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THE ATLAS OF THIS DAY CONTAINS:—

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CONVICT LABOUR IN A "FIX."

But all these resources being exhausted, another of great importance remains. It is that of preparing hitherto unsettled lands for settlement and sale.—*Lord Stanley's Dispatch to Sir E. Wilmot*, No. 24, dated 2nd December, 1843.

This alternative of Lord Stanley goes very far to establish the important principle which has been departed from under the clamour of designing men against the abuses of transportation, but to which his Lordship is now brought back; namely, that convict labour is of great importance for the purpose of preparing hitherto unsettled lands for settlement and sale. *Sic fortis Etruria crevit*. So also this Colony of New South Wales was brought into existence. By withdrawing that aid, the minister could say to our Colony, "Thus far shalt thou go, and no further;" and by overwhelming the sister colony with it, he could "make the deep to boil like a pot;" and yet it has now become apparent that his Lordship has never "entered into the springs of the sea." We quote from the sacred book of Job, almost the only book in which we can look for consolation under the circumstances in which these Colonies have been placed by the wasteful misapplication of Convict labour. We confess the subject is so hackneyed, although still so little understood, that it is not without hesitation, we again introduce it in the columns of the ATLAS.

It is not very prudent to prepare any article for sale, without some prospect of buyers, or of finding a market for that article: and even after such preparation, this article, land, would still be but the raw material, worth nothing without buyers, and when bought worth nothing to the buyers without labour; and even, with labourers, worth nothing without a market for the fruits of their labour, the produce of the land. It is quite evident, therefore, that without buyers nothing could be returned to the treasury for the expense of maintaining the convicts, consequently that convict labour affords no direct resource, such as that contemplated by Lord Stanley in Van Diemen's Land. The best thing that even a private speculator could do with the proceeds of land so sold, would be to employ them as far as they would go to bring people to the land, and so provide for the sale of more. Still this could not be commenced except in a country where there were already some people with money; another indispensable condition of the same country being that it also contained "hitherto unsettled lands" [to be prepared by making roads, &c.] "for settlement and sale." We might instance this country as possessing these requisites as much as any new Colony, but we would rather again advert to the simile of the sacred writer, the sea and the regularity of its tides; which, being certain, are useful, but which, if they were at all uncertain, would be very dangerous; and, to the want of any fixed and certain tide in the influx of population to these shores, we may attribute the checks, and hindrances, to the continued prosperity of colonization in Australia and Van Diemen's Land. It has been by overlooking the good work actually effected here, albeit with base materials, and from being obliged to deal with transportation as a merely moral question in England, that Colonial ministers have found it impossible to "let well alone" in these Colonies. "All went merry as a marriage bell" whilst, in the natural order of things, convict labour was employed in preparing hitherto unsettled lands for settlement and sale. The system had defects, no doubt, as other human institutions also have, and

to expect perfection in any system for coercing evil doers, was surely to begin at the wrong end of society. As well might a heaven be looked for in hell. Habitual slanderers—men whose motives were obvious—whose natural element was hot water, said their worst of the "Felony of New South Wales," and by way of mending the matter, the sister island has been made to groan under the Felony of Van Diemen's Land. This manifest change for the worse to honest men, is the result of an attempt to improve the character of bad men, in deference to public opinion in England. We may regret this, but we cannot feel surprised at it when we see how little even the people here understand their true interests in the matter. Neither can we condemn the public feeling excited in England respecting the transportation system, in deference to which as we are given to understand, convict labour has been withdrawn from our shores: however much these Colonies have suffered from the privation of an element so essential to the rapid colonization of extensive districts. But what we do condemn is the weakness of the Home Government in thus giving way to the mere prejudice of one section of Her Majesty's subjects, to the substantial injury of others so remote that their interests have never been consulted.\*

The deviations from the old system under which these colonies flourished, have been attended with great injury to individuals, and embarrassment to the Government; and it would now appear from the Dispatch from which we take our motto, that the last alternative contemplated by the Colonial Minister is a return to the original system by the employment of convicts in preparing unsettled lands for settlement and sale. Lord Stanley further proposes to effect this "by opening the main and cross roads, by fencing off the different farms from each other; by erecting some rude huts or log-houses on each, and perhaps by breaking up some small portions of the soil on each for cultivation." Now this is just what is indispensably requisite in New South Wales before the land can be sold. Districts equal to counties in extent, and near the capital, remain to this day inaccessible. Not even a main road has been opened through parts of the territory where, if cross roads too were opened, farms fenced off and huts built upon them, not only might land now unsaleable be sold, but settled districts would be greatly benefitted, which are at present by such unsettled tracts still shut off from each other. This would only be doing for the settled districts at last, what seems acknowledged to be necessary to be done at first in unsettled parts, and consequently but due to the inhabitants who first settled under such serious disadvantages.

Besides the general improvement of the country by thus supplying connecting links between districts at present isolated; the other great benefit to our agriculturists by the sale of their produce paid for by the Treasury would be most encouraging to a class much in need of it. Neither of these advantages can, we presume, be disputed. Still must we hear, from a certain class here, committed to the support of other views by former scribbling and cant, that such essential aids to this prostrate bankrupt Colony are but as a feather in the balance when compared with the contaminating presence of convicts. We ask, who are they likely to contaminate in unsettled districts? "Let them not come near towns," say they, "nor within the nineteen counties." To this we reply, that many of these counties are still deserts inaccessible to cart-wheels, and inhabited, if at all, only by receivers, and keepers of stolen cattle, a profession becoming very common, which has its origin and comfortable existence in the inaccessible character of the country, and the security enjoyed in the absence of any kind of roads, by gully-rakers, bushrangers *et hoc genus omne*. No, no, it is not the contamination of the spawn of gaols by convicts known as such that is to be dreaded, but that intercourse of Norfolk Island expiaries, unknown as such, with the free immigrants, who, under actual circumstances, may be seen at work in Sydney side by side.

We maintain that the fancied evils are as dust in the

\* See reply of Sir George Gipps to an Address from the inhabitants of Windsor, in 1838.

balance, compared to the social and moral benefits to be derived from the substantial adoption of Lord Stanley's alternative in this Colony. In short, that the arguments are all quite the other way. That if a convict is marked and known in the books, and by his conduct, in one colony, he will most assuredly find his way to another as soon as he can escape, or become free, and that the country in which his forced services have been rendered and he himself has been identified, will be the last in which he would wish to remain when a free man. Nature abhors a vacuum, says some old philosopher; that vice abhors a vacuum too, seems as true in the moral world, and will rush when let loose, with the velocity of an atmospheric railway train to wherever its baneful identity is least likely to be recognized. The benefits, on the contrary, would be all with us, and all in favour of the colonization of this country by free immigrants. The work of every convict on the roads may be considered to open a way for the comfortable establishment of five or six free immigrants, and the more the one class is kept ostensibly at the subordinate labour—the indispensable drudgery of opening out ways for the other—the more elevated and distinct would be the position of the free settler, or mechanic, however limited his means. The presence of both classes without disguise is necessary, were it but to keep up the distinction and confirm their relative conditions. These remarks we throw out, however, for those at home, whose anxiety about "the stability of the moral edifice of society," has led to the late experiments. We desire chiefly to see the physical powers of both classes employed in their right places, for the advantage of the Colony.

Here is an Anglo-Saxon population thinly sprinkled over very extensive regions. It is not in their nature, accustomed as they are to all the appliances of civilization, to be content to live like savages. They see around them vast resources unavailable for want of hands; a glorious field for the triumph of man's labour, by adjusting the country to its fine climate. workmen they must have, and if felon-labour and immigrants from home do not come, they must have recourse to the Indian Archipelago, or to India itself or China—both fields for cheap and abundant labour.

This country had been planned out for extensive occupation, with the aid of convict labour, when the convicts were prematurely withdrawn; and this one step from the sublime to the ridiculous, has left unfinished a Colony on the scale of an empire, with paper towns, pauper mechanics, and patches of colonization unconnected by roads. To crown the absurdity, it seems left to the perpetual government of a man whose idea is to colonize by taxation; and further damaged by a price set on the land by Act of Parliament, four times higher than it is in other Colonies with canals, navigable rivers, and roads through them—and also much nearer home.

We have but one observation to add on this branch of the subject. The three great roads from Sydney to the interior should be made good and kept up, whatever may become of cross-roads. We have no canals, navigable rivers, or lakes. Our chief staple has to be carried several hundreds of miles on heavy drays; and the extension of population, civilization, colonization, and education, can only take place by these chief lines of access. It is fortunate they are but three, and that they would answer all such purposes from the peculiar character of this country. Surely these roads at least should be made good to the remotest limits; and, in a country where horses are likely to be plentiful, there should be coaches and omnibuses direct to New England; southward, to Port Phillip and Portland Bay; westward, also, to Wellington Valley, or where wanted now; along that road which may eventually be continued across the Darling to Port Essington or Carpentaria. Then emigrants would no longer linger about Sydney, but seek settlements in the interior of the vast territory which, by the formation of these three lines, would be opened out for their reception.

And can we hope for the realization of such prospects under our present ruler?—that he will abandon his miserable hobby of District Councils, and having now gained some Colonial

experience, and seeing our many wants, and the difficulties of the convict question lately referred to him, candidly tell the British Government what it ought to do to get rid at once of its own difficulty, and greatly relieve this colony? We cannot think so.

#### THE BANK CASE AND THE JURY ACT.

IN the last number of the ATLAS, we attributed the unsatisfactory termination of the late trial, to the obstinacy of a portion of the Jury before whom it was heard. Notwithstanding certain doubts which have been expressed, as to the correctness of the imputation which we threw out, we still adhere to the opinion which we then expressed. Whether the Jury were equally divided or not, is immaterial. Six of them, at all events, *must* have been either obstinate or corrupt. We are willing to give them the benefit of the less disgraceful alternative. But, that they were at least obstinate there can be no manner of doubt. As to the facts of the case submitted to them, it is quite impossible that there could have been the slightest difference of opinion. As to the law, there *ought* to have been no dispute, after the clear and decisive manner in which the learned Judge laid it down. Unquestionably as stated by Blackstone and admitted by Mr. Justice Dickinson, "the Jury may, if they think proper, take upon themselves to determine at their own hazard, the complicated question of fact and law." But, as the Judge properly observed, the Jury would not be acting unconstitutionally in taking the law implicitly from himself, telling them at the same time that, should he in that matter be mistaken, his error could be much more easily rectified than if the same were committed by themselves. One would naturally imagine, that under these circumstances, there would be nothing left but for the Jury to apply to the facts, the law as stated to them by that officer whose peculiar province it was to expound it. Six of them it appears thought otherwise, and obstinately refused to be guided by the advice and instruction of the Judge—perversely setting their own opinion upon a matter of which they could know nothing, in opposition to that of one of the living oracles of the law. Conduct so disgraceful as this needs no comment, and the six headstrong jurors who ever they were, ought to be ashamed of themselves for the part of which they have acted in this affair.

In expressing ourselves thus strongly, we do not mean to say, that if the Jury had been compelled to give a verdict before they were discharged, they would have decided differently from the Judge. On the contrary, we have no doubt that every one of the six obstinate Jurors, if they had not previously been aware, that they would be liberated after twelve hours *deliberation* (?) whether they gave a verdict or not, would have found no difficulty in agreeing at once with Mr. Justice Dickinson. We do not believe that any one of them was ignorant or presumptuous enough, to take upon himself to decide upon the law contrary to the Judge's charge, but knowing they could not be compelled to declare their opinion; they most discreditably availed themselves of the loop-hole which Mr. Windeyer invented for their escape. We feel no hesitation in saying, that to this scandalous innovation upon the common law—and to it alone, are we indebted for this unseemly spectacle, of six British Jurors perversely and obstinately refusing, to be guided by their only constitutional adviser in matters of law.

We are, of course, quite aware, that neither Mr. Windeyer nor the Chief Justice, was the first to discover a species of absurdity in compelling twelve men to agree upon any particular point. Men of far greater eminence than they are, both as lawyers and statesmen, have, we are ready to admit, expressed their doubts about the soundness of the principle upon which this unanimity is enforced. And, certainly, there is at first sight, something irrational in *starving* men into a verdict against their consciences. Those however, who use this argument, forget that in doing so, they draw their inferences from extreme cases—cases too, of very rare occurrence. They forget that in ninety-nine instances out of every hundred, the facts submitted to the consideration of a Jury are such, as that any number of men, much less twelve, could have no difficulty in agreeing upon them. They also forget that when twelve men are sworn to give a verdict according to the evidence, in the event of any of them being corrupt, those who are honest and conscientious, are much more likely to succeed in convincing their companions, than to be led by them into the violation of their oaths and the commission of an act of injustice. But most of all, they forget the grand, and in fact, the only object, which the law has in placing twelve men in a Jury box at all. That object is, to obtain a verdict one way or the other, in order that the matter in dispute may be decided according to law—an object which can be accomplished in two ways only:—that is, by enforcing unanimity or by allowing a majority to decide; but, most certainly not by permitting a Jury to separate without deciding at all, after *smoking cigars* for twelve hours together—as we are told was done, in the late case of the Bank of Australia. And this brings us to Mr. Windeyer's second innovation upon the constitution—the power given by him to *nine* Jurors to decide after smoking cigars for *six* hours together. This is an approach to the long exploded

practice of taking a verdict *ex dicto majoris partis juratorum*, which is, we suppose, also to be defended on the ground of the absurdity of enforcing unanimity. But then, so long as our Juries consist only of twelve, it as an innovation upon that constitutional principle which prohibits the life, liberty, or property of any British subject from being affected except by the concurring judgment of twelve men. It is perhaps difficult to discover any peculiar virtue in the figure twelve. Lord Coke, the great oracle of the law, says "it seemeth to me, that the law in this case delighteth herself in the number of twelve; for there must not only be twelve *Jurors* for tryall of matters of fact, but twelve Judges of ancient time for tryall of matters of law in the *Exchequer Chamber*. Also, for matter of state, there were in ancient time twelve *Councillors of state*. He that vageth his law must have *eleven others with him*, which thinke he says true. And that *number of twelve* is much respected in *holy writ*; as twelve *Apostles*, twelve *stones*, twelve *tribes*, &c." (Co. Lit. 155, a.) This reasoning of Coke's may, perhaps, be rather fanciful, but at all events, the substantial benefits which Juries of twelve, giving their unanimous verdicts, have been the means of conferring, is a practical argument in their favour worth a thousand theories. It should also be recollected, that the only act of Parliament which furnishes a precedent for dismissing a Jury without giving a verdict, expressly provides, that all verdicts shall be given by the whole number of the Jury agreeing in the verdict. This Act is the 55 G., 3 c. 42, passed to facilitate the administration of Justice in Scotland, by extending the trial by Jury to civil cases; and in the debate which took place upon it, unanimity was strenuously insisted upon by the great law lords, as essential to the constitution of the trial by Jury. How the power granted by this act, of dismissing Juries after twelve hours' deliberation has operated in Scotland we are not aware, but what effect it has had in this Colony we have already seen.

It is an old but wise maxim, which bids us to leave well alone; and in dealing with constitutional principles, this maxim should ever be kept in view. If Mr. Windeyer had attended to it, he never would have given his assistance to so doubtful a work, as the breaking down or altering any portion of that ancient and venerable fabric, which, under the name of trial by Jury, has for so many ages been the safeguard of the liberties of Englishmen. If he had even observed this mode of trial in a few instances, made subservient by its defects to dishonest and corrupt purposes, he should have looked upon this circumstance, as an evil to which this institution, in common with every other of merely human origin, is liable; and he should have seen, as he might easily have done, that if now and then it worked a little injustice; in almost every instance, it was, in its old form, as it is described by Blackstone, with truth, to be "the glory of English law," and "the best criterion for investigating the truth of facts that was ever established in any country."

As Mr. Windeyer has contrived most inconsiderately to alter it, it can no longer be said to be a criterion for establishing the truth of facts; but a tribunal invested with the power of effectually preventing facts from being ascertained at all. This we are sure is a state of things which that gentleman never intended to bring about; but since he has made so gross a blunder, the least that he can do, will be to lead the way in restoring to its ancient condition, that portion of the constitution which he has disfigured and destroyed.

#### INTERIOR DISCOVERY.

WE learn from the Adelaide papers, that the latest accounts from Captain Sturt were of the 26th of October, when he was in lon. 141° 46' E., lat. 31° 5' S., his last discovery having been that the former one of an inland sea, islands, and rocky coast, were all mirage. This is more to be regretted than the discovery previous to that, namely, that his first discovery of fifteen white men's bodies dead on the Darling was all *moonshine*.

These are notable discoveries truly for dispatches which in due course must, from the interest felt in the solution of our "great geographical problem" by the world at large, find their way to every class of readers.

Our Southern neighbours have from the first been pets of the Colonial Office, and it cannot but be very humiliating to us in New South Wales, to learn by news of such old date, *via* Adelaide, what is going on in our own interior. One additional fact only we can supply on the authority of a gentleman from the Barwin country; that the natives had, about three months ago, seen fifteen white men and horses cross the Darling not far from Fort Bourke. We may therefore hope that such a party, although its leader we are told cannot see very clearly, may at last stumble on something new, that may not be uninteresting to us;—if an accessible country in the direction of Port Essington, this colony may at least claim the merit of having given the hint where to go. It has been suggested to us, however, as remarkable, that this is the second time a hint has taken Captain Sturt to the vicinity of Fort Bourke, where, had he at once crossed the Darling in 1828, and continued North-West, the true direction for inland discovery, that object had been then further ad-

vanced than it is now, and the progress of this Colony accelerated at least by so much as we have rested our hopes upon, by having a direct line of communication with the Northern Coasts.

Of the present expedition of discovery and its objects, we here know nothing, but it is understood to have been fitted out with the sanction, or by the express orders of Lord Stanley, for the purpose of exploring all Australia, and Captain Sturt selected, *par excellence*, as the leader. This, we confess, we can hardly believe, when we learn that this gentleman retired from the army early in life on account of defective vision; and why Captain Sturt should be permitted to trespass on the sphere which properly belongs to the Survey Department of New South Wales, we cannot divine, unless, indeed, we are to view it as another instance of that sinister patronage so often dispensed in Downing-street, even to the sacrifice of great national ends. We hope we are not to borrow another conclusion, already rife out of doors, that personal prejudice in a high quarter, may also have had a share in the arrangement.

Of our own endeavours to be first to send an expedition, we are glad to be enabled to speak with more certainty, but not with more satisfaction. We were not in the Colony at the time the expedition to Port Essington was projected and canvassed in the Legislative Council, but the manner in which that measure was met by the Governor would appear to indicate an exclusive spirit, of which a Sturt or a Leichardt are to reap the advantage, whilst an active and intelligent staff, under an experienced chief, are suffered to remain mending pens at head-quarters. By this conduct of the head of the Government, we comprehend the merit of that accomplishment of saying No at once, instead of saying Yes at first, and No at last—but meaning No all the while. That there is comfort and candour in a positive negative compared to this, we fully admit! and why His Excellency's boasted courage and decision in this particular was not obvious here, it is impossible to say; but to the traveller in question, and the Colonists interested, a decided negative at first had left it possible in this case to have overcome the *vis inertiae* of Colonial authority by timely representations home.

#### SIR GEORGE'S TEAR.

Tune—"The Soldier's Tear."

UPON the deck he turn'd  
To take a last fond view  
Of Sydney, where he rul'd the roast,  
And lin'd his pockets too:  
And sigh'd "Farewell! farewell!  
Five thousand pounds a year;  
Farewell, my greatness, oh farewell!"—  
And then he dropt a tear!

Upon a wharf close by  
A squatter chanced to be,  
He flung aloft, in joyful mood,  
His hat of cabbage-tree;  
And shouted loud, "Speed hence!  
Thou very best of ships,  
That tak'st away our ruler grim—  
Our scourger, Sir George Gipps!"

Sir George, on hearing this,—  
Oh, wrathful did he wax,—  
And griev'd that he no longer could  
The squatter fleece and tax:  
To Downing-street just lie,—  
There with a zealot's grace  
You'll see the man that ground us here  
Cringe low, and beg for place!

#### JUDICIAL PUNISHMENTS IN NEW SOUTH WALES.

WE have no doubt that it must frequently have astonished people arriving in this Colony from England, to see the extremely severe sentences, which our Judges are daily in the habit of passing on criminals convicted before them. It seems to be a general rule with them, to inflict the maximum of punishment, and in no case to recognise the minimum. To what cause we are to attribute this unmerciful, and we may add, most un-English mode of administering the criminal justice of the country, we confess we find it most difficult to say. The peculiar condition of most of those who are found guilty of crimes amongst us, furnishes perhaps, some palliation for the conduct of the Judges in this respect, but by no means justifies it to our satisfaction. On reading through the reports of our Criminal Courts, we have sometimes almost fancied, that we were living under a totally different system of laws to those which regulate the Mother-country. The crime of cattle stealing, seems to be selected as one requiring to be met with unyielding severity. The punishment which the law has provided for this offence, is transportation for not more than fifteen years nor less than ten years, or imprisonment not exceeding three years, with or without hard labour, and with or without solitary confinement, such confinement not exceeding one month at any one time, nor three months in any one year. Here, it will be seen, is a very wide discretion, ranging from imprisonment for a day or an hour, up to the heavy punishment of fifteen years' transportation. But in nine cases out of every ten in New South Wales, the heaviest of this vast variety of sentences is passed. And in the few cases in which a lighter punishment is awarded, the sentence is still greater than would be inflicted for a first offence in England. An instance or two will show that this observation of ours is correct. In the *Sydney Morning Herald* of the 18th of January last, it is reported, that "John Smith who had been found guilty of horse stealing, having been placed at the bar, was sentenced by the CHIEF JUSTICE to be worked in irons on the public roads for the period of three years: THE TERM OF PUNISHMENT BEING MADE COMPARATIVELY LIGHT IN CONSEQUENCE OF THE PRISONER'S PREVIOUS GOOD CHARAC-