

SOUTH AUSTRALIAN COLONIZATION ACT

And other related Constitutional Documents

By G. L. FISCHER*

While examining South Australian records in the House of Lords Record Office and the Public Record Office in London, I was interested to learn about the way in which two instruments issued by the British Government and relating to the constitutional history of South Australia formed part of some of the most important series of official archives in Britain, the administrative origins of which stretch back to the thirteenth and fifteenth centuries. These two instruments are the Act to empower His Majesty to erect South Australia into a British Province or Provinces of 1834,¹ and the Letters Patent Erecting and Establishing South Australia, dated 19 February 1836. The purpose of this article is to sketch something of the historical background to the issuing of these documents, together with that of the Proclamation read at Glenelg on 28 December 1836, and to say something about all of them as archival documents.

Colonization Act

The first step in establishing South Australia was the passing of 'An Act to empower His Majesty to erect South Australia into a British Province or Provinces, and to provide for the Colonization and Government thereof' which was assented to on 15 August 1834. I do not intend to traverse here the significance of the labours of the men and organisations who prepared the way for the introduction of the Bill for this Act into the British Parliament, and who lobbied for its success. Their work has been recorded in the studies of Edwin Hodder, Sir Grenfell Price, Dr. Douglas Pike and Mr. Keith Borrow. Rather, I am concerned with the Act itself, as a document, and its passage through the House of Commons and House of Lords.

This document is now laid up in the House of Lords Records Office in London, which houses the archives of the two Houses of Parliament. The Record Office itself is in the Victoria Tower of the Parliament building at Westminster, and during two visits I was

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1. 4 & 5 Will. IV, c. 95.

permitted to examine the Act in detail, and to arrange for a photographic copy of it to be made for the Archives Department of the Public Library of South Australia.

It is one of a series of some 60,000 Acts, the first of which dates back to 1497.² Prior to this date the English Parliament formed no archives of its own, and those Acts and other records which have survived from the period before 1497 are now found among Chancery records housed in the Public Record Office in London. The series of Acts in the House of Lords Record Office provides 'an authoritative text'³ of all Acts passed by the British Parliament, and is therefore one on which the constitutional and statutory actions of the British government are based. The integrity of these documents is guaranteed by their continuous custody in the Parliament, and the series is the most important one held in the House of Lords Record Office.

All of the Acts up to the end of 1849 are the original parchment rolls ingrossed during their passage as Bills. The South Australian Colonization Act is, therefore, in the form of a parchment roll, consisting of eighteen membranes, that is, sheets of parchment, each stitched to the other. It exhibits additions, attachments and erasures in compliance with amendments made during its passage, but it is in excellent condition and is readily available for reference.

That the document has survived is not altogether without some good fortune. In 1834 a fire destroyed the greater part of the Palace of Westminster, but the series of Acts was not harmed. They have survived through two world wars and savage bombing. But more recently there has been concern for the danger of fungus forming on parchment, and each roll is being wrapped with a piece of paper impregnated with a fungicide to prevent any damage. The Thames-side site itself offers the danger of dampness, but in the years since 1945 the Victoria Tower has been remodelled into a modern air-conditioned record repository, so that the future preservation of the series seems well assured.

The passage of the South Australian Colonization Bill is formally recorded in the printed journals of both Houses, and in some of the debates published by Hansard at the time.⁴ Sets of these important publications are held in the South Australian Parliamentary Library, but it will perhaps be of interest to say a little about the passage of the Bill.

2. Bond: *A Short Guide to the Records of Parliament* (London, 1963), 5.

3. *Ibid.*

4. This account of the passage of the Bill has been drawn from these sources. It should be noted that sittings of the House of Commons in some cases actually began on the day before that given in this article.

The Parliament into which the Bill was introduced was the First Reformed Parliament, which was then drawing to its close. In the House of Commons, early on the morning of 24 June 1834, notice of motion was given that leave be granted to bring in a Bill to establish a colony in South Australia. The Secretary of State for the Colonies, Mr. Spring Rice, told the House that, 'His Majesty, having been informed of the subject matter of this motion, recommends it to the consideration of the House'. It would be interesting to know whether King William IV's interest was anything more than formal; a contemporary opinion that he was a 'weak, ignorant, commonplace sort of person'⁵ might suggest it was not. Leave was granted, and Mr. W. W. Whitmore M.P. and Colonel Robert Torrens M.P. were instructed to prepare a Bill and bring it in. By 12 July they had still not drafted a Bill to satisfy the Colonial Secretary⁶ and it would appear that even the Bill finally introduced did not satisfy James Stephen, the Permanent Under-Secretary for the Colonies, but his criticisms were not heeded.⁷

The Bill was read a first time early on the morning on 18 July, and it was ordered to be printed.⁸ Early on the morning of 24 July, Whitmore moved the second reading. One member objected to the lateness of the hour at which it was brought on — two o'clock in the morning. Others attempted to delay the second reading. Mr. F. O'Connor claimed that emigration would only exacerbate the shortage of labourers in Ireland, and Mr. Hughes Hughes, perhaps with his own interests elsewhere in Australia at heart (he was a shareholder in the Australian Agricultural Company), wanted a week to consider the Bill. Another speaker, Mr. Sheil, was concerned for the children of the emigrants — were they to be left to shift for themselves when they were 'deportated'? The use of this word was unfortunate; Whitmore equated it with 'transported', and expressed his surprise at this infelicity. When the House divided on whether the second reading should be put off, the delayers were defeated thirty-three votes to seventeen. Such a light vote might be indicative of the lack of general interest shown in the proposal to establish South Australia.

On 29 July there was a further attempt to delay consideration of the Bill in committee. Mr. Baring thought the matter 'so grave and com-

5. Quoted in Thomson: *England in the Nineteenth Century* (London, 1960), 170.

6. *Correspondence in the Colonial Department relating to South Australia*, (1841) U.K. Parliamentary Paper No. 129, 43.

7. Pike: *Paradise of Dissent* (Adelaide, 1957), 70.

8. It seems unlikely that a copy of this printed draft Bill is held in the House of Lords Record Office (see Bond, *op. cit. supra* n. 2, at 6). For an earlier draft Bill, see *Correspondence in the Colonial Department relating to South Australia*, (1841) U.K. Parliamentary Paper No. 129, 39-43.

prehensive' that it should be committed in six months time. Mr. O'Dwyer reminded Mr. Spring Rice that there was much land in Ireland which could be reclaimed for settlement; in his reply the Colonial Secretary noted that the land in Ireland was privately owned. A division was called for, and this time the delayers were more convincingly trounced—seventy-two votes to seven. South Australia was at last becoming an influence in history.

The Bill was again debated in committee on 31 July and 2 August when some members showed commendable interest in the welfare of the intending emigrants. Mr. Barnard pointed to recent shipping disasters and stressed the need for safety in shipping transport; Whitmore's reply that South Australia possessed two of the finest harbours in the world might have been good publicity for the new province, but it was scarcely relevant. Sir Henry Willoughby was concerned with the plight of emigrants if they became ill; Whitmore, rather optimistically, replied that as the emigrant labourers had no passage money to pay, 'they would, with the assistance of those who were settled there, be adequately provided for'. He also stated that there were 160 settlers then ready to leave for South Australia, and that labourers would not be sent for until required. More interestingly, in the present context, was the concern expressed by Mr. Attwood that 'those persons who had embarked all their gleanings in such an undertaking upon the security and faith of an Act of Parliament, should not be left to perish in a foreign land'.

A feature of nearly all of these sittings of the House of Commons was that they occurred at about one or two o'clock in the morning, and near the end of the day's business. This, perhaps, points to the small interest in the Bill, and one may also legitimately wonder whether members were able to bring their most penetrating intellect to bear upon the subject at such a late hour, even given that it seemed customary at the time for the House to sit late.

On the morning of 5 August the amendments of the committee were reported to the House and agreed to, and it was ordered 'That the Bill, with Amendments, be ingrossed; and read the third time this day'. It is unfortunate that detailed committee minutes do not seem to exist, so the amendments and their proposers cannot be accurately known. The ingrossing was done at once, and on the morning of 6 August the ingrossed Bill was read a third time. After a further amendment it was resolved 'that the Bill do pass', and then it was ordered 'That Mr. Wolryche Whitmore do carry the Bill to the Lords, and desire their concurrence'. The ingrossed Bill which he carried was the one now preserved in the House of Lords Record Office.

In the House of Lords the Bill was read for the first time and ordered to be printed on 6 August. On 8 August a petition⁹ was presented by the Marquess of Clanricarde from 'Persons possessed of capital who are desirous of settling in the proposed Colony of South Australia'. This petition prayed that the Bill 'may pass into Law as speedily as possible'. In presenting the petition, the Marquess of Clanricarde stated that he 'did not wish to take their Lordships by surprise' — presumably by the implication of urgency in the presenting of the petition. In any case the noble lords were not going to be hurried. The Earl of Falmouth criticized the fact that there had been no formal summoning of the Lords for the consideration of such a Bill. Lord Wynford expressed concern about 'the manner in which land of different qualities was to be disposed of'. And the Duke of Wellington saw the whole affair, at first, as a rather dubious speculation. But Clanricarde firmly defended the Bill and stated that he had 'every reason to believe that the matter had been taken up on the most patriotic and pure motives'.

The support of the Marquess of Clanricarde is of interest. He was the fourteenth Earl of Clanricarde, and was created the first Marquess in 1825, and Baron Somerhill in 1826. In 1834 he was a young man of thirty-two, and married to a daughter of the Right Honourable George Canning. Clanricarde's was an Irish title, and he held considerable estates in Ireland. One might therefore speculate whether his support for the South Australian Colonization Bill might have been partly prompted by his desire to draw attention away from ideas expressed in the Commons about closer settlement in Ireland being undertaken before the waste lands of the Empire were exploited. Or perhaps he saw emigration to South Australia — and elsewhere — as a means of avoiding the provision of poor relief in Ireland which he, as a landholder, would have to pay for.¹⁰ (Later in the century his son would strongly oppose reform in Ireland.)

On 11 August the Bill was read a second time, and ordered to be committed to a committee of the whole House. On 12 and 13 August

9. Possibly this petition is still preserved in Public Bill records (1558 to the present day) in the House of Lords Record Office.

10. Torrens in his *Memoirs of Second Viscount Melbourne* (London, 1890), 443, 444, in commenting on the position of poverty in Ireland, wrote, 'about the right and duty of laying the permanent burthen of relief upon the owners of real property there was a general concurrence of opinion', and 'The country, it was said, must be studded all over with workhouses at an enormous cost, if the destitute were to be provided with in-door relief during half of the year . . . if the right of the able-bodied out of employment were legally admitted, what would become of rents and profits? The section of economists led by Colonel Torrens advocated systematic emigration in preference to either parochial employment or imprisonment'.

See also Collison: *Economic Thought on the Irish Question 1817-1870* (Cambridge, 1960), 118, 229.

the Lords in committee considered and made some forty amendments to the Bill. Two of these amendments are worth noting. One related to the appointment of 'Chaplains and Clergymen of the Established Church of England or Scotland' — a significant departure from the views of some of the promoters of the Bill outside Parliament.¹¹ The other was the present paragraph XXV which states that if, after ten years from the passing of the Act, South Australia's population be less than 20,000 natural born subjects, the land be liable to be disposed of by His Majesty, but having regard for the obligation created by the South Australian public lands securities.

But twenty-eight of their amendments involved merely the insertion of the words 'or provinces' after each point where the word 'province' occurred. Later, Colonel Torrens declared that this amendment had been proposed by Lord Wynford and had got into the Bill in error; Torrens went further to declare that he and the other Colonization Commissioners conceived it to be the intention of the Parliament to mean 'one uniform and permanent system within the whole of the territory contained within the limits specified by the Act'.¹² In other words, only one province was really intended.

In view of Torrens' claim that Lord Wynford's amendment was an error, it is amusing to learn that the proposer was an eminent legal identity, William Draper Best, 1st Baron Wynford (1767-1845) who became Chief Justice of Common Pleas. His politics had changed from Whig to Tory so violently that when in 1829 he left the bench to enter the Lords he 'strenuously opposed' the Reform Bill. Wynford's judgments, it is recorded, sometimes sadly exhibited both temper and political prejudice.¹³

On 14 August 1834 the Bill, as amended, was read a third time in the House of Lords, and passed. On the same day it was returned to the Commons when the amendments were agreed to, and then it was reported to the House of Lords that the Commons had 'agreed to their Lordships' amendments'.

On 15 August 1834 the Bill became an Act when it received the royal assent. The tradition of the King attending Parliament to pronounce assent personally, extends back to medieval times, but from the sixteenth century (when Henry VIII found it less painful not to have to give personal assent to the Attainder Bill which provided for the execution of his fifth wife, Catherine Howard) and

11. Royal Geographical Society of Australasia (South Australian Branch): *The Centenary History of South Australia* (Adelaide, 1936), 290.

12. Archives Department, Public Library of South Australia, C.O. 13/3, fo. 164.

13. *Dictionary of National Biography* (London, 1885) iv, 420, 421.

more frequently from the eighteenth century, assent was given by commission. Nowadays the Monarch never attends Parliament to give assent to Bills, and the last occasion one did so was in 1854.¹⁴

Not surprisingly, William IV had refused to attend in 1832 when the Reform Bill was passed. But by 1834 his feelings toward the Parliament had softened somewhat, and the journal of the House of Lords for 15 August 1834, records that:

His Majesty, being seated on the Throne, adorned with his Crown and Regal ornaments, and attended by His Officers of State, (the Lords being in their Robes) commanded the Gentlemen Usher of the Black Rod, through the Lord Elphinstone, acting as Deputy Lord Great Chamberlain, in the absence of the Marquess of Cholmondeley, to let the Commons know 'It is His Majesty's pleasure that they attend him immediately in this House'.

The Commons, together with the Speaker, duly entered the chamber. The Clerk of the House then read the titles of fourteen Bills covering such diverse matters as money, customs, temporalities of the Church of Ireland, general sale of beer and cider by retail in England, regulating turnpikes as to weights to be carried on waggons with springs, and, finally, the South Australian Colonization Bill. The House of Lords journal records that, "To these bills the Royal Assent was pronounced, severally, by the Clerk Assistant, in these words "Le Roy le veult". The words themselves are written at the top of the parchment document.

It is chastening to find that in his short speech which followed and in which he prorogued Parliament, the King made no reference whatever to the proposed colony of South Australia — foreign diplomacy and domestic affairs occupied all his concern. Nevertheless, it is from this hour that the constitutional history of South Australia begins, and at the same time some new point of direction is given to the history of Australia, also. It is therefore a matter of some pleasure — to an archivist at least — that the instrument documenting these beginnings is still secure in its proper administrative and historical context.

Letters Patent

Although the Colonization Act was assented to in August of 1834, and colonists were even before then agitating to set out for the new colony, the next constitutional step did not follow immediately.

14. Bond: 'La Reyne le veult: the making and keeping of Acts at Westminster', *History Today* (November 1956), 765-773.

Indeed, it was more than a year later before serious thought was given to the kind of instrument which would be used to bring into effect the power granted to the King in the Colonization Act.¹⁵ The official decision of the Colonial Office, given on 15 December 1835, was that South Australia should be erected into a British Province by means of 'Letters Patent under the Great Seal'. The instrument was drafted by the Colonization Commissioners, who had been appointed under the Colonization Act, and whose chairman was Colonel Torrens.

As a form of expression of the royal prerogative, Letters Patent may be traced back in the Public Record Office in a continuous unbroken series of enrolment copies to the year 1201 in the reign of King John.¹⁶ The enrolments, which are official copies of the original document issued, are actually in the form of long parchment rolls, and administratively they are part of the records of Chancery. The Letters Patent erecting and establishing South Australia are enrolled in this series which comprises some 5,432 rolls covering the period 1201 to *circa* 1946. One roll will contain the enrolment of many Letters Patent, and it may be of considerable length and not easy to unwind — and even more difficult to roll up again. As an instrument, Letters Patent are still issued in much the same wording as they were in 1201, except that they are no longer in Latin. Letters Patent are open, that is, addressed in general terms to everyone, in contrast with Letters Close addressed to one person or body, where the seal must be broken in order to read the document. Like Acts of Parliament, Letters Patent are ingrossed and sometimes most elaborately decorated and illustrated — the Letters Patent erecting South Australia, for example, have portraits of King William IV and his consort, Queen Adelaide.¹⁷ As a sign of authentication they carry a pendent impression of the Great Seal and this is sometimes housed in a skipket — a round box or bag made specially for its protection.

By Letters Patent the King conferred some benefit or entrusted some commission to an individual or city or corporate body. Grants of land and wardships could be made by this instrument, and where a chartered colony was being formed its use is obvious. In the use of Letters Patent to erect South Australia, however, the Crown or Government might appear to be perhaps unnecessarily granting to

15. The circumstances surrounding the issue of this instrument are set out in *Letters Patent Erecting and Establishing the Province of South Australia, 19 February 1836* (Adelaide, 1964), published by the Libraries Board of South Australia.

16. *Guide to the Contents of the Public Record Office* (London, 1963) i, 22.

17. Archives Department, Public Library of South Australia, A793.

itself territory it already held. Presumably there had to be *some* kind of instrument formally erecting South Australia into a province, but the fact that the instrument was issued to the Colonial Office, that is, to the British Government itself, does seem to confuse the issue, at least to a layman.

The text of the completed and sealed Letters Patent erecting and establishing South Australia is as follows:

WILLIAM THE FOURTH by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith TO ALL TO WHOM these Presents shall come Greeting WHEREAS by an Act of Parliament passed in the fifth year of our Reign entitled 'An Act to empower His Majesty to erect South Australia into a British Province or Provinces and to provide for the Colonization and Government thereof' After reciting that that part of Australia which lies between the Meridians of the one hundred and thirty second and one hundred and forty first degrees of East Longitude and between the Southern Ocean and twenty six degrees of South Latitude together with the Islands adjacent thereto consists of waste and unoccupied Lands which are supposed to be fit for the purposes of Colonization And that divers of our Subjects possessing amongst them considerable Property are desirous to embark for the said part of Australia And that it is highly expedient that our said Subjects should be enabled to carry their said laudable purpose into effect It is Enacted that it shall and may be lawful for Us with the advice of our Privy Council to erect within that part of Australia which lies between the Meridians of the one hundred and thirty second and one hundred and forty first degrees of East Longitude and between the Southern Ocean and the twenty-six degrees of South Latitude together with all and every the Islands adjacent thereto and the Bays and Gulfs thereof with the advice of our Privy Council to Establish one or more Provinces and to fix the respective Boundaries of such Provinces Now KNOW YE that with the advice of our Privy Council and in pursuance and exercise of the powers in Us in that behalf vested by the said recited Act of Parliament We do hereby Erect and Establish one Province to be called The Province of SOUTH AUSTRALIA — And We do hereby fix the Boundaries of the said Province in manner following (that is to say) On the North the twenty sixth degree of South Latitude — On the South the Southern Ocean — On the West the one hundred and thirty second degree of East Longitude — And on the East the one hundred and forty first degree of East Longitude including therein all and every the Bays and Gulfs thereof together with the Island called Kangaroo Island and all and every the Islands adjacent to the said last mentioned Island or to that part of the main Land of the said Province PROVIDED ALWAYS that nothing in these our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said

Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any Lands therein now actually occupied or enjoyed by such Natives IN WITNESS whereof We have caused these our Letters to be made Patent WITNESS Ourselves at Westminster the nineteenth day of February in the sixth year of our Reign.

BY WRIT OF PRIVY SEAL

EDMUNDS

A few days after the date of the Letters Patent the first colonists left England.

The late J. D. Somerville regarded the Letters Patent as the 'charter',¹⁸ as it were, of South Australia, but until 1907 it continued to be held in Britain. In that year investigations made at the request of the Board of Governors of the Public Library, Museum and Art Gallery, revealed that the document was held in the Colonial Office where it had apparently been 'found' some years earlier. The British Government, through Lord Elgin, the then Secretary of State for the Colonies, agreed to present it to the South Australian Government, which in turn placed it in the Public Library for exhibition.

It is curious that the instrument which had been — and, presumably, still is — the legal basis for the establishment of this State, should, by 1907, be seen merely as an interesting historical relic. Of course, its presentation to South Australia was a most formal act and so its custody and legal validity, so far as these characteristics remain applicable, are unimpaired. Further, one might argue that the document ought always to have been in South Australia, since it was basic to the State's constitutional position. But the odd fact remains that it was originally issued by the British Government to itself as its own instrument for the administrative action it took in founding South Australia, and its removal from the records of the Colonial Office was a somewhat unorthodox, if extremely generous, action.

Proclamation

Finally, something should be said about a third instrument relating to the constitutional history of South Australia. This is the Proclamation read on 28 December 1836, at Glenelg, the text of which is as follows:

18. Parker and Somerville: *South Australia: What Occurred at Holdfast Bay on December 28, 1836?* (Archives Department, Public Library of South Australia, 1097), 8.

PROCLAMATION

By His Excellency John Hindmarsh, Knight
of the Royal Hanoverian Order, Governor
and Commander-in-Chief of South Australia.

In announcing to the Colonists of His Majesty's Province of South Australia, the establishment of the Government, I hereby call upon them to conduct themselves on all occasions with order and quietness, duly to respect the laws, and by a course of industry and sobriety, by the practice of sound morality and a strict observance of the Ordinances of Religion, to prove themselves worthy to be the Founders of a great and free Colony.

It is also, at this time, especially my duty to apprise the Colonists of my resolution to take every lawful means for extending the same Protection to the Native population as to the rest of His Majesty's Subjects and of my firm determination to punish, with exemplary severity, all acts of violence or injustice which may in any manner be practised or attempted against the Natives who are to be considered as much under the safeguard of the law as the Colonists themselves, and equally entitled to the Privileges of British Subjects. I trust, therefore, with confidence to the exercise of moderation and forbearance by all Classes, in their intercourse with the Native inhabitants, and that they will omit no opportunity of assisting me to fulfil His Majesty's most gracious and benevolent intentions towards them, by promoting their advancement in Civilization, and ultimately under the blessing of Divine Providence, their conversion to the Christian Faith.

Given under my Hand at Glenelg this twenty-eighth day of December 1836.

J. Hindmarsh.

By His Excellency's Command,
Robert Gouger,
Colonial Secretary.

God Save the King.

A good deal of attention has been paid to this document as to whether it does in fact 'proclaim', in the sense of constitutionally establish, South Australia. The weight of opinion seems to be that it does not.¹⁹ In its announcement that *government* is now established, it is stating that the law is now in force by virtue of the Governor's arrival and the taking of office by the various government officials. In its admonition to the settlers 'duly to respect the laws' and in its announcement that the aborigines would be protected by

19. See Parker and Somerville, *op. cit. supra* n. 18, at 28, and *passim*.

the law, the announcement of the introduction of law is thus underlined.

The view that this Proclamation is no more than an announcement about law — though admittedly one of great historical importance — might be supported by various authorities on what this kind of instrument can accomplish. Proclamations are another form of the royal prerogative, in South Australia exercised by the Governor through the Colonial or Chief Secretary. As an instrument Chitty²⁰ states that they are 'extremely antient' in origin — no doubt quite as old as Letters Patent with which they have sometimes been associated in the past by enrolment. Chitty also believes that proclamations were 'originally adopted for the purpose of giving additional weight and dignity to the laws' and states further that they may be used to 'appoint fasts, and days of thanksgiving and humiliation; enjoin the reading of a form of prayer in all churches'. Henry VIII had by proclamation made new laws,²¹ but in the reign of Mary this power was denied, judges declaring that proclamations might be made *quoad terrorem populi*, to put the people in fear of the King's displeasure, but not to make new laws.²² In the seventeenth century, Sir Edward Coke stated that the King:

for the prevention of offences may by proclamation admonish his subjects that they keep the laws, and do not offend them; upon punishment to be inflicted by the law.²³

The Proclamation of 28 December 1836 itself makes no reference to proclaiming the State. It is unfortunate, however, that it has been accredited with this role even from an early date. In the Ordinance to facilitate the adoption of the Laws of England in the Administration of Justice in South Australia of 1843, it is stated that South Australia was 'proclaimed to be a British Province' on 28 December 1836. This Ordinance was concerned to establish the date on which such English law as was applicable to the condition of the infant colony was deemed to have been received in South Australia, but subsequent Acts of 1872²⁴ and 1915²⁵ concerned with the same matter go only so far as to say that South Australia shall be deemed to have been established on 28 December 1836. As late as 1932, however, a commission appointing an executive committee

20. Chitty: *A Treatise on the Law of the Prerogatives of the Crown* (London, 1820), 104-107.

21. See the Statute of Proclamations 1539 (31 Hen. VIII, c. 8), repealed by 1 Ed. VI, c. 12.

22. Anson: *Law and Custom of the Constitution* (5th ed. 1922) i, 342.

23. *Case of Proclamations* (1610) 12 Co. Rep. 74.

24. Language of Acts Act 1872, s. 3.

25. Acts Interpretation Act 1915, s. 48.

for the 1936 Centenary celebrations states that 'South Australia was proclaimed a province on December 28th, 1836'.²⁶ But in view of the quite certain role of the Letters Patent of 19 February 1836 which erected and established the Province of South Australia, it may be suggested that the Proclamation of 28 December 1836 was merely *quoad terrorem populi*.

The manuscript Proclamation of 28 December 1836 is held in the Archives Department of the Public Library of South Australia.²⁷ In Britain such documents passed under the Great Seal, and it is curious that this instrument is without a seal. Possibly the matrix of the State seal was not yet available. According to Robert Gouger, the wording of the document was decided upon at a Council meeting in his tent at Glenelg on 28 December.²⁸ But in later years it was claimed for George Stevenson, private secretary to Governor Hindmarsh, that he had been the author of it, at least of that part which was concerned with aborigines.²⁹ It is worth remarking that James Stephen at the Colonial Office in London saw the reference to the protection of the aborigines as the most significant feature of the proclamation.³⁰ The document was received in the Archives Department from the Chief Secretary's Department in 1920, and has been treated as a 'piece', that is, a separate item, and not especially related to other records of the office from which it came. When more work is done on the records of the Chief Secretary's Department it may be possible to place the proclamation in its proper administrative context and so throw light on its constitutional significance, too.

26. Archives Department, Public Library of South Australia, D. 3495.

27. Archives Department, Public Library of South Australia, A97.

28. Hodder (editor): *The Founding of South Australia* (London, 1898), 203.

29. *South Australian Register* 14 November 1840, 2d.

30. Archives Department, Public Library of South Australia, C.O. 13/6, fo. 6 (verso).