicable to other parts of the world.(59) Hanson was not in agreement with Downing St. over the

matter, and declared that South Australia was placed in an unfavourable position as compared with Great Britain, where the Courts had power to order the attachment of an insolvent's colonial possessions. His representations, however, were unavailing, and the Act had to be amended.

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7. Despatch No.138, Jan.28, 1857 from MacDonnell to S. of S..
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22. Practice and Procedure of the House of Assembly. E.G.Blackmore

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CHAPTER 3.

TO THE END OF HANSON'S RULE (May 9, 1860).

Throughout the recess until Parliament met again on Aug. 27, 1858, the colony waited for some word from the eastern colonies on a proposed Federation Conference. The impulse for revived discussion of closer union had come from England, where Wentworth and the Association for the Australian Colonies, composed of Australians and others interested in Australia, issued a memorial on March 31, 1857, pleading for Federation. The Colonial Office remitted the question to the Australian Colonies, which all appointed Select Committees at the end of the year to consider the matter. The possibilities of closer union revealed by the telegraph and improved means of transport, as well as the Crimean war scare and the generally increased volume of intercolonial traffic, certainly suggested the advisability of such a move, and South Australia had the Murray trade as an incentive towards a better understanding with its neighbours. The reports of the Committees of the 2 Houses of the S.A.Legislature were guarded in their recommendation of the scheme, with nothing like the same enthusiastic tone as the report of Duffy's Select Committee

in Victoria. South Australia feared that she would be overborne in a closer union with her more powerful neighbours. The Assembly, however, appointed Hanson and Torrens, and the Legislative Council G.Hall, as representatives to attend an intercolonial conference, as recommended by the Secretary of State, Labouchere. But the Assembly in New South Wales, jealous of Victoria, was opposed to such. The land question absorbing its attention to the exclusion of all else, it did not appoint any delegates, and the proposed conference lapsed.(1)

Interest in vine-growing was intense, perhaps as a result of Wark's Act. This is illustrated by the prominence given to the subject in the newspapers, as witness a series of articles by "Maro" in the "Register".(2) The advocates of free distillation, still unsatisfied, only waited for the reassembling of Parliament to renew the agitation, when they achieved a Select Committee on taxation, but nothing more. In all that was connected with the land, indeed, there was a vigorous interest, with ploughing matches all over the agricultural areas, at Morphett Vale, Gawler, Willunga, Auburn, Clare, Angaston and Salisbury, as well as at other places.

The Torrens system was inaugurated on July 1, 1858, and Torrens himself was installed as Registrar General, a separate Registry Office being provided for the business of the Real Property Act. Torrens toured

the country explaining the working of the measure, and even went to the other colonies, on the request of their Governments. On accepting office he was obliged to resign from Parliament. He dallied for a while with the idea of seeking re-election, at the urging of his admirers, but a public meeting of August 27 showed so plainly its distrust of having Government officers in the House, that he desisted. At this meeting, John Barrow, M.P., soon to be the first editor of the "Advertiser", showed that, despite the silence of the Constitution Act on the point, it was regarded as fundamental to the British Constitution that officers of Government, who were not responsible ministers, should not sit in Parliament. Any officer, by giving to the electors of a particular locality a promise of particular advantages, might gain their suffrages, nor could a member cast his vote independently if holding a position under the ministry of the day. A Resolution of the Assembly, to the same effect, was passed unanimously on September 1. No further action was considered necessary until 1870, when an Act to prevent Government Contractors from sitting in Parliament was passed.

Meanwhile, important developments had been taking place in the inner circle of the Governor and his Ministry. On February 23, Sir Richard referred to the delay of almost a month in the issue of the writ for the election of a member to take the place of G.M.Waterhouse

at East Torrens on his resignation through ill-health.

> "He thought that the provision of the Constitution, which directs writs to be issued by the Governor, and that provision in the writs themselves, which directs them to be returned to the Governor, must have been intended, as in other colonies, to prevent the Ministry of the day interfering, either by impeding, or accelerating unduly the process, whereby the electors are enabled to choose their Representatives."(3)

He held it to be unconstitutional for that process to be interrupted. On March 18, the Attorney-General, Hanson, delivered a reply, denying the Governor's power to act "apart from the advice and without the intervention of the ministry". His opinion was based on the fact that the writ was supposed to be sealed with the public seal of the province, for which the Chief Secretary was responsible, and this the Governor could not direct to be affixed to any document without the consent of the Chief Secretary. Actually, he said, the writ had been postponed at the request of the sitting member for East Torrens and at the desire (as it was stated) of a majority of the electors.(4)

There was a reshuffle in the Cabinet on May 12. Reynolds, the Commissioner of Public Works, a man of vigorous and sanguine temperament, had found himself in opposition to the Railways Commissioners, of whom the Chief was William Hanson, the brother of the Attorney-General. Reynolds lacked tact. In view of the failure of the Public Works Bill of last session, he should have

gone more delicately about the work of reducing the various public Boards to dependence on the Executive. He found that he could not obtain satisfaction on the matter of rolling-stock or the keeping of accounts in the Commissioners' office. His efforts to approach the Chief Secretary, Younghusband, were in vain, as the latter was away holidaying at Goolwa. The Commissioner of Crown Lands was busy, and the Attorney-General, besides the fact of his absence also at Goolwa, was the legal adviser of the Railways Commissioners.(5) Reynolds demanded the dismissal of the Commissioners, a quarrel in the Cabinet ensued, and Reynolds resigned, becoming henceforth the leader of the Opposition. Captain Hart resigned at the same time. Finniss taking the post of Treasurer. Arthur Blyth became the new Commissioner of Public Works. In discussion of the above-mentioned events in the Assembly, on September 15, allusion was made by Reynolds to an April agreement between the members of the Cabinet with regard to the mode of action of Ministers faced with a problem in one of the departments under their charge. This agreement was later submitted to the Governor in Executive Council and adopted as "Regulations for the Public Service."(6) By it, the Chief Secretary was to be the only means of correspondence between the Ministry and the Governor, as well as between the various departments. A responsible minister, when in doubt about his method of acting in

some important matter, should consult with the Chief Secretary. If the Chief Secretary concurred in his views, he might proceed to action, but otherwise the matter should be brought before the Cabinet. All ministers were empowered to authorize expenditure in the departments under their control within the limits of the Appropriation Act, but any excesses would require the approval of the Chief Secretary "by command", and ratification by the Executive Council. The Auditor-General was to be supplied with copies of all letters authorizing expenditure.

One of the first acts of the Assembly after recommencing on August 27 was the adoption of Standing Orders, the preparation of which had been entrusted on December 23 last to a Committee. The concurrence of the Council was invited for the adoption of Joint Standing Orders, but they were unwilling to be bound by the Standing Orders of the Assembly, and did not adopt any until 1861.(7) Hanson wished the Standing Orders to be settled before he introduced a Bill regarding the privileges of the House, such a Bill being necessary in view of a recent decision of the Privy Council. A dispute had arisen between the Governor and Parliament of Tasmania over their relative rights to control the convict department of the colony, which was supported partly by Imperial and partly by colonial funds. The Parliament appointed a Select Committee to inquire. Hampton, Comptroller of Convicts,

refused to appear when summoned before it, whereupon he was arrested under the order of the Speaker of the Legislative Council and imprisoned until the dissolution of the Parliament by the Governor. Hampton then brought an action against the Speaker and the Sergeant-at-Arms for false imprisonment, and the Supreme Court decided in favour of Hampton. The Parliament appealed to the Privy Council, which, applying a decision made by it in 1841, declared that the privileges of Parliament on which the Tasmanian Houses based their case applied only to the Lords and Commons in England. It appeared that the arrest was made to punish an act not committed within the bounds of the Council Chamber, and colonial legislatures did not possess the power of arrest for contempt committed out of those bounds. This decision explained the privileges of the House of Commons as being derived from ancient usage and prescription, not from its legislative power, and it decided that colonial legislatures had no judicial power which enabled them to punish in a summary manner contempt of their authority.(6)

All this was a set-back to South Australian pretensions, since the general opinion had been that the House had powers of arrest for contempt, not only over its own members, but also over the public at large. However- the Constitution Act declared that it should be lawful for it to declare its privileges, so long as they did not

exceed those of the House of Commons. Thus it now appeared that the desired power might be obtained, but that a statute was necessary. The Assembly, therefore, in adopting its Standing Orders, struck out all the clauses relating to the summoning of witnesses, leaving them to be incorporated in a Bill later in the year defining the Privileges of Parliament. This Bill went into detail on the matter, - too much so, it was later agreed, when a Bill of 1872 simply stated that the privileges of the South Australian Legislature should be those of the English House of Commons. It sought to enforce the attendance of witnesses, to deal with disobedient members and to punish summarily, or to proceed at law against, perpetrators of certain contempts. Other misdemeanours were to be the threatening of any member for his action in Parliament, assaulting a member or sending to him a threatening or insulting letter on account of his behaviour in Parliament, sending him a challenge to fight, attempting to bribe him, creating a disturbance in the House, etc. Due to the amendments made by the Council, the clause relating to the freedom of members from arrest was dropped leaving the law doubtful on the point.(9)

Early in the session, Reynolds pressed for satisfaction on the question of the Railways. On Sept. 15, when he moved for a Select Committee to inquire into railway management, he recited the story of his resignation

from the ministry and the events that led up to it. The tenor of his violent attack on the Commissioners was that there could be no really responsible government so long as the Boards governing the different public works, such as the railways, the waterworks and the harbour dredging, were able to defy the ministry. The Legislature voted the money expended on these projects, and it should have a voice in its expenditure. Hanson, in reply, claimed that there had been no mismanagement, and that a little tact on Reynolds' part would have avoided any unpleasantness. The House, nevertheless, voted for the Committee, whose report,(10) brought in after much labour had been spent upon it, recommended a large number of changes in the running of the railways, thus corroborating Reynolds' statements. It also recommended control by one manager, instead of by various superintendents of departments, and that this manager be responsible to the Government.

The ministry, in the meantime, introduced a Board of Works Bill in an effort to stave off the Opposition, among which Reynolds, Strangways, Peake and J. B. Hughes were the most prominent. This aimed at vesting the management of the main roads, railways, waterworks and telegraphs in a Public Works Board. Immediately Strangways demanded to know why the Harbour Trust was not included, and suggested that it was because a third of the money voted to the Harbour Trust had been misspent. Some

very plain speaking followed; Reynolds referred to a disproportionate amount of dredging that had been done around Prince's Wharf, in which some members of the Trust were interested, including the Chief Secretary, Younghusband. Of the six members who threw out the Public Works Bill of last session in the Council, he declared, three were members of the Harbour Trust. Hanson came to the defence of his ministry, and indignantly denied any undue influence. The general public, he pointed out, benefited from better facilities at Prince's Wharf.(11) On the second reading, the Bill was withdrawn, even though the Government were now ready to include the Harbour Trust in its provisions. The reason for its withdrawal was that the House disapproved of the creation of another Board, which would be as obstructive as the old ones, although it would unify control to some extent. The Ministry tried again with a Public Works Bill on Sept.30, this being a replica of that of the last session and intended to abolish all the Boards, giving direct responsibility to the Commissioner of Public Works. It passed the Assembly, but failed in the Legislative Council on Nov.10, principally because of the claims of the Central Road Board for a continued trial. The Board of Works Bill was now reintroduced, with all the Boards retained, but bringing them all, by express enactment, under the direct control of the Commissioner of Public Works. It was acceptable to the Upper House, and

finally passed at the eleventh hour, on Dec.22.(12) Thus, after two sessions of responsible government, the control of the public departments was really in the hands or the Government. Some friction in the changeover was inevitable. Because of the semi-professional character of government in a colony not yet 30 years old, these Boards had been necessary, and it was claimed that they had made a better use of their funds than had those in other colonies. The "senators", by a resolution of Dec.22, unanimously expressed their confidence in the administration of the Harbour Trust, which in consequence went on with its dredging in the inner harbour, in spite of the resolution of the Assembly, on Peake's motion,(13) that it should proceed with the deepening of the bars. Whatever the wrongs or the rights of the case, Reynolds, the "stormy petrel" of South Australian politics, brought about the control of the public works by the Government sooner than would otherwise have been the case. It is to be noted that the Governor's speech on August 27, sketching the intended policy or the Ministry for the coming session, made no mention of a Public Works Bill, which probably would not have come but for Reynolds' activity. There still remained, even after this, a few anomalies, such as the position of the Commissioner of Public Works as a mere member of the Central Road Board, as also of the Chief

Secretary as a member of the Harbour Trust. These gave an opening for questions from the Opposition in the 1859 session, but were soon removed.(14) The Railways Commissioners were replaced by a manager. William Hanson handed in his resignation as Chief Commissioner to the Executive Council on January 13, 1859, although he continued to act as Engineer to the railways.

The Central Road Board, however, were rebellious. Relying on their new-found popularity, they maintained that they were independent of the Executive. When the Commissioner of Public Works required that all situations under the Board be filled only after applications had been advertised in the daily papers and that all applications received be forwarded to the Executive with the recommendation of the Board for final decision by the Government. they were up in arms. They also claimed money powers independently of the Executive, relying on the Act of 1852 under which they were established, and denying its supersession by the recent Act.(15) They were supported in their stand by all the District Councils. Their defiance caused the issue of new regulations in the Government Gazette of July 12, 1859, by which subordinate and temporary appointments were to be made by the Board, higher ones by the Government. If the Board dismissed an officer, it was obliged to forward a report to the Executive. Works over £100 were to be

let only after advertisement for tenders, all correspondence with public departments was to be through the Commissioner of Public Works, the statements of intended appropriation of funds by the Board were to bind it, and it was not to depart therefrom without the consent of the Executive. The salaries of the officers in its service were to be annually submitted to Parliament, any ad interim arrangements made by it were to be subject to approval by the Executive and the Auditor-General was to have the power of examining the accounts and cash of the Board at any time without previous notice, as with the rest of the public service.(16) It does not appear that the Board's resistance outlived this period.

The Waterworks Commission submitted very readily, being quite discredited by the cracking of the dam in the Torrens Gorge in June, 1858. Examination showed very defective workmanship, resulting in the dismissal of the engineer, the demolition of the dam and the erection of another. Act 17 of 1858 abolished the Waterworks Commission altogether, and after December 24 the Commissioner of Public Works took charge.

Two Acts passed in this session related to the law-courts. They were the Supreme Court Procedure Act and the Third Judge and Circuits Court Act. Both had been introduced in the previous session but not passed.

Behind their introduction lies the first phase of the long train of Boothby quarrels which was to upset South Australia for a decade. In February, 1857, Mr. Justice Boothby raised a storm over the case Mara v. Popham, in which he displayed an evident bias against the plaintiff, Ann Mara. He tried to sway the jury to his view, summing up against her. The jury, however, declared for her, and Boothby, in anger at the applause in the court, committed an innocent old man to gaol for 7 days for contempt of court, although he released him later in the day. Public opinion was thoroughly aroused at this conduct of "Jeffries Boothby", and a public meeting of 1500 met to consider the administration of justice in the Supreme Court. The only effect on the judge was to arouse him to greater stubbornness and to sour him. Henceforth he was always looking for insults in any opposition of counsel or a jury. In March he instructed the jury to decide upon the facts only, from which the law of the case would be educed by the court and thereafter, in many cases, he used to put a series of questions to juries on the facts, then deliver judgment on their answers. He had this power, in virtue of section 182 of the Supreme Court Act of 1853, but was much criticised for his exercise of it. Besides this, he would not allow Counsel to comment on the law to the jury, or on anything but the facts.

> "It is now quite clear that the Bar is useless and the Jury-Box impotent. Neither on the learning of the Counsel nor on the fidelity of the Jury can any reliance be placed. The advocate is directed by the Judge as to the way in which he must conduct his case; and the Jury are told not to trouble themselves about giving a verdict but to answer the questions put to them and to leave the rest to His Honour."(17)

These grievances and occasional instances in which Boothby ordered the case to be settled by arbitration led to the fear that the Englishman's ancient right of trial by jury was in danger of being abolished at the judge's discretion. E. C. Gwynne, in consequence, introduced in October, 1857, into the Legislative Council a Bill "to restore to S. A. the full benefit of Trial by Jury". In England, all juries had the right to give general verdicts, he said, both as to facts and as to facts and law combined, and this right had always formed part of the common law of England, nor could any judge legally order a jury to find special facts. Later, when the Bill came before the Assembly, Hanson took an opposing view, stating that the distinction between civil and criminal cases had been overlooked in the other House. The other lawyers, J. T. Bagot, R. B. Andrews and W. Bakewell, were in favour of the Bill without any qualifications, though the latter thought that juries, as an institution, were worn out.

> "It was monstrous, in civil cases, that 12 ignorant, uneducated men, whose talk was of bullocks, should be put in a box to exercise powers of mind which they did not possess."(18)

Due to the deadlocks which occurred in the Supreme Court through Boothby's inability to agree with his confrere, Chief Justice Cooper, a Bill was prepared for the appointment of a third judge. It also envisaged Circuit Courts for country centres, now that there would be sufficient judges to allow of one going on tour. It was a frequent complaint that people in the country, in far-off places, were deterred from seeking justice by the distance they would have to travel to Adelaide. Although a number of members thought the added expense of a third judge unnecessary, and opposed the reduction of juries in country centres to four for civil cases, the Bill passed the Assembly. Hanson's opposition to these two measures seems to have held them up towards the end of the Session and they dropped out of sight. It was hoped, no doubt, that Mr. Justice Boothby would amend his ways. This he failed to do, and a fresh outcry in October, 1858, followed his action in ordering the jury to give a verdict for the defendant in Platt v. Stocks and keeping them locked up for 22 hours without food or drink when they were unable to agree. Strangways reintroduced the Bill for the restoration of Trial by Jury. This time it passed both Houses, as did also the other Bill for a third Judge, for which Barrow moved on Nov.18. One case, it was said, had been tried 4 times and was still unsettled, "through the very

conscientiousness of the judges", as Barrow euphemistically put it. Gwynne, a blunt, honest man of 20 years' standing in the colony, was appointed as the new judge, thus settling two questions raised at various times in the last two years, firstly, whether judges would have to be secured from England, and secondly, whether the ministry would appoint the Attorney-General to a vacancy. On an unsuccessful motion of Torrens in the first session that the Chief Justice should be the one who had possessed his appointment longest, this second possibility had been put forward, to be reprobated by Hanson, then Attorney-General, with every mark of distaste.(19)

An attempt was made by G. C. Hawker, on Sept.14, to halt the Kapunda Railway project in favour of a line through Mintaro, Auburn and Clare, as these, he said, were flourishing districts, and the advance of settlement would follow the valley of the Gilbert towards the Burra, not out beyond Kapunda, where the poor lands fell off to the Murray. They should look to the future, not just build a line to the mines. He pointed to a memorial signed by 600 landowners asking for a consideration of the northern route. His arguments had sound common sense behind them, and they were cogent enough to impel the Assembly to appoint a Select Committee to inquire. The report of the Committee declared in favour of the Kapunda line, although no very impressive reasons were given. It was

decided to make a thorough survey of the rejected route, and it was along the Gilbert, through Riverton, that the line did in fact pass to the Burra in later years.(20)

In a final passage-at-arms with his ministry, in November, Governor MacDonnell demonstrated his resolve to insist on the few remaining powers of a Governor being respected. He had reason to think, from a note of Younghusband, the Chief Secretary, that he intended holding back some documents, for which the Governor had asked, until after the next meeting of the Cabinet. These were in relation to Major O'Halloran's complaint that the ministry had not redeemed their promise to him by voting in favour of military remission certificates in the purchase of land when the subject was before Parliament. MacDonnell understood from Younghusband's note that he intended that compliance with the Governor's constitutional request for the production of certain public documents should be made to depend on the decision of his Ministry. In high dudgeon, the Governor wrote back that he had asked for the production of the documents

> "and I expect to have them - whatever views my Ministry may hold as to the ulterior action most expedient thereon."

Memorials were addressed, he pointed out, this one from Major O'Halloran among them, to the Chief Secretary, even when specially intended for the Governor's information, and he denied the right of the Chief Secretary to

"act as though the Ministry have discretionary power to give or withhold any portion of such correspondence or can determine on what subjects - so long as they are referred to them by the Governor and affect the public interests - they may give or withhold their advice."

"When any appeal is very pointedly made by any of Her Majesty's subjects to the Governor-in-Council, it seems to me that the most politic as well as the most constitutionally correct course is for the Chief Secretary to place before the Governor full information as to every such case together with the views of the ministry thereon, leaving the Governor to decide whether he will formally ask further advice thereon of his Ministry in Council or not."

Younghusband denied any intention of withholding from the Governor the papers concerned, and so the incident passed off. It is worth recalling, however, as a demonstration of the constitutional right of the Governor to be fully informed on all subjects to which he may have to give his approval.(21)

There remains for consideration in this session the legislation that occupied the attention of the Parliament before all else - the Assessment of Stock Bill. This measure had been forecast by Hanson on taking office;(22) he was reminded of it before the end of the 1857 session by Neales, and it was mentioned in the Governor's opening speech in 1858. The interest taken in it is explicable when one remembers that it was the first legislation imposing a direct tax in South Australia. All the revenue previously had come from customs, land sales, or rents of

crown lands paid by the squatters. Now it was proposed to compel these squatters, the ones best able to do so, to contribute an additional sum towards the expenses of Government and the carrying on of public utilities. In all this is evident the need to find a means of financing the expanding field of government action. It reflects the opinion, referred to in the General Remarks at the beginning of this work, that those who had enjoyed better fortune than others should be obliged to contribute, of their superabundance, towards relieving the burdens of the community. The question of an assessment on stock was thus bound up with the parallel ones of direct taxation, free distillation, and the taxing of absentees.

The great advocate of direct taxation in the first Parliament was W. Burford. He moved for a Select Committee on direct taxation on May 27, 1857, but was refused it by 17 to 9. Among the reasons which he put forward in support of a direct tax were the equalization of public burdens and the wider diffusion of wealth. The Customs receipts for the year amounted to £154,000 or 30/- a head. By a direct tax of 3d. per acre, £205,000 could be raised on the land and assessed property.

> "Without touching the Land Fund, they had sufficient to carry on the Government without fettering industry or commerce. The public burden would be borne by large landowners, and it was the only system which would make absentees pay their proportion of that burden. The tax would be paid by the most

> enlightened portion of the community and therefore cheerfully paid. To say that the system he proposed had never been tried was in his mind the strongest reason why it should be tried. The duties raised on wine, tobacco and spirits were £90,349, leaving £68,500 to be collected on other goods. He maintained that the consumers of spirits and tobacco were chiefly among the industrial classes, and consequently they paid more than their fair proportion."(23)

W. Milne added to this that he could see no other way of carrying free distillation except on this principle. It was also the only plan by which the money paid in the Burra shares could be made to contribute to the revenue.

It will be evident from the above reference to the Burra that Milne envisaged direct taxation in a wider sense than did Burford, namely, as extending to all pursuits which were earning large dividends, and not only to the land. The general opinion, reflected in the report of the Select Committee of this year on Taxation, was that the ascertaining of a man's income was not possible with any degree of accuracy, unless in the case of holders of landed property.

Seeing that assessment was clearly on the way, those about to be most affected by it, the squatters, loudly voiced their objections. Before his departure for England, to present the congratulations of the two Houses to the Throne on the marriage of the Princess Royal, John Baker stated,(24) in a public speech, that there had been no improvements, practically speaking, in the North and

there were no expenses of government there, except the support of 8 policemen and the expenditure of £1700 for roads through Horrocks' Pass and Pichi Richi Pass - which helped traders mainly, not the squatters.

Why, then, should the squatters be further taxed? Assessment would have the effect of pushing up the price of meat, and thus it would be the workers who in the long run would suffer. He spoke in glowing terms of the glorious work of the squatters in blazing the trail into unoccupied territory, and much more about this Bill as class-legislation. In general, he said, the taxation paid already by the squatters was spent by the Government in the south. Thus the stock-owners were already taxed more than the people of the settled districts.

Just before bringing in the Assessment of Stock Bill, Hanson presented the Assembly with a Waste Lands Amendment Bill, which was currently regarded as a sop to the squatters, a quid pro quo to induce them to accept the nasty dose quietly. Its main sections were intended to enable the Government to grant annual leases in hundreds without auction, to empower Justices to dispossess persons unlawfully occupying waste lands and to inflict penalties for unauthorized occupancy of waste lands. The opposition to this was led by A. Hay, the acknowledged champion of the farming interest, who objected to annual leases in the hundreds, saying that when a hundred was proclaimed

it was time for the squatters to move further out. Others, more moderate, saw that while there was no pressure for the land to be sold, they might as well be given commonage. Finniss raised the objection that a squatter might place more cattle on his run than the land could bear, to the damage of the purchasers of land in the hundred. It was admitted that people ran cattle on squatters' leases without paying anything for such use. Hawker described how his manager frequently found mobs down along the valley, but declared that he refrained from impounding them. The Government, up to this time, had no power to make regulations on this subject, but now asked for it, to meet contingencies as they arose.(25)

On the second reading of the Assessment of Stock Bill on September 29, Hawker maintained that this impost would be a breach of faith, as altering the terms on which the squatters took their leases. The sums of 10/-, 15/- or £1 per square mile, which they paid, had been fixed in the 1851 valuations and should not be changed. Squatters had no right of pre-emption as in other colonies, and their well-being was greatly exaggerated, since they were liable to fines. Mr. Morris, the Inspector of Sheep, had told him that £500 had been levied in a day for scabby sheep in the South East. There was much satirical laughter in the House while Hawker was speaking, caused by the sad picture of the poor squatters, the vivid likening of this

policy to that which had been the cause of the loss of the American colonies, and such statements as that South Australia was being "dragged in the dirt of the chariot-wheels of Victoria" in imitating its policy of an assessment of stock.

The tax, which was expected to net £21,000 a year, was to be levied at the rate of 2d. for sheep, 1/- for cattle and 2/6d. for horses. After a debate lasting 3 days, the matter was referred to a Select Committee, comprising Dutton, Barrow, Duffield, Glyde, Hawker, Neales and Hallett. This was supposed to be pro-squatter, although Barrow and Glyde were later to distinguish themselves by their support of Goyder's Valuations. Its report, therefore, declaring against the assessment of stock, was not a surprise.(26) The Assembly, apparently not impressed by it, went ahead with the Bill, which passed also the Legislative Council with little opposition. First of all, however, by moves behind the scenes, the Pastoral Association had exacted concessions; so that the Act, in its final form, provided that the holders of leases of 14 years' duration should not be subjected, during the unexpired period of their leases until June 30, 1865, to any further assessment than that contemplated in the Bill before Parliament.(27) The Bill was finally disposed of on December 23, the day before the prorogation, after running for nearly the whole of the session.

The work of this year may be regarded as highly successful. Hanson, enjoying the confidence of the House, tried always to show the logic of the legislation he was proposing, displayed a readiness to fall in with the evident wishes of the majority, as in the amalgamation of the public boards, and even evoked compliments from the "Register" - no great admirer of his - for the alacrity with which his Ministry furnished papers when required. Ill-feeling between the two Houses hardly showed at all, although neither would give way on a Date of Acts Bill, which accordingly lapsed. The main difficulty lay in the question of which Clerk, of the Council or the Assembly, should affix his signature to Bills. The Assembly desired it to be the Clerk of the House in which a Bill originated, but the Council, as the revisionary body, was adamant that its Clerk should certify all Bills. There was a general improvement in administration, in public works, impounding, legal reform, and in the definition of the privileges of Parliament. A district Councils Act made for better arrangements for rating and for division of the districts into wards. Then there were Acts of a general social nature, like those providing for the private execution of criminals, the incorporation of associations, the release of imprisoned debtors and the Matrimonial Causes Act giving a separated wife protection for property

against her husband. Several of these statutes were on the programme of the first session, but it is not surprising that they could not then be disposed of, with such a multiplicity of questions to be cleared up as the inauguration of Responsible Government presented.

Yet a dark cloud had appeared over the horizon. During the winter it became evident that more than usual were unemployed. The winter was always the slack period of the year for agricultural work, but the numbers unable to find work this year were abnormal. At the same time, complaints began to be heard of the difficulty of obtaining credit from the banks. This was due, not only to the banks having no such reserve as the Bank of England to fall back on, but much more to the drain on the colonial banks by absentees. The "Register" of August 4 stated in regard to this drainage:

> "We speak with authority when we say it is affecting our colonial vitality, and that if we are to make this a country worth occupying it must be checked."

Continuing the subject on the 10th, it demanded that the banks increase their reserve of bullion and coin, since they had only £349,740 as the aggregate held. If it were increased, business men would not have to complain of being refused accommodation. Australia should have had ample coin, but it had been drained off in a considerable ratio every year for the last six or seven years since the days

of the gold rushes, without any evidence of such exportation being evident in the Customs returns. An appended table showed the progress of exportation since 1853.

Coin & Bullion held by Adelaide Banks

Year	Bank of S.A.	Bank of Australasia	Union Bank of Australia
1853	759,572	287,954	271,478
1854	649,015	261,445	161,976
1855	542,368	101,637	130,832
1856	265.963	61,051	87,348
1857	215,984	58,040	73,748
1858	182,653	97,847	69,240

Although the decrease was lessening each year, that was small comfort. The "Register" complained further of unfair treatment of some in being refused satisfactory accommodation, while others received it. Mere comparative tables of average accommodation given in S.A. as compared with that given in Victoria and New South Wales, and showing South Australia as getting the best average accommodation, viz., £148/17/- in advances and discounts for every £100 deposited, were not conclusive. It appeared, however, that the local managers had lent to their limit of safety. The fault lay with the London directors, the "absentees" previously mentioned, through whom it came about that only a half of the subscribed capital of the banks trading in S.A. was employed in the colony. Undoubtedly there was another side to the picture and the British capital employed here in the development of the colony should have been taken

also into account. Then, too, the recent depression of the money market in Europe and in the neighbouring colony of Victoria, the fall in the price of wool and the poor harvest of the previous year had all to be considered.

The signs of the times induced an increasing number to doubt the wisdom of continuing the system of free immigration. Was it not absurd, they asked, to be sending away the money of the people to bring fresh workers here, when those already in the colony were unable to obtain employment? The Burra mine owners and directors were always to the fore in pressing for migrants to work their mines, and many took the view that continued free immigration was filling their pockets out of the public purse. Recently-arrived men who were unable to make a living on landing declared that they had been cheated by false promises. Victoria was embarking on a big programme of public works to occupy her large population, while public works were on a comparatively small scale in South Australia. There was always the inducement to those arriving in South Australia, therefore, to continue on to the more attractive prospects in Victoria.

> "To maintain the stream of immigration to this colony merely to swell the waters of that great reservoir towards which all these streams gravitate is wantonly to fling away our resources."

> "The questions to be considered are whether we get anything at all for the funds we devote to the introduction of immigrants (except customers for our

breadstuffs in Victoria), and whether, if we do get anything, it is the best return we could obtain for the amount expended."(28)

It was a difficult matter to check on the number who emigrated to Victoria, as passenger lists did not distinguish between trippers, business men, and those going for good, and indeed, as likely as not the stream was just as plentiful of those travelling in the opposite direction.

In the Assembly, J. M. Solomon presented a petition on September 22 from 329 men out of work praying for employment on public works. The Government were already giving work in the Botanical Gardens at 3/6d. a day, and if too many presented themselves, the overflow were employed on the railway. Public opinion, however, had not yet come to any definite decision, and Milne's motion of September 29 that free immigration from England be discontinued for 6 months was negatived by 20 to 9. The objection, so common among the advocates of large-scale immigration, that many of the present unemployed were unsuitable and should never have been sent here, was freely voiced. All disclaimed any desire to reduce wages by flooding the labour market, and most were of the same opinion as Hart, that they would not be able to implement the motion for 9 months, and the depression would be over by then. A better plan would be to vote money for public works.

A reply to this was a labour meeting on October 7, presided over by the Mayor, which passed resolutions against continuing immigration for 1859. It asked, too, for public works to be commenced immediately.

With the beginning of the harvest, the position eased. The Assembly, nevertheless, reduced the vote for immigration from £20,000 to £10,000 for the coming year.(29) Townsend, Solomon and Milne were in the van of those demanding this, while Hanson was the mouthpiece for the advocates of continued immigration at government expense. It must be remembered that Hanson had been intimately connected with the founders of South Australia. He was one of the intellectuals in that group of radicals who gathered around Durham and Wakefield in the thirties. As such, he was committed to the Wakefield theory of colonisation, in which immigration assisted by the land fund was fundamental. His arguments on this occasion may well serve as a resume of those he continued to advance till his unbending stand drove him from office.

> "The Attorney-General would agree to reduce the sum by one-half, but would strenuously oppose striking it off altogether. The prosperity of South Australia was due to the labour fund. He knew former times and the hon. the Speaker remembered them when there was a great cry of want of employment, and surplus population, and all that as now. These things would always occur periodically in every civilised country on the face of the earth, which was subject to the fluctuations of population seeking employment and capital seeking labour. It

> would be suicidal on the part of the Legislature to stop the stream of immigration entirely, though he could quite understand the propriety under the circumstances of the colony of limiting the amount. It would be at variance with the principles on which the colony was founded, and with the practice which gave it prosperity, to strike out the entire amount, and withhold facilities from those in the colony of contributing to the sum for immigration for the purpose of bringing out their relations, that they might become fellow-settlers here. He had not heard that the immigrants brought out by nomination orders left the colony, but he believed the great number of them were added to our productive power."(30)

There can be no denying the truth of much of what Hanson here said, any more than one can deny the intellectual superiority which he enjoyed over most of those about him. There is always, however, the danger that the doctrinaire theorist may lose sight of the human material amid which his theories are to be exercised, and become unfeeling in his application of them. The happiness of the individuals in a state is of far more consequence than any number of cherished plans, and it is incumbent on the rulers of any society to see when a policy has served its day, and then to modify it. This Hanson would not do, or perhaps could not, as his biographer, H. Brown, declares:-

> "His conception of democracy emphasized the importance of 'for the people' rather than 'by the people'. Local conditions had changed and changed rapidly, and he could not, of course, change with them. Rather, he had commenced, politically at any rate, to crystallize, having ceased to be a radical and only just remaining a liberal; the conservative tendency, characteristic of all men, and especially of those who have fought for and won an ideal, as he had, was beginning to gain strength."(31)

That the depression was not merely temporary was made clear by a meeting of working-men in the Parklands on April 2 of the next year, 1859.(32) Some, it appeared, were earning as little as 3/- and 4/- a day. The purpose of the meeting was to memorialize the Governor upon the reduction of wages by the Government to 4/- a day. A man named Alexander read the memorial, which expressed want of confidence in the Ministry. He then upbraided the working-men for their apathy in not registering as voters, for by their votes they might influence policy.

> "The real battleground on which the labouring man would have to fight for his rights was the registry office; and therefore he said, Register! Register! Register! (Cheers, and 'We will! We will!') He was glad to hear them say so, and he hoped that every working man in the colony would do the same, for then they could get the representation in their own hands, and if those in office refused justice, they could send them about their business, and send in those who would."

Part of the memorial had reference to "the reckless extent to which immigration has been carried out." A deputation was appointed to present the memorial to the Governor.

The meeting received a favourable notice from the "Advertiser". Referring to the men present, it said:-

> "Their labour is their capital, and we honour the working-man who stands up for his rights as a free citizen in a free state."

At the same time it pointed out that the Government was giving men work when it could not be got elsewhere, adding "Half a loaf is better than no bread."(33)

The deputation reported to another meeting in the same place on April 11, telling of the Governor's reply that he could hardly dismiss his Executive at the wish of a meeting of 300 people and that under responsible government and universal franchise they had the remedy in their own hands. Accordingly a fresh resolution was passed that

> "this meeting solemnly pledges itself to support no candidate at the next election for the House of Assembly who will not pledge himself to vote for the entire abolition of immigration."

Another resolution stated the desirability of a Working-Man's Association for the protection of their liberties.(34)

How little effect all this had on the Government is shown by the Governor's opening speech to the Parliament on April 29, 1859, in which no mention occurred of a disposition to reduce immigration below one ship every two months. Hanson likewise stated on May 4 that he believed the prosperity of the colony would decline if free immigration were stopped.

Again Reynolds showed himself as a scourge to the Government. He required plans and specifications before asking the House to assent to a vote of £500 or more for any public building, and received the support of the House. He continued by accusing the Government of dilatoriness in proceeding with public works for the unemployed for which money had been granted. The Commiss-

ioner of Public Works, Blyth, replied that if the Government were to make bricks they must be supplied with the necessary straw, and they could not comply with the motion to draw plans beforehand unless they were given more draughtsmen. Some members, including J. T. Bagot and Macdermott, spoke against the motion requiring plans before the voting of money, and held that the Assembly ought not to usurp the function of the Executive. Peake, supporting the motion, had an excellent illustration of its necessity in the recent report of the Chief Commissioner of Waterworks (since superseded), wherein the tale was told of extensive deviations from the original plans for the Torrens weir and thousands of pounds wasted through its bad design and faulty construction. A resolution, similar in nature to that of the Assembly, was carried a few days later in the Council, but the amount named there was £2,000 and it required that the plans of projected works should be called for and submitted to public competition. The whole value of the resolution was nullified, however, by the addition of the words "so far as is consistent with the public interest". The discussions had the beneficial effect, though, of stirring up the Government service to look ahead and prepare plans during the recess for presentation to Parliament when it met.(35)

Reynolds was not very particular about the tactics he employed to embarrass the Government. On the day before a by-election which Neville Blyth, the brother of one of the ministry, was contesting, he asked for a return to be laid upon the table showing what amount of goods the firm of Blyth brothers had supplied to the Central Road Board and other public bodies from June 8, 1858, to that time. Next day, Neville Blyth was, of course, defeated, the implication being enough to secure that. At the declaration of the poll he complained bitterly of his treatment, but it was too late then.(36) Along with Strangways, another demagogue, Reynolds made repeated efforts to dislodge the Ministry on a vote of censure. On May 18 it was for their delay in prosecuting public works, on May 25 it was because of the Chief Secretary's continued connection with the Harbour Trust, and on May 27 it was for the Ministry's treatment of the explorer Babbage in encouraging him in his painstakingly careful method of progress through the Lake Torrens country and then suddenly recalling him without proper notice. This time the vote of censure was passed by a majority of two. Dutton, the Commissioner of Crown Lands, had conducted all the Babbage correspondence, but the principles of constitutional government required all the members of the cabinet to stand together if the policy of one was attacked, and

Hanson declared that he would resign if the vote was adverse He did so, and the Governor sent for Strangways, who found that he could not get together a ministry. Hanson went back into power, with Dutton omitted and J. B. Neales in his place. Reynolds and the opposition had to be content with sarcastic references to the indispensability of Hanson and his expectations of a judgeship and to Neales' sudden change of heart, after so recently lashing the Government on more than one occasion.

In the discussion on the Estimates, Glyde moved that voting on each separate item be dispensed with and the total sum needed for each department be voted. Retrenchment was all the talk, and he held that if the House reduced the whole grant for each department it should be left to the Government to find the means of reducing individual items to suit. The House would not agree to this, for which action they were commended by the "Register" -

> "To the Assembly all praise is due for the care bestowed by the members in the supervision of the public expenditure - a care manifested alike in the determination to have every branch of that expenditure brought under their notice, in its details, and in the habit of rejecting the smallest item which could be shown to be extravagant. If in former sessions this House had struggled successfully for the right of exclusive control over the public purse in opposition to the Upper House, in this session it gained much of the reality of that control by wresting it from the Executive Government." (37)

Actually, nothing was done towards a reduction of salaries in the public service. Mildred, Townsend and others wanted a 15% reduction all round on incomes of Government servants over £200 a year. This was rightly seen to be too sweeping, besides being a victimisation of this class without any compensating sacrifice from other parts of the community.

In the consideration of the Estimates, Townsend again moved, as he had done earlier in the session, for a discontinuance of immigration for a period. The well-worn arguments were repeated by both sides. Townsend reiterated his accusation of a desire on the part of employers to reduce wages to a minimum rate by bringing in immigrants, Hawker maintained that there was not a surplus of labour in the country districts, and Hanson delivered himself of several surprising sophistries, such as that when immigration was the most restricted, labour was the cheapest. The vote of £20,000 was carried by a majority of 8.(38) A summing-up of the voting showed that there was no clear division between city and country members on the question.

After this, the workers began to meet frequently. At Gawler, on June 20, they heard of families who "had now to live on tea and bread, and were oftentimes dependent on their neighbours for food to support existence". Speakers fiercely denied the calumnies that the unemployed were unsuitable for the colony, as nearly all of them were ready

to turn their hand to anything that offered a living. Most workmen, in fact, followed other than their original callings.(39) A monster meeting in the vacant space adjoining the Napoleon Bonaparte Hotel in King William Street was attended by 1000. Here Petheridge inaugurated the Political Association which was to wield so much influence at the next elections. It was to be

> "a political debating club, which would meet twice a week, and when members were required, they would elect fitting members from among themselves (Cheers)."

At the beginning of July, news reached Adelaide of the outbreak of war in Europe, with Austria opposed to France and Sardinia. In alarm, both Houses resolved on an address to the Governor praying that steps be taken for organizing an armed force. There was a store of Enfield rifles on hand, and it was decided to revive the Volunteer Force which had been enrolled during the Crimean War, and to issue its members with these arms. Among the enthusiasts for a Volunteer force was Torrens, who called a meeting for July 13 at the Napoleon Bonaparte Hotel for the formation of a rifle corps. What was his surprise, after a moving oration, to find that the meeting, by a show of hands, negatived the desired corps! The reason appeared in time - the workers were angry with the Government and would not respond until public works were pushed forward. The Governor, too, came in for criticism for

his zeal in connection with the Crimean War Fund, the Nightingale Fund, the Indian Mutiny Fund, and his apparent indifference to local suffering, which was in contrast with the practical sympathy shown by Bishop Short and his family.(41) A deputation from the workers, consisting of Messrs. Murphy, Macdonald and Petheridge, received but indifferent encouragement from ~~him~~ the Governor, being told to rely on "their own stout hands and hearts,"(42) and not look so much to the Government for aid.

The Political Association gathered strength. On July 28, a committee was appointed comprising P. B. Coglin as Treasurer and Petheridge as Secretary pro tem. A branch at East Torrens was formed with Daniel Fisher as Chairman. Both Fisher and Coglin were later to represent the people in Parliament. Present at the inauguration of the East Torrens branch was John Clark, a Scottish tailor, President of the central Association and soon to be so powerful that it was said he had the Association "in his pocket". North Adelaide formed its branch, as did Port Adelaide.(43) At the West Terrace Hotel, Weymouth Street, the Association defined its aims in a memorable statement -

> "We believe that the time has arrived when immigration should cease at the public expense. We believe that property should never be considered in comparison with manhood, that the happiness and well-being of the mass are paramount to the aggrandizement of the few. We believe that all citizens should have

> equal political rights. We believe that members of the Legislative Assembly should be paid. We believe all land alienated from the crown and unimproved should be taxed. We believe in Law Reform. We believe the Press should be free and unshackled."

At this meeting, Clark discussed, among other things, land policy, declaring for selection with deferred payments, although he would compel settlers to fence and improve the land.(44) This was the time of the most violent scenes of the land agitation in Victoria, when the People's Convention, with a newspaper of its own, was practically a Parliament outside the Legislature and the mob forced their way on one occasion, into the Chamber while Parliament was sitting. The leaders of the Political Association here were awake to the advantage of incorporating land reform in their programme, and this explains the strength that the Association attained in country districts such as Clare, where there were numerous small holders and others anxious to obtain land. The Association also welcomed those who would abolish the ad valorem customs duties. At the formation of a branch at Norwood, on November 3, MacDonald told his audience that there were now 600 on the Adelaide roll of the Association. A monster meeting on November 25 revealed that there were 12 branches and thousands of members. Reynolds made his appearance here, apparently seeing the trend of affairs, and Townsend also.(45)

Probably the most useful legislation of the session of 1859 was the consolidation of some branches of the law. In this, the hand of Hanson was evident, impatient as he was with outworn forms. Not that the subject was new. In the session of 1857, John Baker offered to take on himself the expense of the work involved in consolidating the scattered statutes. The South Australian legislation of 1859 closely resembled that of 1856 in England, giving judges and magistrates a ready means of reference to the punishments attached to particular crimes.(46) The penalties for many offences were also lessened in accordance with the more humane temper of the age.

At the end of the session, on August 24, Hay made a move to prevent the appointment of any member of Parliament to a place of profit under the Crown until at least one session after his resignation. This was evidently aimed at Peake and Macdermott, who were considered to have sold out their constituents to the Government over the immigration question, on the promise of Government posts at the end of the session. Peake's withdrawal from active opposition was most marked, and he did, indeed, receive the appointment of Manager of Railways before the end of the year.(47) Such an embargo as Hay desired was in operation in Victoria, and many felt that it was necessary to prevent the government from buying off a troublesome

opponent. A majority of the House considered, however, that it was too great a check on the liberty of action of the Executive, and were able to refer to the appointments of Torrens and Gwynne as having been clearly an advancement of the public good, whatever might be thought about the present case.

In the Volunteer movement, appointment of officers was henceforth to be by the Government, in the interests of efficiency. Patriotic doggerel apart, it does not appear that there was great enthusiasm at first for joining the colours. Interested spectators watched the firing at the butts in the South Parklands, but the 10 companies numbered only about 300 men in August and 400 in September. With the new year, and the proclamation of the Militia Act, there was a rush to enrol in the Volunteers, to escape service in the militia, which would have been much more onerous. The Governor was able to report to the Secretary of State in March, 1860, that 2000 had enrolled, and further expansion had been halted by the number of Enfield rifles available. The policy of the British Government was at this time to supply artillery and extra military stores to the self-governing colonies only if they paid for them, and any companies of regular soldiers, above the companies already stationed there, could only be sent at colonial expense. Some friction arose between Major Nelson, the officer in

charge of the regular troops, and the staff of the volunteers, which was fortunately ended by the Major's departure in April 1860. It resulted in an intimation from the Home Government that the Volunteers were to be reviewed by the senior officer commanding the regulars in the colony. Colonial Governments might set up their own forces for local defence and staff them, but, in case of war, they would be merged in the general scheme of Imperial defence, which required, of course, to be under the control of the War Office. The Admiralty did not favour investment by the colonies in navies of their own, realizing that a concentrated squadron of ships of the Royal Navy could be of far more use than the small and scattered flotillas that the limited means of the colonies could provide. Nor was any contribution as yet asked towards the support of the Navy.(43) On the outbreak of war in Europe in 1859, Australia was made a Naval Station under a Commodore, separate from the East India and China Station.

In the new year, the Political Association set to work in earnest to prepare for the elections. There was talk even of a general convention of representatives from all its branches. Clark travelled early in January to the Burra and Clare, stopping on his return to lecture in Gawler. Here his talk was mainly of the payment of members.

> "Numbers of the best-informed and most intellectual and upright men in the country were left outside the walls of the Parliament House because, their means being limited, they could not spend money as well as time upon the public service."(49)

He dismissed the cry that payment of members was un-English, by saying that they had

> "a constitution which was un-English, and he trusted that they would have many things un-English as the colony progressed, because improvements upon that unfortunate country."

Clark's oratory was not polished, but he is said to have had "a fierce, declamatory style."(50)

All those with grievances were welcomed to the ranks of the Association, those annoyed that tobacco had been taxed an extra 4d. a lb. recently, small farmers smarting under the Waste Lands Amendment Act of 1858 - against which Hay had twice protested in vain in the last session,(51) and by which a landowner was exposed to fines of £5 for the first offence, £10 for the second, etc., if his cattle strayed on to a squatter's land, while the squatter was charged only 4d. a head if his animals were found on a farmer's land and impounded by him, - and the increasing number of those who found themselves unable to buy land because of the combinations of capital against them in the auction-room. The Victorian and American land legislation was studied at their meetings. It is notable that the aims of the Association appealed also to

a number in the higher ranks of society, particularly in country centres like Clare and Gawler. In the latter place, the "Humbug Society", a brilliant coteric, nominated their president, E. L. Grundy, as member for the district of Barossa. In characteristic style, Grundy said he would need to be "reimbursed", not paid, as he did not favour payment of members. Several gentlemen had offered to contribute £50 to his maintenance. He appreciated these offers,

> "and he assured those present that if he saw many more flying about he should not be long in placing himself at their disposal."(52)

From being a movement that employees feared to join, the Association became an organization to be respected. Conservatives were frightened, and the "Register" and the "Thursday Review" abused it repeatedly. The "Advertiser" was more moderate. E. McEllister was made to realise that he would have no chance of being returned for the Burra and Clare unless he would pledge himself to the aims of the Association, and not being prepared to do so, he was obliged to stand for Yatala instead. Hanson refused still to compromise, whether through principle or disdain it is hard to say. Reynolds announced his policy of reducing expenses in government departments and suspending immigration. He favoured direct taxation and free distillation, as also railway extension, though by private

companies, rather than the Government, for efficiency's sake. He opposed amendment of the constitution, although he would like to see the Attorney-Generalship made a non-political office.(53)

The Association named the candidates of its choice in the city, and although Osborne, its new President, was not returned, the six successful candidates, T. Reynolds, M. Moorhouse, P. Santo, W. Bakewell, R. D. Hanson and W. Parkin were placed in the same order as the Association had directed its members to vote. Finniss and Dutton were defeated and had to betake themselves to country electorates, in which the polling was held on a later date. All three of the new members for the Burra and Clare were nominees of the Association. A leader of the "Advertiser" of March 28 is a reflex of the consternation felt by some of the Old Guard at the result of the elections, and the satisfaction of others in the community.

> "Does any one suppose that Messrs. Moorhouse, Bakewell, Parkin, Magarey, Morphett, Sutherland, Blyth, Peacock and men of their stamp will speak or vote so as to damage our credit or shake the stability of our finance? But there's the Burra and Clare, with its three Radicals; and Barossa with its to-be-paid representative; and Port Adelaide, which some people affect to believe has irredeemably disgraced itself! All fudge and absurdity. We have thrown open the doors of Parliament to candidates of all classes, and why should we be so appalled if 2 or 3 persons of a class not ordinarily admitted have now forced their way into that Temple of Wisdom? The present Parliament will be quite as loyal as the last was, quite as careful of the credit of the colony as

the last was. There will not be more place-hunters in this Parliament than there were in the last."

Shaken out of their complacency, the Government issued in April new regulations for Waste Lands and ordered the discontinuance of embarkation orders to immigrants, no doubt hoping to stave off the storm when Parliament met. Twice as much commonage as formerly was to be extended to landowners in the hundreds, the depasturage of sheep was to be kept separate from that of cattle, and the unappropriated portions of hundreds might be leased to anyone, thus giving the farmer further help to run dairy cattle. At the same time, 24 hundreds were proclaimed along the Murray extending back on either side and offering attractive opportunities to farmers.(54) It was all in vain. On the day that Parliament met, Reynolds tabled his motion of censure, and Hanson left office. Apart from a space of less than two months, he had been at the head of affairs since the declaration of responsible government, 3½ years before.

The especial interest of the Political Association lies in its being the harbinger of the Labour Party in its concern for the workers, its restriction of weapons to such as were constitutional, its use of the ballot, and its perception that payment of members was essential before it could secure satisfactory representation. As yet

the workers were obliged to depend on representatives not of their own class, liberal-minded sympathisers like Dr. Nott of Gawler, Grundy and Hay, or opportunists like Reynolds, and over these they had no real control. Prominent among the demands of the Association it is interesting to note payment of members, the last of the demands of the Chartists left unsatisfied, if we except annual Parliaments, which were long since seen to be impracticable. Yet the Association possessed no real cohesion. It continued to meet until the middle of 1862, but prosperity drained it of strength. The workers, assured of a heavy demand for their labour when Moonta and Wallaroo began to boom in 1861, lost interest in politics. The third Parliament, elected at the end of 1862, had more of the quality of a capitalists' mouthpiece than any before. Even in April, 1860, good times were so far returning that the workmen on the weir in the Torrens gorge struck for 12/- a day, not being satisfied with the 11/- a day that they were receiving.(55) It was a sign that the worst of the depression was over.

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48. Ibid. July 6, 8, 13, 14, 19, 21. Aug. 2, 3, 5, 6, 19. Sept. 3, 6. Oct. 17, 29. Dec. 22, 1859; "Register", Jan. 26, 28. Feb. 11, 14. March 5, 7, 9, 15. April 5, 24, 25; MacDonnell to S. of S. 1859 - Confidential July 18. No. 337, Aug. 17. No. 345, Aug.19, 1860. No. 365 Jan. 17. No. 375 Feb.18. No.377 March 14. No.386, April 18; S. of S. to MacDonnell, 1859 - No.3, Jan. 27. No.15, May 5. No.21, Oct.11. Circulars May 6, May 17, July 14; 1860 - Jan. 22, June 20.

49. "Register", 1860. Jan. 3, 4, 12, 13.

50. "The Representative Men of S.A." G. E. Loyau. P.78.

51. S.A.P.D. 1859. June 8. Aug. 17. "Register" May 6.

52. "Advertiser". Feb. 21, 1860. Loyau. P.119. "Register", 1860. Jan. 18. Feb. 7, 8, 10, 16, 20, 21, 24, 25.

53. "Register". March 2, 1860.

54. Ibid. April 20.

55. Ibid. March 9, 24. April 4, 17. May 2, 4, Sept. 5, 1860; Feb. 20, March 5, April 2, May 3, 1862; "Advertiser", March 23, Nov. 26, Nov. 28, 1861.

CHAPTER 4.

THE FIRST ADDRESSES FOR THE REMOVAL OF MR. JUSTICE BOOTHBY (May 9, 1860 TO June, 1862)

The Ministry which Reynolds announced, destined to hold office for just over a year, was as follows:-

Chief Secretary - G.M.Waterhouse (until Feb.4, 1861, when he resigned through illness, and was succeeded by J. Morphett).

Attorney-General - H.B.T.Strangways.

Treasurer - T. Reynolds.

Commissioner of Crown Lands - J. T. Bagot.

Commissioner or Public Works - A. Hay.

The "Register" hoped that Strangways would prove

> "as judicious and tractable in official harness as he is impetuous and erratic in opposition."(1)

On May 15, Reynolds outlined his policy, which was much as he had stated it to the electors. First there would be retrenchment in the public service, and whatever could be economised there would be devoted to public works. At the Port he proposed amalgamating the Harbour Trust, Trinity Board and Marine Board, as well as abolishing harbour dues and ad valorem duties. In regard to land policy, the best plan would be to wait a little and observe the

effect of the Victorian experiments, about which opinion differed greatly. Not to be behindhand in sacrifices for the general good, the Ministry intended introducing a Bill for the equalizing of Minister's salaries, and to reduce the rate of salary hitherto enjoyed by them. Not only would they place no sum on the Estimates for immigration - they hoped to countermand the £15,000 which their predecessors had remitted to England, not long before losing office. Completion of the railways, waterworks, roads and telegraphs under construction would be the means adopted for employing the surplus labour in the colony.

Next day, the resolution declaring the inexpediency of appointing a member of Parliament to office within 12 months of his resignation was reintroduced by Hay. It was lost by 19 to 15, partly because it struck at the principle of responsible government, partly because it would require to be followed up by a Bill for it to have any effect. The offenders Peake and Macdermott, however, were displaced by the Executive, and sent off to hold magistracies in the country, the one at Clarendon, the other at the Burra. The new Manager of the Railways was C.S.Hare, who was thus solaced for the loss of his post as Comptroller of Convicts, this latter position being declared a sinecure and abolished. The pruning-knife was soon applied in the public service generally, heads of

departments being issued with instructions to that end. Reductions in the police were to be £5,000 a year, by restricting the numbers, lessening the pay of privates and cutting down travelling expenses. It was hoped to save £2,000 a year in the Customs Department and to reduce teachers' stipends also by £2,000.(2) The last announcement aroused the Preceptors' Association, which very justly pointed to the inevitable rebound on the social well-being of the community as a result of depressing the teaching profession.(3) Enemies of the Ministry asked also if, in their zeal for retrenchment and amalgamation, they were

> "going to amalgamate the Police Department with the Lunatic Asylum, and entrust the preservation of public order to the gentlemen who are provided with food, lodgings and medical attention at the public expense?"(4)

The Assembly reduced the salaries of the President of the Legislative Council and the Speaker of the Assembly from £650 to £500 each, and that of the Commissioner of Police from £600 to £500. The Department of the Emigration Agent was merged in that of the Agent-General.(5) As compensation, a Superannuation Act was passed,(6) allowing to retiring public servants one month's salary for every year that they had been in the service. All previous attempts to establish a retiring fund had proved abortive. The 1854 measure, setting aside a fund of £10,000, had to be abandoned after a few years, owing to the demands on

it from those retiring and the refusal of younger members to contribute to it. Bills introduced in 1857 and 1858 had failed, not that they differed widely from this latest one, but through the opposition, widely spread, to the establishment of government pensions, which were associated in the minds of many with grants in the old land "for disgraceful services to royalty." Expectations of a retiring allowance, it was claimed, would attract to the service of the state such as were thriftless or lacked independence. The friends of superannuation replied that some security was needful if they were going to have a worthwhile public service, in which the rewards could never be large enough to allow a man to make adequate provision out of his salary for old age.(7)

The bill for equalising ministers' salaries passed the Assembly with practically no opposition, but in the Council it was passed by only one vote. The Law Officers, Strangways and Wearing, were of the opinion that such a bill, altering as it did the schedules appended to the Constitution Act, required to be passed by "an absolute majority of the whole members of the Legislative Council and of the House of Assembly respectively", like any other bill altering the Constitution, according to section 34 of the Constitution Act. It was therefore withdrawn, the ministry stating at the same time that they intended

voluntarily to refund all of their salaries in excess of £800 a year. The Governor, in writing home, declared that he would have reserved the bill had it passed, in spite of the general expectation that he ought to have given the Queen's assent thereto as a matter of course.(8) The Colonial Office, however, were of the opinion that in such matters of purely domestic concern "interference on the part of the Home Government would be peculiarly out of place," and he might have assented to it unless the S. A. Law Officers advised otherwise. In general, the criterion for reservation for colonial governors was to be that they need reserve only if the Law Officers of the time thought that they should do so, although the governors still had a discretionary power.(9)

In a different class was the attempt to reduce the salary of future Governors from £4,000 annually to £3,000. This measure was popular in the Assembly, where it was thought that the Governor's salary had been set at too high a figure in the first flush of tendering for self-government, but it was rejected unanimously by the Legislative Council. Hanson expressed the view that, as this was a contract between the Crown and the colony, it would have been more seemly to make a representation first of all to the Home Government. The Governor himself complained to Newcastle that if the colony could offer £4,000

in 1855 with a population of 86,000, it should be able to continue it now with 120,000. There was no question about the necessity for reserving such a bill as this, had it passed.(10)

As a question of privilege, J. Morphett produced in the Assembly on July 31 a letter he had received containing a request for contributions towards the support of Grundy, the member for Barossa. A committee, with Dr. G. Nott as chairman, was running the fund, from which they hoped to raise at least £5 a week. The fund was to be held by the committee and doled out to Grundy as long as he satisfied the electors of Barossa. Morphett's contention was that Grundy's vote could not be disinterested in these circumstances and that the honour of the House might be concerned in such control over one of its members Townsend retorted that it was no offence in a man to be poor, and the majority in the Assembly considered that it was bad taste on Morphett's part to have initiated the discussion at all. The various opinions expressed are most interesting to a present-day reader, as they illustrate the light in which the men of those days regarded the payment of members. In the "Register" appeared from time to time the satirical "Little lessons for little politicians." In relation to this incident, it ran on Sept. 1 -

"One day the whole lot made a fierce at - tack on a poor boy called Grun - dy, be - cause his school - ing was paid for by the pa - rish ..... And they were so spite - ful that they want - ed him turned out of the school, and none but rich boys ad - mit - ted for the fu - ture."

A cardinal point in Reynolds' policy was the repeal of the ad valorem duties. This system of levying duties had been instituted in 1854, and had never been adopted by Victoria or New South Wales. The popular party considered that it bore too heavily on the poor. Townsend instanced clothing in illustration of the claim that these duties were not paid equally by all classes according to their means. Everything the working-man wore, from his boots to his hat, was an article on which duty had been paid. Therefore, the removal of these duties would benefit him. Such things as tobacco and spirits were not "almost a necessity of life", as a previous speaker had maintained, and might bear a higher duty. The opposition held that the greater a man's expenditure, the greater would be the duty he paid, and that, therefore, the ad valorem duties adapted themselves to the means of all. The subject had an airing on May 22, when the House gave leave for the repeal of the duties. From 108 enumerated articles, Reynolds proposed to reduce the number to 14 or 15. This was desirable for simplicity's sake, and to help the Murray trade, as many orders were going to other colonies which could have been executed

here but for the ad valorem duties which amounted to 6% against the trader of South Australia and in favour of the Victorian trader. The practice of using false invoices would be stopped too. It was well known, he said, that 3 invoices were sent out with goods to this colony, one with which to pass through the Customs, one by which to sell and one genuine. Thus was the revenue defrauded. The adoption of fixed duties on all goods would stop this immoral custom. He estimated a loss to the revenue of about £40,000 to £50,000 by the new arrangement. The reduction of £20,000 expenditure in the Government service would neutralize some of that, and the rest would be raised by additional duties on the limited number of enumerated articles, e.g. 10/- a gallon on spirits, as in the other colonies. Tobacco would be raised from 1/4 to 2/- a lb also. No extra duty was to be placed on colonial-made spirits, thus aiding the distillation industry indirectly.(11)

During discussion in the House,(12) the interesting question was mooted as to whether S.A. had power to impose a duty on spirits different from that included in the recent treaty between France and England. The Attorney-General said the Government had no official knowledge of such a treaty and that there was no reason whatever for supposing that if there was such a treaty, that it placed any limit on colonial legislatures. Customs

Bills were reserved for the Queen's assent, but a Circular of Dec. 12, 1857, from Downing Street, made it plain that the Home Government would leave colonial governments to frame their own tariffs unless some extra-territorial principle intervened. Later on, the matter was to be definitely settled by the Act 29 & 30 Vict. c. 74, passed on August 6, 1866, by which the Imperial Parliament gave legal recognition to this right of the colonies and dispensed with the need for reserving in future.

Dutton declared that the revised Customs Act was no fulfilment of the Treasurer's election promises. He quoted him as saying that direct taxation was a fine thing, not only in theory, but in practice. Where now was his promised abolition of the Customs? Not that Dutton favoured any system of direct taxation - he merely saw an opportunity of embarrassing the ministry. The Government, however, was so strong in the House that it carried the schedule of duties as a whole, without discussion line by line.

A further means of raising revenue was hit on at this time, and that was a dog tax. Sheepowners were losing up to £50 worth of sheep each per year and people were suffering attacks from the number of stray animals. The Dog Act of 1852 was scarcely of any use beyond Adelaide, where policemen on duty were obliged to destroy all straying

dogs. Now a tax of 10/- was imposed on all dogs, and such as were not registered were to be destroyed.(13).

It was hoped that the Marine Board Bill would bolster the trade of the colony. This, apart from amalgamating the various Boards at the Port, finally abolished the harbour and light dues, the subjects of the celebrated Tonnage Dues Repeal Bill of 1857. The 6d. a ton charged previously on shipping amounted to only about 1/4 of the interest on the £100,000 which had been borrowed for the deepening of the harbour. At the same time, a ship of 500 tons would here pay in various dues up to £50, while in Sydney it would not have to pay more than £20. With the reduction, it would be £24/15/- here, still more than Sydney, but the difference would not be enough to frighten off ships from our ports. In proof of the injurious effects of the dues, Reynolds stated -

> "Of the wool shipped to England from this colony in 1857, not more than 5% went by way of Melbourne, while in 1859 more than 10% of the wool was sent to Melbourne for shipment. ..... Returns showed that the copper ore shipped from Port Adelaide to Great Britain in 1857 was 1214 tons, while that shipped to Victoria amounted to 5158 tons or more than 400%. In 1859, the copper ore shipped to England amounted to 653 tons, while that forwarded to Victoria amounted to 5211 tons or about 800% more.(14)

Concerning amalgamation, he added -

> "they proposed amalgamating the Trinity Board, the Local Marine Board, and the Harbour Trust. The fees received by all boards should be in proportion with the amount of work performed. The funds

> received by one of these Boards was something like £500, and the whole of the work was in reality performed by a gentleman with one arm - he might say, very efficiently performed, too. The funds of the Board were derived from poor seamen and how were they disposed of? Why, so much went in the shape of fees to the gentlemen constituting the Board, then a Secretary received £100 a year, and there was £200 for a shipping master, whose office was a perfect sinecure, and who was comparatively doing nothing, and £150 to an assistant shipping master. It was now proposed to put all these Boards into one, and to make them responsible to the Government."

Whatever were Reynolds' faults, he was a salutary influence in the organization of South Australia's public service. His impatience with inefficiency showed time after time, and his grasp of details made him the very man to pull the depressed colony through its period of crisis. He achieved what had seemed almost impossible up to that time, a bill to define the Main Roads of the province. Perhaps, rather, we should give the credit to the strength of the ministry collectively. The settlement of this perennial problem was demanded before the Central Road Board could be sure where to spend the money at its disposal. A bill to define the main roads was brought in and referred to a Select Committee at its second reading. All the time that the committee was sitting, petitions poured in on it for consideration of all the roads of any importance. Its report was somewhat modified in the final form of the bill, some concessions having to be

made to local influences.(15) A serious blemish, in the eyes of northern residents, was the omission of the North Road, which had for so long been the chief artery of the state. It was deleted from the list because it ran parallel to the railway. Along it came long strings of heavy waggons laden with goods for Clare or Kapunda, and the incessant rattle of German wagons with produce from Barossa was witness of the extensive use made of it.(16) No provision was made for its upkeep or that of other roads now omitted,. An exception was made for the Port Road, for which £5,000 was granted. Residents along the latter had petitioned for some consideration from the Legislature, being satisfied even to countenance the erection of toll-gates, so long as it was made passable.(17) Hence Act No. 10 of the session authorized the levying of tolls on the Port Road. Not for some years was the Act put into force, and then it aroused so much opposition that the toll system was soon abandoned.

The end of the session saw half of the Government's promises carried out - "a really wonderful achievement", the Register called it.

Meanwhile, important constitutional developments involving the Real Property Act were taking place, and we must retrace our steps a little, as the decisions springing from the events of that time were to have repercussions on the whole of the Empire.

In March, April and May, 1860, great interest was taken in a case in the Supreme Court affecting the Real Property Act. As the judgments delivered showed plainly the antipathy of the judges thereto, resentment was aroused, and the stage was set for an outburst of popular feeling in the next year. Already in 1859, Torrens had been compelled by a judgment of the Supreme Court to register under the old system, and not under the provisions of the Real Property Act, a land grant of a closed road, the court holding that the alienation was not from the Crown - in which case it would have been amenable to the Real Property Act - but from the Roads Commissioners.(18) This, surely, was a shameful quibble, indicative of so much that was to follow. The case which came on in 1860 was that of Hutchinson v. Leeworthy, and involved a land grant of 56 acres, which had been brought under the Real Property Act by Leeworthy. Through the surveyors' error, 10 acres of this really belonged to Hutchinson, who, to prove his case, applied to the Lands Titles Office to inspect the title deeds of Leeworthy's land grant. Torrens refused to produce the documents, and Hutchinson applied successfully to the Supreme Court to compel him to do so. The decision struck at section 39 of the Real Property Act, which declared that a certificate of title, of the kind that Leeworthy held, should absolutely vest the estate

in the manner described thereon. Thus it appeared that one's title might, after all, be insecure, and all the former tedious searchings through title-deeds be required again. Hence the interest in the next stage of the proceedings, when Hutchinson claimed his land. J. H. Fisher, the bitterest opponent of the Real Property Act, who had issued a book in 1858 to show that the Act was invalid and repugnant to English law, appeared for the plaintiff, and Hanson, now in favour of the Act, for the defendant. The Full Court of 3 judges unanimously declared for the plaintiff, not on the ground of the invalidity or repugnancy of the Real Property Act, but on the evidence of the title-deeds. Torrens maintained that the judgment had not weakened the Act, but opinion generally differed.(19) What was required was a revised Act to provide for lands set aside for roads and to place indefeasibility of title

> "as far as words can do so beyond cavil or doubt by declaring that a Certificate of Title shall be conclusive evidence of the land in question having been duly brought under the Act and shall not be impeached on the plea of informality and shall be received in all Courts of Justice as conclusive evidence of the particulars therein set forth."(20)

An Act of the kind was passed during the Session, though some, like John Baker, thought that a Commission ought first of all to be appointed to give the system a thorough overhaul,(21) as objections of repugnancy and ultra vires were still being made against the Act. Forster pointed

out that the fact of the Home Government disallowing a portion of the Insolvency Act a few years before, on account of its repugnancy to English law, indicated that a similar defect would have been noticed had it existed in this measure. His reasoning looked plausible enough, but it was to be upset in the following year by the decision of the English law officers that an Electoral Act of as far back as 1855, although assented to here - improperly as it turned out - by the Governor and left to its operation by the British authorities, was in reality invalid owing to the Governor's being obliged to reserve Bills touching on the Constitution.

The later discussions on repugnancy never progressed far beyond the principles that were expressed at this time so clearly by Hanson. To Fisher's assertions in Hutchinson v. Leeworthy of repugnancy in the Real Property Act, he replied that it was only when colonial legislatures contravened fundamental principles of English law that their actions became repugnant, when they tried to introduce

> "some such thing as a prohibition of the free exercise of the Christian religion, or if any person would hang another without a trial by jury except under martial law. It would not be repugnant to English law to do away with Trial by Jury in criminal cases except in trials for treason; in all minor matters it would be a question for the Legislature to consider and decide according to expediency."(22)

Historically, it appears that the provision in colonial constitutions forbidding legislation repugnant to the law of England goes back to the early days of the American colonies. It was first applied in Australia when a nominee Council was given to New South Wales in 1823. The Governor, thereafter, was not allowed to introduce legislation until it had been certified by the Chief Justice that it was not repugnant to the laws of England. On these grounds Chief Justice Forbes vetoed Darling's attempt to force newspapers to be licensed. If any former Act of South Australia could have been open to the accusation of repugnancy, surely it was that of 1852 abolishing grand juries. "Repugnancy" had been the reason given for a disallowance of a similar Act when passed in 1842; yet the Colonial Office allowed the 1852 Act to go through ten years later. They permitted also the introduction of the ballot, the admission of Jews to Parliament, and other like concessions which were not in practice in England at the time. As it was said,

> "the Queen of England has aided and abetted our disloyalty",

and every department of South Australia's legislative proceedings was open to the charge of repugnancy in some way or other. Many held, when pressed for an opinion, that "repugnant" meant, from its Latin derivation, actual "hostility" to English law, and so it extended to Acts only which were treasonable.(23)

In Hutchinson v. Leeworthy, Mr. Justice Boothby, although claiming for the Supreme Court the power to enquire into the validity of local legislation, did not declare the Real Property Act repugnant, since, according to his view, it did not at that time refuse to the Supreme Court the power of revising the decisions of the Lands Titles Commissioners. Its new form, where no appeal was allowed from their decision on ownership of land, was a throwing down of the gauntlet to him, and he did not hesitate to pick it up. At the end of 1860, the case of Payne v. Dench, one of the most important cases ever decided in the Supreme Court, according to Hague,(24) hinged on the defence of a purchaser who failed to complete his contract to buy, on the plea that the Certificate of Title tendered by the plaintiff was not such a sufficient title to the land as he was bound to accept. The three judges gave unanimous judgment for him, saying that the Certificate of Title given by the Registry Office was ineffective. It could not prevent the Supreme Court from enquiring into the title to land. In June of the following year, 1861, Mr. Justice Boothby went further. Giving judgment in McEllister v. Fenn, he held that the latest Real Property Act embraced now matters "of an extraordinary nature and importance, whereby the rights and property of our subjects not residing in the colony may be

prejudiced,"[25] and, therefore, should have been reserved, according to the Governor's Instructions, for the Royal Assent, and not having been so, was invalid. The other two judges were not prepared to go as far as this, and were silent on the point.[26] Another reason advanced by Boothby for its invalidity was that no copy of the Act had been deposited at the Supreme Court, as an Imperial Act of the reign of George IV had directed to be done with all colonial Acts. A sufficient reply to Boothby was that which MacDonnell mentioned in a despatch to the Secretary of State,[27] namely, that the Supreme Court had no means of knowing what the Governor's Instructions were, as they had not to be communicated to Parliament, but only to the Executive Council, and it was to the Governor's Instructions that Boothby was pointing for proof of his contention that the Act should have been reserved. So long as an "infinitesimally small discretion" was allowed to the Governor to assent to a Bill, no colonial court could disallow it or criticize his actions. This opinion was supported by the British Law Officers, and later, put into statutory form by the Colonial Laws Validity Act of 1865.[28].

In Liebelt v. Hunt, on June 13, Boothby outraged the province by stating that the South Australian Parliament could not pass a law to override the common law

of England. As the common law of England was unwritten, one can understand the Advertiser's stigma of this dictum as "a most monstrous and extraordinary proposition".(29) South Australia - as other colonial possessions - understood itself to have the right to change even the statute law of England if local conditions warranted it, so long as the statute did not extend expressly to the colonies.

> "Would the British Parliament care one whit for common law maxims or usages, if those usages were antiquated and inconvenient? Is it the Queen's wish to restrict our liberties? thus to mock us with the semblance of free institutions, whilst at the same time subjecting us to hopeless political bondage?"(30)

It will be remembered that the three judges were unanimous in their decision in Payne v. Dench. The supporters of the Real Property Act immediately spoke of taking the case to the Court of Appeals, which had existed since the foundation of the province. It consisted of the Governor and his Executive Council, and had been expressly mentioned in a revised Supreme Court Act as late as 1856. The judges thereupon quashed the appeal, stating that no such body existed as the Court of Appeals,(31) owing to the different composition of the Executive Council since responsible government. The Constitution forbade any judge to sit in Parliament, they said, and the members of Parliament forming the Executive Council at present were thereby prevented from acting as judges in a court to review the decisions of the Supreme Court. There were

some grounds for this view, for the political activities in which the Ministry were immersed would hardly incline them to impartiality in their judgments, and a recent despatch from Downing Street(32) had set out the method of appeal to the Privy Council from the decisions of colonial courts, evidently intending that to be the regular method of appeal in future. Still, the Acts establishing and confirming the Local Court of Appeals were there, and the sudden discovery that no such court existed, after it had been giving decisions each year since the grant of responsible government, looked too much like twisting the facts in favour of the judges themselves.

The Governor and his Council were sure that the judges were wrong. On May 20, 1861, there had been a reshuffle in the cabinet. Its composition now was -

Chief Secretary - J. Morphett.

Attorney-General - R. I. Stow.

Treasurer - - T. Reynolds.

Commissioner of Crown Lands - H.B.T.Strangways.

Commissioner of Public Works - A. Hay.

One of the first concerns of the Parliament of 1861, therefore, was an Act putting the existence of the Court of Appeals beyond doubt, so far as a colonial enactment could do.(33) The Ministry were encouraged to seek the

concurrence of the Parliament in this by an opinion of the English Law Officers, sent some time before, in which they favoured the continued existence of the Court.(34) The Act of 1861 obliged the judges of the Supreme Court to furnish to the Court of Appeals notes of trials under review. The Judges were not, it seems, cast down. In September, 1861, Gwynne and Boothby declared that there was no Court of Appeals, as the Legislature had no power to create courts, and this latest Act, as affecting Her Majesty's prerogative, should have been reserved.(35)

It is important to realise the extent to which Boothby, more than his confreres, had gone in questioning the validity of local legislation. Gwynne said that several Acts were invalid. Boothby was already denying the validity of the Constitution Act, of all Acts passed in the last seven or eight years, and the legal existence of the Legislature. Neither of the others claimed to be able to interfere with the Governor in his Instructions, nor did either set up his individual opinion against the decision of the Full Court, as Boothby did.(36)

The talk was now of having the Parliament remove Boothby for his "judicial absolutism and arrogance". A Select Committee of the Legislative Council was appointed on July 10 to inquire into his conduct and decisions, and, after meetings had been held in various localities,(37) a

Call of the House was taken in the Assembly on August 2. Instead of appointing a Committee on the same motion as that in the Legislative Council, the Assembly agreed to a Committee to inquire into the validity of the laws as affected by Mr. Justice Boothby's decisions. The arguments against the original motion, which was the same as that of the Council, had reference to the independence of the judges and the danger to democracy of bowing to intimidation and coercion brought to bear on Parliament from outside. As the Assembly appointed to the Committee only those who had voted against the original motion, it was widely held, during the hearing of evidence by the Select Committee, that the members of the Assembly had not supported the dignity of Parliament against the Judiciary.(38) A monster meeting at White's Rooms condemned the Assembly. Townsend, who had unexpectedly spoken against the popular view, was howled down, and had to print his explanations next day as an advertisement in the newspapers. J. N. Solomon, a leading public figure, suggested that Fenn, a prominent lawyer, had written the speech which Townsend gave in the Assembly, and that he had been paid for delivering it.(39) A like suspicion attached to Grundy. The meeting felt that the people's representatives in Parliament had failed in their trust, and that a dissolution was required.

The Committees reported to the Council on August 27 and to the Assembly on Sept. 3.(40) That of the Council made the error of refusing to the Supreme Court the power of looking into the validity of local Acts. G. F. Angas, one of the Committee, dissented from the report, stating that the opinions in the report were contrary to the evidence, that they were opposed to the decisions of the courts in other colonies and in England, and that they were not in accord with constitutional law. The Committee of the Assembly had the advantage of the attendance of Boothby and of his two colleagues. Its report was a fine piece of work, drawn up by Hanson, and setting out clearly the issues involved. Besides the Real Property Act, Boothby considered that the Act of 1852 abolishing the Grand Jury system was repugnant, as well as the Act establishing Local Courts (where the law was administered by magistrates, often not trained lawyers, and unassisted by juries). It was this report which furnished the later definition of the Colonial Laws Validity Act on repugnancy. The Committee recommended that an address be presented to the Queen asking for the opinion of the law officers in England on the validity of the Acts of the South Australian Parliament, and asking also that a Bill be introduced into the Imperial Parliament declaring the validity of such Acts.

The admission of doubts concerning the validity of some of the colony's legislation was not acceptable to

the general run of the people. Instead, they pressed for the removal of Boothby, rightly divining that there would never be peace as long as he remained on the bench. On September 27, Moorhouse moved an address to the Crown to that end. The result was a split in the Cabinet, for Hay, the Commissioner of Public Works, ridiculed the shuffling action of Stow, the Attorney-General, in condemning the opinions of the judge and at the same time saying that he would vote against his removal. The legal members in the House, such as Stow, were in a difficult position, as they had to plead before the Judges. The Cabinet resigned, whereupon G. M. Waterhouse formed a temporary ministry to carry through the petitions. This included Henry Gawler, a solicitor in the Lands Titles Office, who was made Attorney-General without having a seat in Parliament. According to the Constitution, he might hold office for three months only. The ministry included -

Chief Secretary - G. M. Waterhouse.

Attorney-General - H. Gawler.

Treasurer - - A. Blyth.

Commissioner of Crown Lands - M. Moorhouse.

Commissioner of Public Works - P. Santo.

The ten days for which this ministry lived, October 8 to 17, were sufficient to complete its work. The majorities

for the Addresses were 9 to 7 in the Legislative Council and 21 to 14 in the Assembly.

The Ministry that returned on October 17 was spoken of as a coalition. It had no premier, according to the Chief Secretary in the Legislative Council, and it was intended that each member should maintain his own opinion.(41) No-one, accordingly, expected it to be very long-lived. It comprised:-

Chief Secretary - G. M. Waterhouse.

Attorney-General - R. I. Stow.

Treasurer - - T. Reynolds.

Commissioner of Crown Lands - H.B.T.Strangways.

Commissioner of Public Works - J. Lindsay.

It had not seemed necessary to the Parliament to attach any reasons to their request for Boothby's removal. They considered that it did not befit the dignity of a self-governing colony to do so, as it should be taken for granted in England that the Legislature of South Australia had good reason for acting as it did. The Addresses were sent through the Governor, as all communications to the Home Government were supposed to be.(42) When the two Houses sent home Addresses of congratulation on a royal marriage in 1858 by way of John Baker, the Colonial Office addressed a complaint to the Governor, which he passed on in Executive Council. While the colony was awaiting the

result of its petition, it saw the retirement of Chief Justice Cooper, who, through ill-health and weariness of the quarrels brought on by the overbearing Boothby, had obtained a retiring pension of £1,000 a year from the Legislature. MacDonnell informed the Home Government on November 22 of the appointment of R. D. Hanson in his stead, - "the ablest man I have met in these colonies". This appointment gave Boothby fresh grounds for complaint, since he regarded the position of Chief Justice as his by right of senior appointment. In his tortuous fashion, he maintained that no-one but a barrister of the English, Irish or Scottish courts was eligible for a judgeship - thus disposing of both Hanson and Gwynne, - and reached the stage of denying that there was any such office in the colony as that of Chief Justice, though he had been ready enough to recognise it and receive an additional £100 per annum while acting in the place of Chief Justice Cooper several years previously.(43)

The reply of the Secretary of State to the Addresses arrived in June, 1862. It contained, first, the declaration of the English law officers that the whole of the legislation of the South Australian Parliament from 1856 on was invalid, due, as Boothby had maintained, to the non-reservation by the Governor of the Electoral Act No.10 of 1855-6, under which the elections for the Parliaments

since that time had been held. As this Act had a bearing on the Constitution, it should have been reserved.(44) To validate the legislation of all this period, therefore, the Imperial Parliament passed an Act 25 & 26 Vict. c.11, news of which was contained in a following despatch.(45) According to the law officers, the obligation to reserve electoral Acts applied only under the former Legislature of one House, and section 2 of the new Act contained a statement to that effect. Although MacDonnell had not reserved the electoral Act of 1856, he had done so with a more recent one of 1861, being cautious of giving any further opening to Boothby.

The Law Officers agreed with Hanson's view of repugnancy, and considered that South Australia was quite competent to constitute Courts of Justice. Unfortunately, the Secretary of State did not think it necessary to incorporate these views in a Statute, leaving the way open for further trouble. Finally, he refused to recommend Her Majesty to remove Boothby, as he held that the independence of the superior courts of a colony was one of the principal links binding the Empire, and

> "the principal guarantee of this independence is to be found in the assurance that a Judge once appointed will not be displaced without the reasonable concurrence of an authority wholly removed from all local or temporary influences."(46)

What strikes one as strange about the Law Officers' opinions here given and Newcastle's statements

thereon is that the justice of all South Australia's complaints is admitted, but no satisfaction is given. It was small consolation to have the reasons which "might" impel the Crown to remove an unsatisfactory judge set forth, if all those reasons were present in Boothby's case and he was to remain. If the electoral Act of 1855 was now declared invalid, much of the blame could be laid at the door of the Home Government. The Law officers of the Crown should at the time have pointed out the necessity of reserving it, and one would think that Her Majesty's assent would give an Act validity.(47) The whole incident was a setback in the constitutional development of the State. For several years past, there had been a progressive relaxation of the reins of Imperial authority, in such cases as the Act 24 & 25 Vict. c. 52 of the Imperial Parliament empowering the governments of the Australian colonies to make regulations for vessels plying between ports in those colonies. The importance of this Act was that it allowed a limited control over shipping beyond the territorial limits of the colonies. In 1859, it was left to the Governor's discretion to vary the order of precedence of dignitaries at official functions in accordance with local customs.(48) The Imperial Act of August, 1860, giving to the colonies authority to legislate where persons injured in such possessions died out of the limits

thereof was a further concession of the extra-territorial principle.(49) By Act 22 and 23 Vict. c.12, colonial legislatures were even enabled to repeal certain provisions of Imperial Acts as regarded proof of matters by affidavit.(50) Perhaps the Colonial Office was now frightened of the extent to which South Australia was going in self-determination and decided to apply the curb in this first instance of a self-governing colony applying for the removal of a judge. Certainly its action left doubt as to whether the clause in the Constitution Act, giving the Legislature power to remove judges on address to the Crown, had any real meaning. It moreover encouraged Boothby in a belief in his invulnerability. Henceforth he was more astute than ever to find instances of invalidity.(51)

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CHAPTER 5.

OTHER EVENTS OF THE YEARS 1861 AND 1862.

Meanwhile, the colony had been steadily returning to prosperity. It was helped in very large measure by the rich copper discoveries at Wallaroo, Kadina and Moonta, where £20,000 worth of land was sold early in 1861. Port Wallaroo was proclaimed on April 4 of the same year, and arrangements were made to set up police protection, a local court, and utilities such as jetties, the telegraph from Adelaide, and a process for purifying sea water in the absence of a sufficient supply of fresh. The influence of Wallaroo is evident in the legislation of 1861 from two Acts, one to provide for the drainage of the mines and the other to authorise the construction of a jetty and tramway by a contractor named Gouge. On June 11, surveying the last year in his financial statement to the Assembly, Reynolds was able to say that the revenue for the last quarter had been "truly surprising", due in large measure to Wallaroo. By December, there were extensive smelters, chapels in course of erection, three hotels and a population of 2,000.(1) A like expansion was taking

place in the development of copper mines in the northern Flinders Ranges, at places in the neighbourhood of Yudanamutana and Blinman. Until the drought, commencing in 1864, halted work, there was great activity in the area, of which J. B. Austin's little book, "The Mines of South Australia", gives a good idea. Traction engines were introduced for cartage of ore and supplies between the mines and Port Augusta, and camels as well. It was a time when Port Augusta grew quickly, and Dr. W. J. Browne felt obliged to bring before the notice of the Assembly on October 25, 1861, the question of a water supply for the town. In the following year an Act of Parliament was passed to satisfy this need,(2) by piping water down from the Flinders Range. The interest in mining led to much reckless investment. Some of the prospectuses that were issued were frowned on as being unreliable, and as lessening the credit of the colony. Leading financiers in the State were implicated in a prospectus of this nature, that of the Great Northern Mining Co., which was the subject of discussion in Parliament and of a Select Committee of enquiry in 1860.

The ministerial crisis of May, 1861, already mentioned, was due principally to Strangways. There had been a constitutional question for settlement in February, viz., the issue of writs for filling vacancies in the Legislat-

ive Council due to effluxion of time. One third of the 18 members were supposed to retire every 4 years. MacDonnell, in Executive Council on the 19th, claimed that the intention of the Constitution was that the Governor should issue writs when the time came due. The Ministry diverged, under the opinion that Section 26 of the Constitution Act required the 6 vacancies to be notified to him by the Legislative Council. This opinion of the Ministry, and that of the Law Officers supporting it, the Governor characterised as "hasty". It meant that Parliament would have to be called together merely to invite the Council to declare vacant the seats of the 6 members at the top of the "Members' Roll". The Chief Justice, Cooper, was present at the Governor's wish and agreed with him. In the despatch which he wrote to the Colonial Secretary on February 23, MacDonnell asserted that he was determined to stand firm in this instance, as he considered the rights of the Crown involved. Seeing his resolve, the Ministry asked for more time, and returned two days later with a modified statement and an opinion of the Law Officers agreeing to the immediate issue of writs. When the Parliament reassembled in May, a request was made in the Assembly to see the Law Officers' opinions. At first, the Ministry objected to making public "the details of their private deliberations in Cabinet", while acknowledging their responsibility for the advice they tendered

the Governor to issue the writs without calling Parliament together. The Assemblywas dissatisfied with this answer and passed, on Glyde's motion, an Address to the Governor himself for the production of the papers. Immediately Strangways rose and laid the required papers on the table. Then another motion was assented to, directing the papers to be returned to the Attorney-General, as the motion asked for them from the Governor. Reynolds tried to stay the motion by stating that the Governor concurred in the present laying of the papers before the House, implying, as the Governor said,

"that I was a party to the proceedings of the Ministry."

MacDonnell was incensed, and compelled Reynolds to explain the true state of affairs to the House before he would again admit him to confidential relations. As a result of the Assembly's action on this occasion, the Ministry resigned, but no others being found who had a sufficient following in the House, they went back into power, with R. I. Stow now as Attorney-General and Strangways in place of Bagot as Commissioner of Crown Lands.

> "It strikes us as somewhat singular that the crisis should open with Mr. Strangways arraigned as a political criminal, and close with Mr. Bagot left for execution,"

remarked the Advertiser.(3) The whole incident illustrates the restlessness of the Parliament and the absence of any party cohesion. The House turned quite easily

against the Ministry, and as easily followed them when they reconstructed. So long as the principle was admitted of the responsibility of the Executive to the majority in the House, honour was satisfied. One would not find parties of the present day thus bringing their leaders to heel. Rather, in such a case, would they justify ministerial conduct and stifle opposition by a quick vote. On the question of the Governor's power of issuing writs, MacDonnell suggested to the Secretary of State that the Home Government leave the matter open. This was agreed to, and not until the South Australian Parliament passed the Writs of Election Act of 1872 was there definiteness in the matter.(4)

The Governor was able to announce in his opening speech in the session of 1861 that a Bill was being prepared for submission to the Imperial Parliament, by which the territory lying between the western boundary of South Australia, as it then was, and the eastern boundary of Western Australia at 129° E longitude was to be annexed to South Australia. The small strip belonged to N. S. W., but it was quite inaccessible from either Western Australia or New South Wales. Following explorations in the region by Hack in 1857, South Australia requested the New South Wales Government for the cession of the area, seeing that the only harbours available for it were those of Fowler's Bay and Streaky Bay in South Australia. It was likely to be taken up shortly by squatters, and proper control

would then be necessary for life and property. Rather than ask the Imperial Government to remove the land from New South Wales control, the South Australian Government approached New South Wales.(5) It received unexpected opposition from the Legislative Council of that colony, which declared that this cession would be a breach of faith with its public creditors. Tired of waiting, South Australia appealed in 1859 to the Imperial Statute 18 & 19 Vict. c.54, s.7, which expressly enabled Her Majesty to detach that very portion of New South Wales. In sending home a request for such action, MacDonnell further suggested the addition of what later became the Northern Territory, instancing Stuart's explorations towards the centre and the expectations of being able to use his route for a telegraph line.(6) In his reply, the Secretary of State announced the intention of the Imperial Government of annexing the western land to South Australia, but counselled delay in regard to the territory to the North, which would need to be explored before there could be talk of annexing it. The Imperial Act was passed on July 22, 1861. It declared valid the Letters Patent and the Order in Council erecting Queensland into a colony, as also any other colonial alterations in future in Australia made by letters patent to State territories. It provided for joint action and arbitration by the Australian colonies

in determining or altering their common boundaries and in allocating the public debt or funds of any lands thereafter to be annexed to any colony.(7)

Another announcement in the Governor's speech that was not received with so much enthusiasm was the intimation of the Government's intention to place before the Parliament a Bill for the repeal of the Education Act of 1851. The cause of this announcement would seem to have been the petition of the Catholics in the preceding year against the existing system. The part played by the state in education extended then to little more than the making available of a yearly grant in aid of education. The terms under which schoolmasters might receive the Government grant augmenting their fees forbade denominational instruction and ordered that the bible was to be read for a half-hour daily. The Catholics could not in conscience agree to the first condition, and in consequence were deprived of a share in the grant. They also objected to the reading of the bible without comment, as was done in the public schools. A largely-attended meeting at St. Patrick's, West Terrace, decided to petition the Legislature, because it was maintained that the system was wholly Protestant and the faith of the Catholic children in Government schools was jeopardized. It asked also for

> "an equitable share of the grant for education to be applied to our Catholic schools."

When P. B. Coglin, the member for Port Adelaide, moved in the Assembly on October 10, 1860, for the abolition of bible reading in public schools, the motion was negatived overwhelmingly. Only Coglin, Grundy and McEllister voted for it. This opposition of Grundy, a non-Catholic, to the use of the bible as a school-book goes far towards explaining his defeat at the next elections. The new Catholic bishop, Dr. Geoghegan, who seems to have considered the administration of his predecessor, Dr. Murphy, lax in its compromise with the state system, was the instigator of all this agitation.

The Bill which was introduced by the Ministry on May 7, 1861, made no mention of bible reading or its abolition, but was directed towards diminishing the grant-in-aid to city schools, where it was not so much needed, and extending it to more thinly-populated districts. Shortly after, another Catholic meeting was held, and another petition was forwarded, asking for a complete abolition of state aid to education, in order to remove the causes of heart-burnings on the matter. If, it stated, the denominations were left to provide, out of their own resources, for the education of the children of their members, no-one would have cause to complain of unfair treatment. After the second reading of the Education Bill, it was side-tracked by R. D. Hanson's motion for a Select Committee

to inquire into the condition of education in the province. The report of the Committee, brought up on August 23, recommended, not a curtailment of the existing system of state aid, but an extension. It expressed satisfaction with the conduct of education as it was, being unable to find any ground for the Catholic complaint of proselytism. Among the improvements it suggested were the formation of a model school in Adelaide for training teachers, more detailed and systematic examination by inspectors and the adoption of local organizations for the support and supervision of schools in connection with government aid.

This report was another instance of the disposition to place more control in the hands of the state in imitation of current developments in the British Isles. As the well-being of the state depended on the quality of its citizens, it was incumbent on the state to see that its members were adequately educated. Hanson's utterances in Parliament illustrate this viewpoint very clearly. For him, there could be no doubt that greater educational facilities involved a moral uplift among the citizens at large. His opponents denied that secular education was sufficient. If divorced from religious training, it was not true education, they declared.

The terms of the abandoned educational Bill were almost identical with those of a resolution put to the House by Kingston on September 20 and assented to by it. According to this resolution, the grant to education was to be paid only to schools where the fees payable by each scholar did not exceed one shilling per week. The purpose was to ensure that schools receiving government support taught the elementary subjects. Town schools were also obliged by the latter part of the resolution to have a minimum attendance of 40 scholars before being eligible for aid, thus freeing additional revenue for the assistance of country schools.(8)

The sudden alterations in the distribution of population, owing to the development of Wallaroo and the South-East, led Arthur Blyth on May 3 to move for a Select Committee on the Electoral Act. Several anomalies, such as the extremely small number of voters in the District of the Murray, required correction, and there was the persistent idea that the districts of Adelaide and of the Burra and Clare had too many representatives for their populations. Then, too, there was the need to give postal votes to electors who lived perhaps hundreds of miles from a polling-booth. The "Advertiser" of May 7 published a table on the question which is of much interest. By taking the number of electors in the colony (21,965) and dividing by

36 - the number of members in the Assembly - the average obtained was one representative to 610 electors. As will be seen below, 10 districts were above this average, 7 below it. Instead of Adelaide having too much power, it was the nearest of all to a proper voting average. The Burra and Clare was shown to be one of the worst represented.

Name	No. of electors	No. of representatives	No. of electors to each representative.
The Murray	202	1	202
Flinders	458	1	458
The Sturt	932	2	466
W. Torrens	999	2	499
Encounter Bay	1030	2	515
Port Adelaide	1042	2	521
Yatala	1069	2	534
Noarlunga	1125	2	562
Gumeracha	1126	2	563
Adelaide	3384	6	564
Onkaparinga	1294	2	647
Barossa	1320	2	660
E. Torrens	1438	2	719
Light	1504	2	752
Victoria	825	1	825
Burra & Clare	2517	3	839
Mt. Barker	1760	2	850

An analysis also of the votes cast in the city and country for the recent elections to the Legislative Council made it appear untrue to say that the city returned all the members. Younghusband and Baker, for instance, were rejected by all the country districts just as much as by Adelaide.

A Bill, the result of Blyth's Select Committee, effected a fairly satisfactory adjustment to the schedule of districts, except in regard to Adelaide. Two members were taken from the city and one from the Burra and Clare; of these, two were given to a new district to be called Stanley, incorporating part of the Burra and Clare district, and one to Flinders, formerly returning one member. The member previously representing the Murray was given to Victoria, which comprised the South-Eastern districts. Wallaroo and surroundings was combined with Port Adelaide. Another improvement was the permission for as many nominations as a candidate pleased, thus avoiding such difficulties as had recently arisen when it was found that one of Barrow's two nominators was not naturalized. Candidates could now cast a vote, and were allowed to address meetings of electors until within 12 hours of the time of nomination instead of until within 24 hours of the day of nomination. Although Glyde strenuously advocated Proportional Representation, he did not receive much of a hearing from the others in the House.(9)

As the result of a Commission appointed in the beginning of the year, the Real Property Act was thoroughly overhauled. The loopholes in it were finally closed up by an Act, the fourth Real Property Act now, but destined to survive for many years before requiring amendment. To be on the safe side, the Governor reserved it, as he did with the Electoral Act.

For several years, the lawyers of the City Corporation had been preparing an amending bill. There were various complaints of the working of the Corporation, of the manner of electing the Mayor and of the violent quarrels which occurred from time to time at the meetings of the aldermen. The altercations were probably not much more personal or disedifying than much of the interchange that marked the debates in Parliament, and, indeed, the "Advertiser" of December 13, 1859, suggested that "too much was being made of occasional indecorum in the Corporation". It was doing a useful work for the city, in its care of the streets, public places, markets, etc. An abuse, certainly, was the election of the Mayor by the aldermen from among themselves, for a candidate for the post had only to treat 8 of them to a dinner and he would have a majority, as happened at least once.(10) The Act of 1861 established voting by ballot at municipal elections, it directed that the Mayor be elected by the citizens at

large, and introduced reforms on a very comprehensive scale, an idea of which can be gained from the fact that the bill in its initial form contained 365 clauses. The Assembly reduced it to 219, but it was still formidable enough. It is interesting to note that it allowed female ratepayers to vote at elections for the "Council of the City of Adelaide", as the Corporation was now to be called, and still more interesting to note that at the first election none availed herself of the liberty. The "suffragettes" were still in the future, even in South Australia, which was the first modern state to give women a vote for Parliament.(11)

The loss of another ship, the schooner "Flying Fish", at Port Elliot in December 1860 brought up once more the subject of a suitable port for the south. For a time, in 1858 and 1859, it was hoped that ~~the~~ ships would be able to navigate the Murray mouth and thus save the necessity of a deep-sea port; but the undermining of Barker's Knoll and the silting up of the bar until there was a depth of only 5 ft. 6 ins. drew from the "Advertiser" the lament -

> "Sic transit gloria. Thus vanishes, at least for a long time, the hope of making the Murray mouth the gate of entrance to that noble river for the ships of all nations!"(12)

For nearly a year more, the skippers of a few ships continued to tempt providence by broaching the bar. The

"Melbourne" negotiated it some 180 times before being wrecked there in November, 1860, and the "Ruby" took a cargo of silver-lead ore direct from Milang to Melbourne. With the loss of the "Melbourne", and the reports of experts that nothing could be done to keep the mouth open - in spite of an ingenious plan of Goyder - attention reverted to Victor Harbour. The Goolwa tramway was obtaining more traffic than for some years, owing to the increased trade with New South Wales by way of the Darling. A deputation presented to the Chief Secretary on April 23. 1861, a memorial for adequate harbour accommodation for the south, no particular port being named. This memorial had been decided on by a meeting at Port Elliot. An item of £8000 was accordingly included in the Estimates for 1861, with the result that work began on the extension of the tramway to Port Victor and the erection there of a jetty. The whole work was estimated at about £20,000, for which an Act of the session of 1862 made provision. It passed very narrowly by a majority of one. There was always the counter-claim of a railway to connect Port Adelaide to the river, for which purpose a bill was introduced in 1862. It was, however, thrown out by the Upper House, as had been the Bill for the Strathalbyn and Goolwa tramway in 1859.(13)

The seasons were good, although the problem of markets for South Australia's wheat was already looming. Victoria was fast reaching the stage where she would be able to grow all her own cereals. A good deal of flour was being sent to England, but not yet any grain.(14) The insecurity of the market led some to believe that South Australia's best hope for the future lay with wool, not wheat. Hence there were divided opinions about the Bill which Dr. W. J. Browne had brought forward in 1860 to allow people to select from the unoccupied lands outside the hundreds blocks of from 10 to 50 square miles at 10/- a square mile, to be held under lease for 21 years, with a right of renewal for a further 14 years. He contended that his Bill would enable men of restricted means to set up as squatters in a small way. Moorhouse favoured it, and such a friend of the workers as W. Dale. To us nowadays it appears as nothing better than a capitalists' Bill, allowing as it did a right of purchasing portion of the land held during tenancy and making no proper provision for ensuring that the areas selected did not fall into the hands of those already well established as squatters. That was how the better-informed saw it then, too, and it was dropped after being severely handled in the newspapers and at public meetings.(15) The redoubtable John Clark was in his element when discussing it.

A move in the right direction was J. T. Bagot's motion of July 3, 1861, that all lands which had passed at auction for 12 months might be taken up by bona fide occupiers at the upset price of one pound per acre, to be paid by equal instalments within 4 years. The Governor had said in his opening speech that a Bill of this nature would be brought in; but in the meantime, Bagot had lost office, and now felt obliged to press for the promised legislation. He admitted that the recent Victorian land law had failed,

> "because by its provisions land could be taken up without being submitted to auction. Free selection without auction, was, he was convinced, a most dangerous policy."(16)

On the other hand, many men in South Australia had not sufficient ready capital, and so had to resort to capitalists or go without the land. The colony would benefit, as much land would be brought into profitable occupation that was now "unproductive and useless". Dr. Browne opposed. The measure would tend to make beggars all over the country. All the good land would be taken up, and the men would not have the capital to work it. They would be better off to work for wages. Coglin was for the motion and said some hard things of squatters like Dr. Browne. Anderson held that the measure would not benefit the poor man, and that the land would pass into the hands of the rich on easy terms, as it was said to be

doing in Victoria. Lindsay maintained too that if a man could not pay £80 down it would be better for him to continue as a servant. Grundy was in favour of the measure, saying that it would prevent the tendency on the part of many of their small farmers to move across the border, where they knew they could get better land. Sutherland either misunderstood the motion or wilfully pretended to do so. His view was that it would cause land speculation. Men would do as Goglin had done at Rapid Bay and Cape Jervis, namely, buy land which in a few years would be much increased in price. He even spoke as though land was to be sold at below £1 an acre.

Summing up next day, the Advertiser wrote:-

> "We will not say anything about land-jobbers opposing a proposition which would render the man of small means to some extent independent of capitalists, nor will we scrutinize too closely the motives of squatters, who object to the proposal as one that must inevitably throw the land into the hands of sheepfarmers and capitalists. Rare candour! Matchless self-abnegation!"

Much was made by these interested parties, it went on, of the

> "impropriety of tempting and deluding the poor labouring man."

Leave was finally given to bring in a Bill, which had its second reading on August 29. Here Townsend put his finger on the real weakness in it, that which was to be rectified in the final form of

Strangways' Act in 1868. The Bill, he said, only put the poor man on poor land, - land which had passed the hammer. Why not the best land? For that reason he would vote against it. A report by Goyder, the Surveyor-General, on the working of the Victorian Land Act was not very favourable to free selection or deferred payments. That, however, had probably little effect on the members' votes, by which the Bill was defeated on the casting vote of the Speaker, G. C. Hawker. Thus, the land disposal question was laid aside until it was revived in 1865 by Goode.(17) Selling by auction was considered an essential part of the Wakefield system, and the colonists did not see that it could be combined with controls over the purchaser and with deferred payments. The Wakefield principles of immigration had been abandoned, and no evil results had appeared, but South Australians were not yet prepared to modify the other half of his theory. A belief in state paternalism was not sufficiently developed among them to induce an acceptance of deferred payments and agricultural areas, which, when they came in 1868, would indicate a final rejection of the "laissez-faire" gospel. A slight concession which was obtained by popular pressure in 1861 was the holding of land sales in the country centres. It was hoped by

this means to check the activities of the land sharks. As we shall see, it failed.

If the agriculturists gained little or nothing, the squatters secured a mitigation of their assessment. Ever since its institution in 1858, they had been complaining about the inequalities of the incidence of the tax. A Select Committee, in 1860, after hearing the evidence of Morris, the Valuator of Runs, reported that many runs were over-assessed, while others were under-taxed, results which were unavoidable from the fixing of 240 sheep to the square mile as the maximum on which assessment was to be computed and 100 as the minimum. The varieties of country caused a greater divergency in the tax than this scale envisaged. Some of the poorer runs were paying as much as 4d. or 5d. per head. The Committee mentioned possible methods of discovering the stock-carrying capacities of runs, such as accepting the number declared by the owner at shearing-time or arbitration. Both of these were open to obvious objections. The method recommended was to divide the grazing lands into several classes according to grazing capabilities, with not less than 50 sheep per square mile for the lowest class, nor more than 400 for the highest. A right of appeal by a dissatisfied lessee was another recommendation. To implement this, a Bill passed the Assembly in 1860, but the Council, in their zeal for their

fellow capitalists, altered the minimum to 25 and the maximum to 300, and struck out any reference to "situation" in providing for the valuing of runs for assessment. The result was that the Assembly objected to the Council's altering of a Money Bill, the measure lapsed, and the squatters received no relief. The squatters' contention in regard to "situation" was that it should never be used for increasing the rate of assessment, but only for decreasing it. Morris had assessed a run near a port or shipment point more highly than one of equal carrying capacity, but more distant. It was pointed out that outlying holders had many advantages that closer ones had not, e.g., the certainty of not being disturbed for many years by land sales. Further, by reason of its advantage of water carriage, a run at Streaky Bay could obtain cartage to Adelaide more cheaply than a run at Melrose.

During the recess, Morris prepared the third classification of runs since 1858. The first, by Colonel Freeling, consisted of 4 classes only, between the limits of 100 and 240 sheep to the square mile. The second took seven classes but the main difficulty was not surmounted, viz., that the maximum of 240 had been fixed too low and the minimum too high. With Goyder helping, Morris prepared a table dealing separately with each run

in the colony, giving its number, locality, grazing capability, the amount of assessment at 2d. a head, the amount of assessment by 7 classes, proposed new assessment, etc., all in view of a new Act. The runs were grouped in 10 sub-divisions, but each sub-division contained at least 4 classes; so that the total number of runs was valued in 42 different classes. Goyder's report on this re-classification averaged the bearing capacity of the whole of the leased runs of the colony at 135 sheep per square mile, as against 173 for the last classification. That represented a substantial concession. In time the Bill came on for discussion and was passed. Not only did it provide for the future, but it was made retrospective for 12 months, thus remitting some of the assessment for the less fortunately-situated squatters.(18) On December 3, Goyder was appointed Valuator of Runs, in succession to Morris.

The revival of prosperity during 1861 caused an increasing demand for the resumption of immigration. Writing to the Secretary of State in February, the Governor bewailed the selfishness of the labouring classes, who, through universal suffrage, had

> "the option of introducing or shutting out labour by Assisted Immigration".(19)

A movement in June for a petition to the Legislature asking

for the resumption of immigration drew from Reynolds the suggestion that export duties might be put on minerals, wool and wheat to bring out the 1000 miners, 1000 agricultural labourers and 1000 domestic servants desired.(20) He considered that enough were coming from neighbouring colonies to fill the labour market. Various meetings and petitions, however, continued to voice the demand or to oppose it. New South Wales and Victoria were also considering at this time starting immigration arrangements once more.(21) After reconstructing his Ministry in October (see previous Chapter), Waterhouse declared that immigration would be considered in the recess, and the session closed with the two Houses vigorously debating the question.(22) On November 18, the Chamber of Commerce passed a resolution, nem. con., for resuming immigration, and the Legislative Council was also able to achieve unanimity on it on November 19. In 1862, the cabinet decided early in February to instruct the Agent-General to send out a ship-load of emigrants in June and another in July, under the former arrangements for assistance. £25,000 was put on the Estimates for the purpose. It is noticeable that the Assembly were now almost unanimous on the desirability of immigration, although the Political Association refused to change its attitude.(23)

When nomination certificates for assisted migrants were issued in November, the Irish rushed them for the benefit of their fellow-countrymen, resulting in certificates being discontinued as regards Irish migrants for some time. The balance of nationalities in immigration was still a very live issue, as this shows. By a resolution of the Assembly of October 20, 1862, it was considered desirable to introduce Germans with assistance, but the new Parliament in 1863 did not see fit to change the Act of 1857 forbidding assistance to foreigners.(24)

The Waterhouse Ministry, formed in October, 1861, after the adoption of the Boothby Addresses, was short-lived. Almost immediately after it was announced, it was subjected to a censure motion by Arthur Blyth, and survived it only through the Speaker's casting vote. It had been discovered that Reynolds and one or two others of his cabinet had been drawing their full salary for some time past, after declaring in 1860 that they would refund all over £800 per annum. In other words, they had pretended to be sharing in the retrenchment to which they had subjected so many others of the public service. Worse than this for the Government was the outcome of Reynolds' action for libel against the editor of the Kapunda paper, the "Northern Star", for his statement charging the Treasurer with selling a situation of trust and salary, that of Crown Lands Ranger,

to his nephew, W. J. Litchfield, and receiving as payment a valuable interest in a piece of land owned by him. The charge was originally made by Litchfield in January in the Insolvent Court, where Reynolds denied that his nephew had any interest in the land concerned. He was able to produce documents, also, showing J. and F. Litchfield as being joint holders, but not W. J. In the case against the "Northern Star", the jury acquitted the editor, justifying his charge. Reynolds was obliged to resign, and the ministry with him. Only Reynolds and Lindsay were dropped, Waterhouse announcing on February 19 the ministry as follows:-

Chief Secretary - G. M. Waterhouse.

Attorney-General - R. I. Stow.

Treasurer - - Arthur Blyth.

Commissioner of Crown Lands - H.B.T.Strangways.

Commissioner of Public Works - W. Milne.

This was obviously a much more conservative body than the ministry formed 18 months previously, and the legislation which they sought to introduce showed the altered outlook of the Government. Blyth and Milne were firm personal friends, whose voices for some years to come would be consistently raised in the interests of property. Their association with Strangways could hardly have been an altogether tranquil one. Within two years he was to be the

leader in the fierce criticisms of the pro squatter bias of Blyth's cabinet of 1864-5.

Governor MacDonnell's term of office was now drawing to a close. His championing of the cause of the colonists with the Colonial Office in the controversy over the Real Property Act and the conduct of the judges arising out of it was well known. Although of an aristocratic disposition, he was extremely popular for his pleasing ways, as well as for his evident interest in the progress of the colony. The news that his successor was to be Sir Dominick Daly, a Catholic, elicited a certain amount of correspondence in the newspapers of late 1861. The objection raised was not religious, it was stated, but political. How, it was asked, could the appointment be reconciled with Her Majesty's Coronation Oath to support the Protestant religion to the best of her ability? The great majority could see little colour for such objections, and certainly Sir Dominick, in his years of office, gave no cause for complaint of offending anyone's susceptibilities.(25) The departure of Sir Richard MacDonnell and the arrival of Sir Dominick Daly took place on March 4, 1862, being marked by a Volunteer demonstration and the presentation of Addresses by the Mayor on behalf of the Corporation.

In 1862 came to a head the movement in the South-East for a junction with the Western Districts of Victoria to form a new colony, to be called Princeland. The silence on this subject by the writers of the last century is remarkable. It might never have been, for all they say of it in their surveys of South Australian development. It really was a considerable movement, motivated by a succession of complaints against the Governments of South Australia and Victoria for their continued neglect of these remote regions. In the late fifties there was such an influx of settlers to the well-watered areas around Mt. Gambier, Penola and Naracoorte (then called Mosquito Plains), that the Government was in possession of something like £200,000 from land sales. The settlers complained that they received no adequate return for their money - that there were no roads made over the heavy black-soil plains, that surveys were held up, and that there were moorings for only one ship at Port MacDonnell, the newly-declared port meant to serve the Mt. Gambier district. The ends of justice were defeated by the absence of any court nearer than Adelaide, for people suffered wrongs rather than travel to the capital for a case. All these complaints accumulated during 1860 and 1861, until we find the "Border Watch" of July 19, 1861, threatening separation or annexation to Victoria unless local wants were

attended to.[26] The residents of Portland, with E. Henty as Chairman of their Separation League, were most anxious to woo the dissatisfied South Australian residents across the border for their projected state of "Princeland", which was to extend from Port Fairy to the Coorong and northward to the Murray. They estimated that there were about 60,000 people within these limits - quite enough to start a colony. Their objections to "worship at the Melbourne central shrine" were the drawing away of the trade of the area from its natural outlet at Portland, the reduction of their representation in Parliament to one member, and the neglect to provide roads, tramways and amenities for the district. Subscriptions of up to £50 and even £100 were received - though not many, we may be sure - for forwarding a petition to Downing Street. They were aware of the recent refusal of the Home Government to attach part of the Northern Districts of New South Wales to Queensland, but they hoped that their request for an entirely new colony and the justice of their demands would obtain them a hearing.

"No more must Melbourne glitter in
The show for which we pay.
We'll cut connection - claim no kin,
But wrench ourselves away."[27]

A public meeting at Mount Gambier on July 20, 1861, resolved that a committee be formed to correspond with the Portland

Separation League and ascertain what they had to offer. As a result, the committee of the League sent out a lecturer through the districts concerned, early in 1862. He was R. H. Horne, renowned in Victorian literary circles during the sixties for his globe-trotting exploits and his authorship of an epic, entitled "Orion". He was accompanied by Richardson, the Secretary of the League and editor of the Portland "Guardian". Their meeting at Mount Gambier was crowded to the doors and many signed the petition for separation. Their reception in other South Australian towns was not so encouraging. Port MacDonnell would not let them hold a meeting, and the residents of Penola were lukewarm. The squatters, for one thing, were scared by the Victorian assessment of 8d. a head for sheep, although Horne was at pains to prove that the new state would not be bound to follow Victorian precedents. Following the separationists' meeting at Mount Gambier, a gathering of those opposed - led by Justices of the Peace and Stipendiary Magistrates in the Government pay, as a correspondent pointed out - adopted a counter-petition against separation. Umpherstone, later a member of Parliament for the district, sounded the alarm that if they separated they might not be given responsible government and would lose all the money they had paid to the South Australian Government. Portland might not consider them as much as Adelaide. A petition

from this meeting, sent to Governor Daly, was suitably responded to by him, with compliments on their loyalty to South Australia.(23)

These activities in the South East had their effect, and the session of 1862 displayed alacrity in voting roads and public buildings to the area. Heavier moorings were laid down at Port MacDonnell, even though it was so exposed that it could never be a satisfactory port, and a Customs House was built there. The Judges went on Circuit to the South East - Gwynne to Robe early in 1862, and Boothby later in the year to Mount Gambier.

The petition of the Separation League to the Home Government was sent through the Governor of Victoria, and the reply came back at the end of the year, saying that the Secretary of State was not able to recommend separation

> "without either the concurrence of the Victorian and South Australian Legislatures or the proof of an intolerable hardship amounting to political necessity for separation."

He counselled the districts affected to protect themselves against injustice by a wise choice of representatives, by a fair appeal to public opinion, and by securing enlarged powers of local self-government. The unctuous tone of the whole despatch shows no appreciation of the problems resulting from the distance of this area from markets and the need to develop the natural resources of the district

free from the vested interests which favoured centralization in Melbourne and Adelaide and opposed local development. Needless to say, the whole movement received no encouragement from the newspapers of the capital cities. Even the "Border Watch" failed to support what might have resulted in another colony approaching in wealth and progress the larger territorial areas beside it. The people of those parts were left, however, with the knowledge that a threat of separation, or of alliance with the neighbouring colony, whether it be Victoria or South Australia, was a form of blackmail that could hardly fail. As evidence, witness the further threat, chronicled in the "Advertiser" of May 22, 1863, of an indignation meeting over the dissatisfaction with the Government buildings proposed for Mount Gambier.(29)

The interest of the 1862 session was divided between the Bills that related almost entirely to details of administration and the considerable, if nugatory, discussion on changing the constitution. Many of the Acts may be briefly dismissed, e.g. the Acts relating to unlicensed auctioneering, elections by ballot for district councils, money orders, more liberal mining regulations, and the sale of goods for rent. There were Acts concerning wills, trustees and mortgagors, insolvents and the equity side of the Supreme Court, all of which were in-

tended to bring the law into line with recent English developments. Those which we may more particularly notice were (a) the Sale of Poisons Act; (b) the Thistle Act; (c) the Fire Brigade Act; (d) an Act for the regulation of cemeteries; (e) the Jury Act; (f) two Acts relating to the Assessment of stock; and (g) Sutherland's Act.

(a) By the provisions of the Sale of Poisons Act, particulars of the sale were to be entered in a special book, and poison was not to be sold to an unknown person. Thus it was hoped to prevent the committing of suicide through this medium. Poisons were to be labelled and seventeen was to be the minimum age for selling or buying. A member told in Parliament of poison being sold to a child in a teacup, and instances were related of accidental deaths through drinking poison from bottles that had not been labelled. The rigorous principles of Angas caused him to regret that tobacco and spirits were not included in the provisions of the Act.(30)

(b) Another Act was aimed at eradicating the Bathurst burr and Scotch thistle. Legislation was already in existence for the destruction of the latter, but some landowners did not take the trouble to carry out their obligations of seeing that their holdings were free from the pest. Concerning these, Magarey thought he might apply the lines -

"I passed by his garden, and saw the wild briar,
The thorn and the thistle grow higher and higher."

The apathy of these people caused their neighbours also to suffer, and before a person could enter land to destroy thistles, he was obliged to make application to a Justice of the Peace. A greater pest than the thistle was the Bathurst burr, which had recently made its appearance. Its tiny hooks adhered fast to fleeces, resulting in a loss of 3d. a lb. in wool, due to the difficulty the manufacturers found in extracting it. The district of Barossa was especially affected, and therefore its member, Grundy, advised "Occurrite morbo". The revised Act gave those engaged in destroying thistles or burrs a right of entry to lands and enacted penalties for owners and lessees not destroying the plants on their land and on the adjacent half of contiguous roads.(31)

(c) A fire had broken out at Kent Town earlier in the year, and when the fire engine at last arrived, it was found to be hopelessly out of order, due to the Insurance Companies' decision that it would be cheaper for them to lay up the service, which they had previously maintained, and pay for any fires that occurred, since one tenth only of the properties in Adelaide were insured. An Act was accordingly passed for the appointment of a Superintendent of Fire Brigades by the Government and for giving him the management at fires. The owners of buildings were to pay

the expenses when the Brigade was summoned. In 1867 a regular schedule of fees was drawn up. By the 1867 Act, also, the Insurance Companies, in return for contributions towards the cost of calling the Brigade to a fire, were given the privilege of nominating the Superintendent.(32)

(d) An Act giving the Government power to make regulations for the closing and administration of cemeteries was the result of the effort of the Rev. Mr. Pollitt of the Church of England to forbid a nonconformist minister to officiate at a burial in the part of West Terrace Cemetery set aside by Governor Young in 1849 for the Church of England. In the early fifties, Henry Wills and John Wills were buried there in a plot belonging to the family. In March 1862, another member of the family, who was a Congregationalist, having died, his remains were brought to be interred in the family plot. The funeral was met at the gate of the cemetery by the Rev. Mr. Pollitt, who protested against the Congregational minister, the Rev. Mr. Jefferis, officiating. The authorities of the Church of England, however, allowed the funeral to proceed, and Mr. Jefferis interred Wills. The outcry at Mr. Pollitt's action bade fair to rival that over the Cathedral-acre grant a decade previously. As a part of the public domain, the land should not have been handed over for the exclusive use of any religious body, it was said, especially

as, until 1849, all classes, irrespective of sect, had been buried at West Terrace. Denominations desiring exclusive burial-grounds should have to pay for them, contended the "Register", which also complained that the Church of England had been allotted 14 out of 21 acres. The agitation subsided after a time. Bishop Short assisted in calming the storm by allowing dissenting ministers to officiate in the Anglican section. Thus the Act mentioned above had little immediate effect. The danger to public health of having the cemetery so near the city figured largely in the Parliamentary discussions, but nothing was done then or since to close it. A Select Committee of 1856 had recommended that burials should cease there, and occasional mention was made in Parliament and the newspapers of the difficulty of digging properly constructed graves in the water-logged lower portion.(34)

(e) The Jury Act granted a payment of 10/- a day to jurors in civil cases and mileage to them in criminal trials. Labourers could hardly be expected to attend from the country without payment. For the wealthier classes it was not such a burden to give up their time. The stock argument against payment of jurors was that members of Parliament and Volunteers were not remunerated for discharging duties in the service of their country, so why should jurors be paid? This was the basis of the dis-

tinction between civil and criminal cases, allowing payment in the one case and not in the other. If the parties to a private lawsuit had the advantage - doubtful as it might be - of a jury, they ought to pay for it. In criminal matters it was the state acting in the general interest of all the citizens, who should not complain of the inconvenience of sacrificing a few days to the performance of a public duty.(35)

(f) Two Acts dealt with the Assessment of Stock, one dividing the waste lands into three classes with an attached schedule specifying the districts, and the other setting up a tribunal for appeals by those feeling themselves unjustly assessed. The tribunal was to have three members, one appointed by the Executive Council, one by the appellant and another whom these two chose.

(g) Finally, there was Sutherland's Act, of which so much was to be said in the future. The roads were Sutherland's great interest. He had been Chairman of the Central Road Board for some years, even before his entry into Parliament, and was dubbed "The Colossus of Roads" from his constant devotion to the one topic. On July 21, a Select Committee on the road question reported in favour of separating the cost of maintaining the main roads from that of constructing them. It advised setting aside one half of the land sales revenue for constructing roads, and maintaining them by an assessment on

property. These were Sutherland's ideas in the main. Many were opposed to taxing the residents of particular districts for the maintenance of the main roads near their properties, as everyone in the colony participated in the benefits of good roads, and it was therefore held that the general revenue should support all. The Act bearing Sutherland's name came from the discussions thus inaugurated. It was a partial return to the Wakefield principle of devoting half the land fund to public works, but instead it devoted two thirds to public works (including roads), and one third to immigration. Sutherland showed by figures that over the last ten years much less than half the money from land sales had been spent on the roads. Of course he should have made allowance for some of it being spent on other public works. Since Responsible Government, the land fund had been fused with the general revenue, and he maintained that the Government had thereby been encouraged to force on land sales to compensate for deficiencies in the general revenue. The Assembly agreed that it was desirable that no doubt should exist as to the source of the money for immigration, and thus it could not be said at election time that the poor man's tobacco was being taxed to bring out labourers.(36)

The intimation that the ministry intended to introduce legislation to change the constitution and give

plural votes for property holders came like a bolt from the blue in May. Reynolds declared that when he was in the Government there

> "was no such idea entertained and he supposed it had originated from those gentlemen who had recently joined his late estimable colleagues."(37)

The justification advanced by A. Blyth for the projected change was that the approach of direct taxation to supplement the revenue required some compensation for those who were to bear the major part of these taxes. Practically all in the Legislative Council favoured the announcement, but not so a large number of the Assembly. Probably also no-one was much impressed with the glib suggestion of the "Register" that the electoral change envisaged would make the poor man anxious to be a landowner to get a double vote - as if he were not anxious enough for land already.(38) Santo demonstrated in Parliament that the proposed alteration was a reflection on the present House. What evils had arisen under manhood suffrage? If the ministry brought forward a few concrete proposals for taxing property, there would be some colour for a change. Diverging sharply from his brother over the issue, Neville Blyth stated plainly that the result of the alteration would be to overthrow the rights of the poor man. Meetings outside said the same.(39) Although a bill was sent down by the Governor, it was side-tracked by the Speaker's ruling

that, being a Money Bill, it should have originated in the House. Thus was the subject closed for all practical purposes for that session, and the Conservatives had to be content with a resolution favouring Constitutional amendment.(40) The discussion of the Constitution meandered on through the second half of the year. Almost once a week, the major part of a day's business was devoted to it. Now it was a resolution for the Attorney-Generalship to be a non-political office, and now it was for members to be obliged to seek re-election on accepting ministerial office. It was thought that such a provision as the latter might make ambitious members less anxious to overturn ministries, although its inclusion in the Constitutions of other colonies had not prevented numerous crises.(41) The difficulty of filling the office of Attorney-General when ministries broke up was caused through the small number of lawyers in Parliament, and it was a principal reason for seeking to remove the Attorney-General from active politics. It created something like a monopoly of the position. The time that the Attorney-General had to spend in the House watching the proceedings and defending or expounding the measures of his colleagues prevented him from devoting the requisite thought and attention to his proper duties. Hence there was the danger of slipshod legislation. He had to carry out legislative and administrative functions, and this was too much. Part of his

duty was that of presenting indictments (in place of the presentments of the Grand Jury), and it was not well to have politics mixed up with this.

In claiming the power of initiating Money Bills, the House asserted an important principle, which was allowed to it by the first section of the Constitution Act. It went further, and on the motion of Kingston, the ex-Speaker, assented to the proposition -

> "That the initiation of a Bill by the Governor deprives the House of the opportunity of discussing its principles prior to its being read a first time."

In a self-governing colony, when a Bill is spoken of as being sent down by the Governor, it is meant that it emanates from the Ministry. There was no power in Victoria and New South Wales for the Governor to send down Bills. The South Australian Constitution allowed the initiation of Bills by message, but it was desired to assimilate the practice to that of the Commons, which required the leave of the House for the introduction of Bills. In 1857, there were 40 Bills initiated in South Australia, all except one by notice of motion. In 1858, there were 21 initiated, of which 4 were introduced by message. In 1859, 28 were introduced, 4 by message. In 1860, there were 27 introduced, 15 by message and only 12 by notice of motion and leave of the House. In 1861, there were 31 introduced, 21 by message. So far in 1862, 6 had been intro-

duced, all by message. "May" was quoted to show that the House of Commons could control the initiation of a Bill by forbidding leave to introduce it. As a result of this action by the Assembly, Ministers in future would introduce Bills only by leave of the House, thus avoiding the possibility of the country being again taken by surprise.(42)

Sir Dominick Daly had received a thorough training in the principles of responsible government during his long sojourn in Canada, and the occasions on which his hand was shown were very few. One of these was on September 2, 1862, in Executive Council, when Sir Charles Cooper's resignation as a member of the Executive Council was accepted. The British Government originally intended that the senior officer commanding the troops in Australia, or his delegate, should act as Governor if a vacancy occurred in any of the colonies through death or other cause.(43) In the Maori war of 1860, practically all the troops were withdrawn from Australia for service in New Zealand, and the Chief Justice, Sir Charles Cooper, as being a dignitary removed from the political arena, was issued with a dormant commission to administer the Government in case of need.(44) MacDonnell thought it proper that he should at least be a member of the Executive Council, over which he might at any moment be called to preside, and accordingly had him sworn in on September 21, 1860,(45) and explained to the Secretary

of State that it was not intended that he should take any active part at meetings. The appointment, however, was an anomaly, as the Secretary of State pointed out, since the Executive Council was occupied with political functions and was analogous to the British Cabinet rather than the Privy Council.

> "A place in that Council cannot be appropriately given as a mere honorary distinction to persons not performing Executive functions, and least of all to an Officer whose duty it is to hold himself pointedly aloof from politics."(46)

As it was a fait accompli, and there was no local opposition, the appointment was allowed to stand. If it were to be a precedent, warned Newcastle, the Governor might find himself in an invidious position, if either the Chief Justice claimed the right to share in the practical work of the Council, or the Council should demand his removal,

> "a demand which it would be very difficult, if not impossible, to resist."

On Cooper's retiring from the office of Chief Justice, he forwarded to the Governor, at that time Daly, his resignation from the Executive Council. In order to guard against Cooper's appointment being made a precedent, the Governor asked that the letter of resignation and his own reply to it might be put into the Minutes of the Executive Council. In Daly's letter of reply to Cooper, he

informed him that he had not resigned, he should have felt obliged to ask him to do so because of Newcastle's instructions.(47) Another matter which the new Governor thought was out of step with constitutional practice elsewhere concerned the issuing of commissions. He considered - and the Council passed a resolution showing its concurrence - that Government officers whose incomes exceeded £240 per annum were entitled to commissions on appointment. For minor appointments, the responsible minister in whom the department was vested should write a letter of appointment. All appointments to the office of Justice of the Peace henceforth were to be in such a form as would be prepared by the Law Officers and submitted to His Excellency in Council for approval. The instrument of appointment would bear the seal of the Colony and would be signed by the Governor and countersigned by the Chief Secretary. A further resolution stated -

> "that all documents forwarded to His Excellency the Governor-in-Chief for his signature shall, before being submitted to him, be signed by the Minister from whose department they may emanate."(48)

An Act was passed by the Legislature to remove any doubts as to the legality of former appointments made without commissions.

From the time of the reorganization of the Volunteers in 1859, their encouragement received the closest attention

from Governors and Ministries. In their zeal to carry out the wish of the Home Government that the officer commanding the regular troops in South Australia should be asked to review the colonial forces, the Government appointed, in 1860, the newly-arrived Captain Blyth to be Colonel commanding the Volunteers. It appears that this was done on the suggestion of Major-General Pratt, the officer commanding H.M. Forces in Australia. The Colonial Office, however, must have been unaware of his suggestion, for it sent out word that if Blyth would be unable to discharge his ordinary duties he would have to resign his Imperial commission. MacDonnell hastened to reply that the two commands had been combined in him for the sake of efficiency, and because of the fact that in the event of an invasion he would automatically assume command of the Volunteers. With this explanation the British Government was satisfied.(49)

By the beginning of 1861, the staff arrangements for the Volunteers had been completed. B.T.Finniss was Lieut.-Colonel of the Adelaide regiment, a military Commission had reported on a suitable uniform, and battalion drill had been begun.(50) Training was hampered a good deal by the shortage of rifles.(51) The Governor had been instructed to send a large number of Enfield rifles and spare ammunition to New Zealand, and all the requests

that he sent home for field pieces, rifles and ammunition were refused by the Imperial Government.(52) When the House voted £12,000 for defence, Neville Blyth and Finniss made an appeal for more discipline and a "weeding" of unsuitable elements. To this end, Act No.14 of 1860 gave power to the Government to recover fines by court action or otherwise from those who absented themselves from drill or otherwise broke the regulations. Another Act, No.7, allowed the formation of an Auxiliary Volunteer Force, the units of which would supply their own equipment, appoint their own officers and draw up regulations to suit themselves. In case of invasion, they were to come under the orders of the regular officer commanding.

When, during 1860, affairs looked very serious in New Zealand, Victoria sent off all the Imperial troops quartered there to assist, leaving home defence to the Volunteers. South Australia, though ready to send the company in Adelaide if requested to do so, made no move in the same direction. Upon Dutton's attacking the Government fiercely for their lack of spirit, the explanation was given that the troops were needed for duty at the gaol at Yatala. Dutton thought this a slur on the Volunteers, a suggestion that they could not be relied on for duty in an emergency. The "Little Lessons for little politicians" made capital of the encounter -

> "Now Mas - ter Dut - ton was a bold lad. and liked to play at sol - diers, and he thought it would be so nice to be a sen - try and march up and down in front of the Head Mas - ter's House with a gun in his hand."(53)

Nevertheless, it was already becoming apparent that military ardour was fading. From a roll-call of 2127 in August, the total fell to about 1600 by November.(54) Instead of serious drill, the cry was for rifle clubs which

> "would not be rivals of the volunteers, because they would wholly disclaim every attribute of military life. They would have neither drill, nor pay, nor military uniforms, nor would they lay claim to military exemptions from Jury service, militia enrolment, etc."(55)

Thus there would be no irksome military drill, simply an enthusiasm for proficiency in the use of arms and the interest of competitive matches. A National Rifle Association was formed, as similar organizations were being formed in England and the neigbbouring colonies, and a subscription list was opened for prizes at the Annual competitions.(56) Local rifle clubs appeared, and there were district associations centred about Adelaide, Mount Gambier, Kapunda, Gawler, Willunga and Strathalbyn. Lady MacDonnell started the subscriptions with £15, by September the fund was £500, and the Governor was able to tell the Colonial Office with pride in November of the success of the first annual meeting of the South Australian National Rifle Association in the South

Parklands during a week at the end of October.(57) Two extra butts had been erected, and were so well patronised that a "fearful desert of sand" was being created. The Governor had good cause for claiming -

> "there is nothing connected with my administration of this colony to which probably I shall hereafter look back with so much pride and satisfaction as the share which I have taken in creating such a body of men, and in promoting and fostering the loyal and excellent spirit by which they are animated."(58)

Throughout 1861, the Volunteers continued to drill. We read of a review at Kapunda, in which 58 men took part, assisted by the band.(59) In Executive Council, on July 4, Sir Richard expressed concern over the poor attendance at drill at Glenelg and Port Adelaide, the two places which would be first attacked in the event of an invasion. At the end of the year, the new uniforms arrived, of stone colour, with black and red bordering, and bronze buttons bearing a crown and the letters S.A.V.(60)

With the outbreak of the American civil war, volunteering received a slight fillip and a military Commission recommended a battery on Torrens Island and a mobile field train.(61) As soon, though, as the position looked less threatening for a clash between Great Britain and the North, it was announced that the regiment would not be called out for permanent duties, as had been intended and as had happened in Victoria, where there had been a

general encampment. Discipline in the Volunteers continued to deteriorate. At Kapunda the rank and file of the rifle corps called a meeting to consider the conduct of their captain, who had fixed the time of meeting for drill at an hour that did not suit them. The drill instructors were supposed to collect fines for non-attendance, but found themselves powerless to do so. Hence new regulations in March, 1862, directed that defaulters were to be struck off the rolls of the volunteers. To compete for the Government prizes in the rifle competitions, a candidate was required to have attended a certain number of parades.(62)

We may make some allowance for official diplomacy in Sir Dominick Daly's public statement, made after witnessing a review in May, 1862, that the evolutions and the efficiency were equal to anything that he had seen.(63) A day or two later, writing home to the Secretary of State, he commented on the popularity of Rifle shooting and the neglect of drill, making it seem that he was not entirely satisfied with the state of military affairs.(64) When the National Rifle Association held its second meeting in October, 1862, it was evident to what extent enthusiasm had waned. Only £547 was donated for prizes, just over half of the amount in 1861, and there were fewer country entrants. A grievance also existed, inasmuch as the

Volunteers were obliged to compete with Enfields against better rifles. Perhaps this fact goes far to explain the wins of Ayers and Hawker in the preceding year. In general, to quote a newspaper editor, "the aspect of the Volunteers was retrogressive rather than progressive".

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