

missionaries in the service of the Church Missionary Society. Mr. Thomson D'Abbadie also is now on the road to join his brother, who is probably by this time in Enarys, once a Christian kingdom, but now ruled by the pagan Gallas. Several other travellers, principally French, are now en *route* to Abyssinia. Two of them are said to have been sent thither by the king of the French.

If the Abyssinians are thus partial to strangers who visit their country from motives of curiosity and love of knowledge, surely that partiality would increase if gain were the result of greater communication with foreigners. If peace were once restored to this distracted country, it is not too much to expect the establishment of European commercial houses at Gondar, where even now the missionaries reside in peace, respectability, and health. European commerce established at Gondar, would soon spread itself into the interior of Africa, carrying, with the love of gain, the blessings of civilization. The possession of Berbera and Zeyla by the British is therefore intimately connected with the future prospects of Africa ; without them it is scarcely possible to repay our- sable fellow-creatures of that continent for the miseries Europe has inflicted on them : possessed of them, while we effect that great object, we consolidate the stability of our Indian empire, and extend British commerce.

[We shall, on a future occasion, show the resources which Western Africa offers for British commerce, the extension of which will do more to destroy the curse of slavery than any treaties or naval armaments on the coast.]

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## STATE OF SOCIETY AND OF CRIME IN NEW SOUTH WALES.

BY JUDGE BURTON?

[Concluded from Vol. I. page 240.]

**THE** statement given in the preceding pages is not inconsistent with the fact that there has been, and still is a vast amount indeed of crime committed in the colony; it will, however, serve to show what is intended by it, that a true picture of the state of society has not been given by others, and that injustice has been done to particular portions of it, by an indiscriminate condemnation of all ; but it is

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\* The whole of this article was received in March last, but we were unable to give it in one number.—ED.

not intended, nor can it have the effect of disproving that then actual state of crime is such, as it has been represented to the committee by those parts of the evidence and documents, on which they have relied, and have adduced in proof of their report to the House of Commons : nor does it disprove any thing which was alleged by the writer on a former occasion,\* as to the condition of the colony then presented to his mind, Its circumstances have, indeed, since that period been greatly changed and improved ; but there has ever been within it a considerable body of highly respectable and virtuous persons, whose influence could not 'but be felt by the whole community, and must have ever operated favourably . on the system of transportation. As far as regards the present state of religion, he has already shown, in a recent publication, how far the long-continuing deficiency of means of religious instruction under which the colony at that time laboured, has been supplied ; and to that account he must now refer for the state of society in a religious view ; at present, a less grateful duty appears to be imposed upon him, as connected with his present subject, namely, the State of Crime.

At the close of the judicial business of the supreme court of New South Wales, for the year 1835, it became the duty of the writer, being the presiding judge at the time, to discharge the jury, who had been occupied in the trial of **criminal** cases, from their further attendance at the court; and in doing so, he took occasion to address to them such observations on the state of the country, as had occurred to him **during** his residence amongst them. Four months afterwards, the matter contained in that address was referred to in a petition prepared in the colony, for presentation to the House of Commons, as a proof of what was in that petition termed, " the fearful increase of crime that had of late- years taken place in that colony : " the particulars of which (the petitioners stated) are fully set forth, as well as several of the causes that have led to so lamentable a **state** of things, in a charge delivered by the Hon. Mr. Justice Burton to the jury, at the close of **the** sessions of the supreme court for the year 1835, a copy of which is annexed, together with a return of the criminal cases that have occurred. since that time. These documents, your petitioners conceive, afford **full** proof of the alarming increase and extent of crime in the colony, and establish the **necessity** for some change in a system that produces such results."

This use having been made of the judge's address, a counter peti-

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\* **Address** to the jury at the close of the criminal session of the supreme court, 18th November, 1835,

tion to the honourable House was prepared, by certain persons, to whom the promoters of the first were, for various reasons, opposed, and denying the increase of crime, and the inference which had been drawn from it as quoted.

Soon after these petitions reached England, a select committee of the House of Commons was appointed, to inquire into the system of transportation, and the subject of the petitions and the judge's charge became matters of strict investigation and particular report by that committee. The state of the colony, and the causes which led to it, were proved to their satisfaction to have been such as the judge alleged ; and the charge frequently referred to by the committee in their report, received at least that strong and gratifying acknowledgment of its accuracy, which is to be found in the following passage.

“ As the charge of Judge Burton must of itself be considered the best possible evidence which can be adduced upon this subject, it is unnecessary, in order to confirm the facts therein stated, to refer in detail to the unanimous testimony of every witness who has been examined.”

The writer might, therefore, be well content, as far as his own reputation is concerned, to rest upon that judicial decision of so honourable a tribunal, in contradiction to the statement of any one, that he had “unfairly or unjustly represented” any party.

Another point is, however, linked with this subject, namely, the true state of crime in the colony, which led to the delivery of that charge.

One of the evils resulting from that anomalous system of government, which existed at the time (and still exists), in which, **together with** the executive power, the functions of the legislative also, are too largely committed to the hands of the governor, was, that of bringing him into a situation of personal responsibility for every measure emanating from either ; and thus to render him nervously sensitive **upon** any point appearing to affect ever so remotely that which he came to consider the character of “ his administration :” a doubt of the **propriety of a law was** construed into a reflection upon himself; and he **felt** his own **reputation involved in that of** the country. All this was **the natural consequence. of too** great power vested in the executive, and too little opportunity being afforded for the expression of the public opinion beforehand ; **for it cannot be doubted that mankind, in the social state, love to be governed by good and equal laws,** that the generality of men are not indifferent judges of what are deserving of **that character ; and that the most proper time,** both with reference to **the authority and dignity of the legislature and the public welfare,** is

to ascertain the general sentiment before, rather than after a law has been made, which is 'to affect a whole community.

In New South Wales, the people of all classes had no voice in the framing of their laws ; all that was done, proceeded from a council so constituted, and under such direct control of the executive government, that no one looked to any other as responsible for its measures : it followed, that, inasmuch as these were doubtless intended to be the wisest and the best, and that the country was meant to be so well governed by them, that the peace, good order, and welfare of the whole community should be ensured thereby, and be apparent to all ; if any **doubted, or** asserted the contrary to be the case in ever so constitutional a manner, they were accounted factious, and enemies of the local government ; and those who made it their interest to flatter the pretensions of the ruling powers found a ready mode open to them by concealing or denying the truth, and by imputing false motives to those who declared it. No instance was ever more illustrative of this proposition than the proceedings which followed the delivery of the charge above referred to. Although the governor in his despatch to the secretary of state, dated 18th December, 1835,\* transmitting a colonial newspaper containing it, conceded that " The mere existence of a large proportion of crime, in a penal colony, can form no just charge against its government ;" that " Mr. Burton, probably, does not mean to **impute it, nor** does he assert that crime increases in the colony beyond the proportion of its rapidly augmenting numbers," yet when in *April following* he thought fit to refer to the two other judges on the subject, in the letter subjoined, he neither referred to the judge, who delivered **that charge, to know** his opinion whether there had been an increase of crime or not, nor communicated to him that he had referred to his **brother judges upon it.** Nor did he at any time call upon him for any **proof** of his statements, if any part of these were meant to be **doubted.** As to the " principal matters which the charge contains," upon which the governor desired their opinions ; he already possessed, it is true, the judge's own public statement in the charge ; and he was in possession as well, of an official communication to himself on the same subject, which he had received twelve days **before** the date of his despatch to the secretary of state above referred to ; and which was so explanatory of the judge's motives in delivering the charge, and of the grounds upon which he arrived at his conclusions, and so full of his suggestions for the remedy of those

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\* Appendix to Report from the Select Committee on Transportation, No. 13, p. 287.

evils of which he complained, that it is not very easily conceivable how it happened that; the governor, when communicating to the secretary of state the one statement, withheld from him the other ; this must, however, have been the case, or doubtless both would have been laid before the committee on transportation.

That letter was dated the 2d of December, 1835. The writer of it regrets that he does not feel authorized to insert it in this place; else it might be safely appealed to as a proof, that the judge was actuated by no factious motives, and brought no unfair or unjust accusation against the country, or the local government, but was actuated by such zeal for the public welfare as became one, who ought to be, and was observant of what was passing around him.

Several of the suggestions contained in that letter were subsequently adopted by the local government, and the writer had the satisfaction, not only of assisting in the application of them, but also of knowing that they proved beneficial to the public.

The following is a copy of the letter of the colonial secretary of New South Wales to Chief Justice Forbes and Mr. Justice Dowling, extracted from Appendix to Report from the Select Committee on Transportation, p. 293.

“ Colonial Secretary’s Office, Sydney, 2d April, 1836.

“ GENTLEMEN,—The governor perceiving that an address delivered by Mr. Justice Burton, on discharging a petit jury from attendance at the Supreme Court in the month of November *last*, has been adverted to in a petition to the House of Commons, recently printed and circulated in Sydney, for the purpose, it would seem, of giving support to some of the opinions expressed in that petition, his Excellency considers it necessary to request that he may be informed whether that address was delivered with your consent and concurrence. If it were not, his Excellency directs me to solicit, that you will, either jointly or separately, favour me, for his Excellency’s information, with your opinions on the principal matters it contains ; stating how far your views correspond with, or differ from, those which Mr. Justice Burton has expressed. I am further commanded to observe, that as in the petition referred to, the address has been brought forward in conjunction with an assertion that crime has fearfully increased in the colony of late years, his Excellency will be obliged by your stating, whether, in your opinions, there **has been** any such increase disproportionate to the augmented and augmenting numbers of the free population, and the continued importations of British criminals.

“ I have, &c.

( Signed) ALEXANDER M‘LEACY.”

The result of this reference as to that part of the judge’s charge, which appears to be intended to be comprised in the term “ the principal matters,” and upon which they were “ solicited to favour the

colonial secretary, either jointly or separately, with their opinions, stating how far their views might correspond with, or differ from those which Mr. Justice Burton had expressed," was to show, either that those learned persons entertained similar opinions, but hesitated to declare them, or else, that they had been greatly unobservant of matters with which they should have been unhappily equally familiar. Upon this point Chief Justice Forbes stated his diffidence in expressing any opinion in the following terms :\*

"I do not feel myself at liberty to enter more particularly into the other matters contained in Mr. Justice Burtdn's address, as it might seem to arrogate a power of reviewing his honour's opinions delivered from the bench, which I disclaim, however I might differ with him as to some of those matters coming within the proper province of a judge. I have no doubt that his honour considered he was acting within the legal bounds of his authority, and that his motive in pointing out those general causes, which, in his opinion, had led to the frequent commission of crimes, was with a view to their prevention or removal. I may be permitted, however, to express my own opinion, that some of those matters came more immediately under the care of the Government, which alone possessed the power of 'applying an adequate remedy to such evils as might be found to exist ; and I 'am aware that the evils of transportation have engaged the anxious consideration of his Majesty's government, both here and at home, with a view to devise and adopt the means of counteracting them, by encouraging the immigration of virtuous persons, as well as by diffusing religious and moral instruction more equally among all classes of his Majesty's subjects, and rendering the police of the colony more proportionate to its augmented population."

Mr. Justice Dowling avowed his want of information in the terms following:†

"Deeming it to be no part of my duty as a puisne judge, to analyze and discuss with a view to the expression of any opinion of my own, the matters contained in the address attributed to Mr. Justice Burton, I trust that his Excellency will not think me guilty of disrespect in venturing -to decline pointing out in what particulars I differ from, or concur with, that gentleman, especially as the task, if undertaken, would imply a sufficient knowledge, which I do not possess, of the various matters alluded to, enabling me to form a correct and binding judgment."

Upon the question, however, whether in their opinions there had been any increase of crime in the colony, disproportionate to the augmented and augmenting numbers of the free population, and the continued importations of British criminals, the judges were more communicative. Chief Justice Forbes expressed himself as follows :‡

"With reference to that part of your letter, in which I am requested to state whether, in my opinion, there has been any increase of crime disproportionate to the

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\* Appendix to Report, &c.

† Appendix to Report, &c.

‡ 12th April, 1836.

augmented numbers of the inhabitants ; *I have to state, as my opinion, that there has not been an increase in the ratio of crime in the colony of late years*; and to add, that there is nothing in Mr. Justice Burton's address, that will bear out the conclusion which seems to be drawn from it, in the petition adverted to in your letter, as affording proof of the fearful increase of crime of late years in the colony. His honour, as I apprehend him, merely meant to show the actual state of crime, as proved by the convictions which had taken place within a given period of time, and not the comparative increase of crime. It is nowhere affirmed, that there has been an increase of crime ; on the contrary, the data furnished by the address itself, show a decrease of thirty-two capital convictions in the year 1835, as compared with the convictions of the preceding year ; being something more than one-fourth of the whole amount of capital convictions in the year; and this decrease was not occasioned by the act of Parliament which takes away capital punishment in certain cases, because the act came into operation in August 1833; but even supposing the number of convictions had been greater in the year 1835 than in the preceding years, *the mere fact of a larger numerical amount of convictions in any one year, would not afford conclusive evidence of the increase of crime, without taking into calculation the augmented numbers of inhabitants, and especially of transported persons. If it be affirmed that crime has increased with the increase of population, the fact will be readily conceded*; but if be stated that there has been an increase in the ratio of crime, it implies some defect in the system of government, which should be proved before it is assumed.

“The extent of crime in this colony depends upon two main causes ; the number of transported convicts, and the force and efficiency of the police. So long as it is deemed expedient to banish the criminals of the British dominions to this colony, so long will the amount of depravity keep pace with the number of exiles. It is stated, that between September 1833, and November 1835, there had been an addition of 8,163 transported convicts ; of whom 7,357 were males : and it follows as a necessary consequence, *that with so great an accession of criminals, there must be a corresponding increase of crime*, liable to be varied in its proportion, by the degrees of vigilance in the superintendence and control of the convicts. It has occurred to me, from observations made in the course of my judicial experience, that as the immigration of free persons has improved the moral force of the colony, it has tended to diminish crimes accompanied with combination and violence, in their number and malignity ; but that it has had the effect of increasing that class of offences which relates to property. Speaking from the experience of twelve years in the Supreme Court, it is my impression that the crimes which have of late years been brought before me, have been much less aggravated in their nature and circumstances, than during the earlier period of my presiding in the court ; and I think, if a careful abstract were made of the number of cases tried and adjudged from the first session of the year 1824, to the first session of the present year, distinguishing their several degrees and character, it would be found to establish this result.”

The following is an extract from the answer of Mr. Justice Dowling on this point :\*

“ I am of opinion, that as far as my knowledge and experience extend, crime

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\* 9th April, 1836. Appendix to Report, 295.

has not fearfully increased in this colony of late years, having reference to the augmented and augmenting numbers of the free population, and the continued importation of British criminals. I have now been a judge of the Supreme Court for eight years and upwards, during which time I venture **say**, that from the occasional ill-health of my colleagues, and the frequent absence from court of the chief-justice, **in attending** other duties connected with his office, a very large share of the criminal justice of the colony has fallen upon myself; and without meaning to undervalue the very great **labour**, experience, and knowledge of my learned colleagues on this subject, I am fully persuaded, that, so far as a careful and candid reference to the records of the Supreme Court may affect the question, it will be found that the opinion thus expressed will be borne out. **I exclude from the basis of my opinion the crimes brought under the cognizance of the courts of quarter sessions, petty sessions, and local jurisdiction, as I have no means of access to the records of those tribunals.** All heinous **offences** are exclusively tried at the Supreme Court of the colony.

“ I have carefully examined *my notes of the trials which have taken place before myself* during a period of eight years, that is to say, from the 1st of March, 1828, to the 1st of March, 1836, and, dividing the interval into two different periods of time, I find that between the 1st of March, 1828, and December 1831, **I tried** thirty-six cases of murder; twenty-six of manslaughter, and other **offences** against the person; eight of rape and unnatural **offences**; thirty-eight of highway and street robbery; fifty-four of burglary; two of arson; thirty-eight of stealing in a dwelling-house; fifty-one of house robbery; one of piracy; and twenty-four of cattle, horse, and sheep stealing. I find that in **the** interval between the end of December 1831, and the 1st of March 1836, *during which time Sir Richard Bourke administered the affairs of the colony, I tried* thirty-seven cases of murder; twenty of manslaughter, and other **offences** against the person; twelve of rape and **unnatural offences**; sixty-three of highway and street robbery; thirty of burglary; four of arson; twenty of stealing in a dwelling house; four of piracy; and forty of cattle, horse, and sheep stealing. In round numbers, during a period of three years and nine months, the **first** division, the **offences** above enumerated amounted to 325; and during a period of four years and three months, the second period, the **offences** so enumerated amount only to 252, making a difference in **favour** of the latter period of 73 cases. I have not taken into account the numerous trials for simple larceny, receiving stolen goods, perjury, libel, and other less serious offences, which took place before myself during both periods, but have extracted only the most heinous crimes, as being more applicable to the question propounded by his Excellency the Governor.

“ Assuming, therefore, that **I** have had no more than my share of the **labours** of the criminal branch of the jurisdiction of the Supreme Court, I may **conscientiously** say, as far as the criterion of my personal experience can be **depended** upon, that crime *has not fearfully increased, but has, in fact, decreased in this colony of late years*, having reference to the augmentation during the period last mentioned, of free inhabitants, and the vast accession which has **notoriously** been made to the numbers of the prison population, by the importation of convicts from the mother-country during the last two or three years.”

The writer of the former opinion [Chief Justice Forbes] first denies “ that there has been an increase in the ratio of crime in the colony of

late years," and then proceeds to prove that there has been an **increase**, by a course of reasoning, with which he appears to have satisfied himself, instead of facts ; thus, he lays down a proposition, that "the extent of crime depends upon two main causes,—the number of transported convicts, and the force and efficiency of the police," and argues that, as the convicts had increased, so must crime have increased : he then shifts his ground, and states, that his own personal impression, arising from an imperfect recollection of what had passed before him in the Supreme Court, is, that' crimes accompanied with violence had been diminished, although those against property had increased ; and that "the crimes which had of late years been brought before him had been much less aggravated in their nature and **circumstances** than during the earlier period of his presiding in that court."

But respecting the actual amount of crime committed within the colony, he is **wholly** silent. This omission, however, Sir Francis Forbes attempted to supply before the committee on transportation, by producing two tables, which, he stated, he had drawn up,—the one showing the total number of convictions for felonies and misdemeanours in the Supreme Court, and courts of quarter sessions, in New South Wales, from the year 1831 to 1835 inclusive ; and also the *additional number* of convicts arriving from the United Kingdom within the same respective years. The object of the witness was to show, by comparing the year 1831 with 1835, that, although there had been an increase in the number of *simple larcenies*, there had been a decrease in crimes accompanied with violence, — and upon these **imperfect** data he relied, to prove that to be the case. The number of convictions only, which took place within the two periods, in the Supreme Court and courts of quarter sessions, omitting all notice of crimes of like character which his constant experience in court must have shown him had been committed by some one, although not brought home to the parties accused, and omitting all those which had come before the magistrates in their summary jurisdiction, both classes forming, however, a very remarkable feature in the state of the colony as to crime,—these convictions, he should have well known, could give but a very remote estimate of its amount. He was guilty, however, of other fallacies in the premises upon which his calculation was founded, which show that it was undeserving of the slightest credit : First, the offences of "sheep and cattle and horse stealing" were all classed by him as "simple larceny ;" these offences, however, although they may fall within the legal and technical description of larceny, have ever been considered in our law, and especially in a **pastoral country**, as crimes of a more serious character than

ordinary larceny, and were for two years and a half of the time comprised in his calculations punishable with death, and for the remainder of it with transportation for life : Sir Francis Forbes had passed many sentences of both degrees upon offenders of this class. Again, in his estimate of the number of convicts in the colony in the year 1835, which is another and most important term in his calculation of the proportion of crime and the decrease of those committed with violence, comparing together the years 1831 and 1835, there was this gross fallacy; he assumed, first, the number of convicts who were in the colony in 1831 to be 18,000, then stated that, between that year and 1835, 16,554 others had arrived. Hence, the terms of his proportion were thus stated by him :-As 18,000 (the number of convicts in 1831) : 75 (the number of crimes committed with violence in that year) :: 34,554 (the assumed number of convicts in 1835) to :141,\* which he estimates would have been the number of crimes committed with violence in 1835, if they had increased in proportion to the increase of the criminal population ; and then concludes, that, as the convictions for crimes committed with violence in the year 1835 only amounted to 109, there was a decrease ! But the whole number of convicts in the colony in 1835 did not exceed 22,888 ; two, therefore, out of three of the terms of his proportion were erroneous. The statement, upon his own mode of reasoning, should have been—

As 18,000 : 75 :: 22,888 : 95, which would have given an increase beyond the proportionate increase of the population, of 14.

His calculation was also equally deceptive in another point. Comparing together the years 1833 and 1835, he has taken the convicts in the former year in the colony at 24,543, (which, however, is erroneous, for 1,167 were at penal settlements,) and then adding the number who arrived in 1834 and 1835, viz. 6,163, concluded that there were 30,706 in the latter year, which he assumed as the basis of his calculation ; he said, indeed, “ probably many might have received remissions, or their sentences have expired ;” but he assumed that number as a term of his proportion, and thence also concluded that “ similar results with respect to crimes with violence and larcenies will be given for the years 1833 and 1835.” No wonder, when he assumed their number to be nearly 8,000 greater than it actually was : in 1836, when the census was taken, those within the colony did not exceed 26,260, and in 1835 they amounted only to 22,888.

The grounds upon which Mr. Justice Dowling arrived at the same

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\* Even this result, however, is erroneous, if Chief Justice Forbes's premises were correct, for it should be nearly 144.