

STATE LIBRARY OF N.S.W.
MITCHELL LIBRARY

DSM/
991/
D



Alfred Lee.

CASE *SHELF*

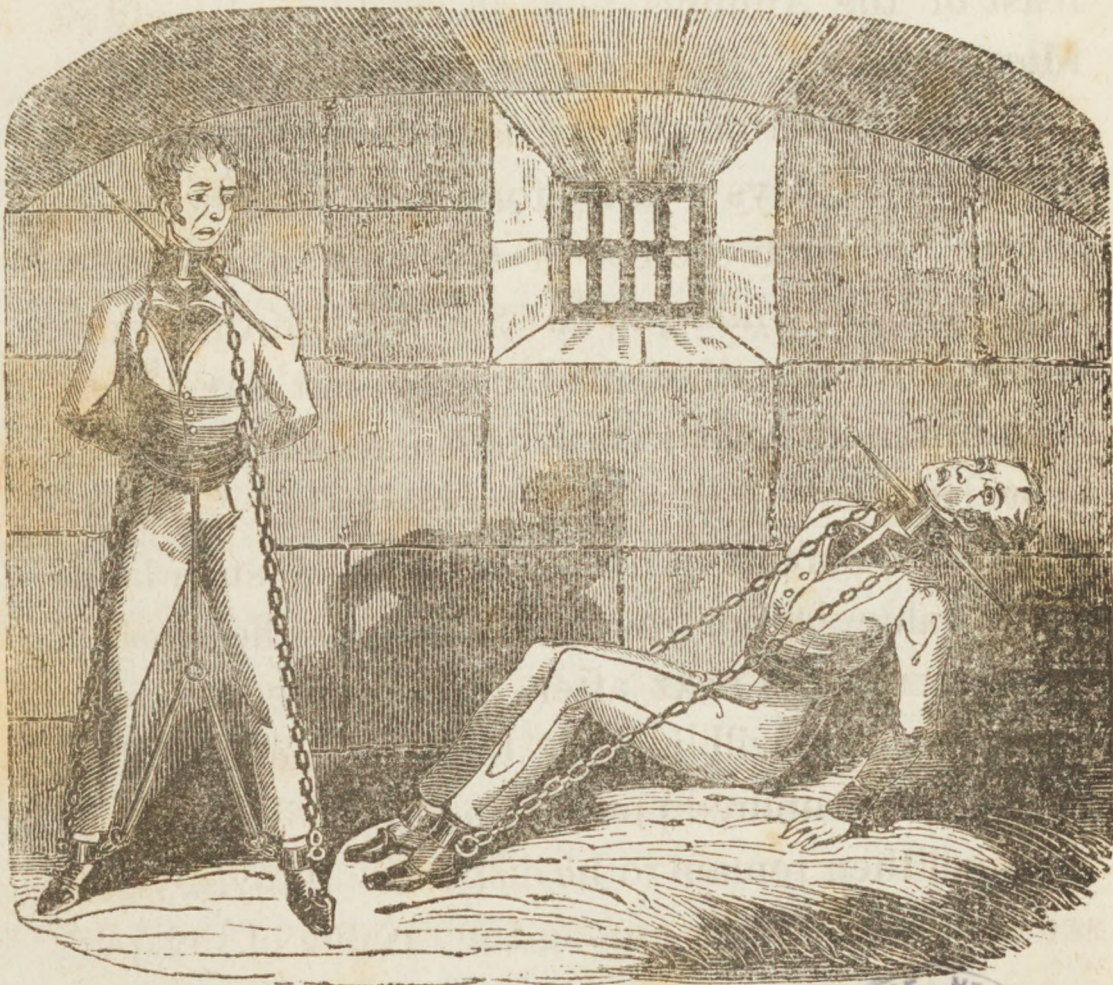
N^o

GOVERNOR DARLING'S Refutation

OF THE CHARGES OF CRUELTY AND OPPRESSION
OF THE SOLDIERS,

SUDDS AND THOMPSON.

AT SYDNEY, NEW SOUTH WALES, November 26th, 1826.



" Oh my country, for mercy and valour renowned,
Shall thus your defenders with slave-irons be bound,
Oh, no! in the land where true freedom resides,
Where justice, but tempered with mercy, presides;
Her pitying voice will atonement demand,
For a son thus destroyed in a barbarous land."

The Dying Soldier in Australia.

" The irons were made of round bolt iron formed into a COLLAR FOR THE NECK, with two projections extending from a foot to eighteen inches from the collar, and weighing about fourteen or fifteen pounds each."—*Minute of the Executive Council of Sidney, May 28th, 1829.*

By MILES.

LONDON:

PRINTED AND PUBLISHED BY D. GILL, FETTER-LANE, FLEET-STREET.

1832.





THE "DARLING" IRONS

OF SUDDS AND THOMPSON,

OF HIS MAJESTY'S 57TH REGIMENT,

AT SYDNEY, NEW SOUTH WALES.

THE Public will not have forgotten the "*scandalous and audacious*" letter of Lieutenant-Colonel DARLING in the *John Bull* of the 18th of December,* (copied into the *Times*, the *Herald*, and most of the Journals), in no measured language abusing Mr. BLACK, the Editor

* From the *John Bull*, December 18th, 1832.

" UNITED SERVICE CLUB, PALL MALL, DEC. 16, 1831.

" SIR,—A most false and calumnious letter having appeared in the *Morning Chronicle* of Wednesday, the 14th instant, anonymously signed "MILES," and dated from the United Service Club, Pall Mall,—in which the honour and character of my brother, Lieut.-General DARLING, is most foully and slanderously attacked:—

" The undersigned, Lieut.-Colonel DARLING, waited last evening on the Editor of the *Morning Chronicle*, accompanied by his Solicitor, Mr. FORBES, and Lieut.-Colonel WOODROFF, and required him to produce the original of the letter, demanding, at the same time, the Author's name and address. This was, in the first instance, positively refused by Mr. BLACK, who declared himself ready to take the responsibility, and abide by the consequences.† He appeared to rely on the official absence of Lieut.-General DARLING from this country, as securing himself and his dastardly correspondent from the consequences of this literary assassination; and that one, or both of them, might spit forth their venom, and poison the public ear with impunity, prejudging (as "MILES" asserts) grave and most serious charges pending, and assuming that simple *accusation* amounted to proof; well knowing that the traduced could not, from a distance of half the globe, immediately contradict their base and most wicked slander. Such conduct carries with it its own comment—I shall make none. But I think it right to apprise the public, that my brother is expected to arrive in this country some time in May next, ready to meet any, and every, charge that has been, or can be made against him, either officially or individually; and will then deal with the authors of this scandalous and audacious letter in such manner as his friends may advise, and his injured honour and calumniated character demand. It is gratifying to me to have received such documents, by a late arrival, as satisfies my friends that he will be able triumphantly to prove that his honour and character are equally pure and unsullied. Till then, it is hoped that a liberal public will suspend its opinion, and not, by prejudging the case, do irreparable injury to an honourable and persecuted individual.

I simply add—*Audi alteram partem*.—I am, Sir, your obedient humble Servant,

W. L. DARLING, Lieut.-Colonel."

† When "MILES" was informed on the following day of the visit of Lieut.-Colonel DARLING, and his Aids-de-Camps, he instantly requested Mr. BLACK to furnish the Lieutenant-Colonel with the necessary information; but that honourable and independent Journalist peremptorily refused to do so. The Public will now be able to understand his reasons why, and appreciate his motives.

of the *Morning Chronicle*, and his “*dastardly correspondent*,” MILES, as Mr. BLACK had refused to give the name of the Author who had asserted that, “by the acts and conduct of Lieutenant-General DARLING, Governor of New South Wales, the character and honour of the army had been compromised beyond any thing upon record:”—That, “if it was difficult to account for General DARLING’s promotion, it was still more difficult after the many and serious charges preferred against him as Governor of New South Wales, to account for his being continued in a situation for which he had proved himself perfectly unqualified to perform the duties with justice to the governed, with credit to himself, or honour to the Government who employed him:”—That, “public justice, as well as the credit of the profession, cried out for investigation and redress; that, the honour of the British Nation required it;—retributive justice, and the laws of the land loudly proclaimed it to be their due.”

A variety of causes prevented a reply to the letter of the Lieutenant-Colonel, but most of all because he appealed to the Public to suspend their judgment until “*May*,” when his brother would arrive, and be “*ready to meet any and every charge that has been or can be made against him, either officially or otherwise.*” It was considered proper to give him all the benefit that delay could produce, and to submit for a time to the obloquy of being called “*literary assassins*,” and by these means prove to the world how utterly groundless was the charge of a desire, to “*spit forth venom*,” or to “*poison the public ear with impunity.*” May has passed, June has arrived, and so has General Darling! It is therefore essential now that the justification of “*MILES*” should be heard; that the charge of “*scandalous and audacious calumny*” should be repelled; by the production of “*proof.*” A liberal Public has suspended its opinion; and a liberal Public will, no doubt, after they have read this, do justice to General Darling, if “*an honourable and persecuted individual.*”

General Picton, as Governor of Trinidad, was tried on a charge of cruelty and oppression by ordering the torture to be applied to Louisa Calderon. Governor Wall, Governor of the Island of Goree, was tried for the excessive punishment of one Benjamin Armstrong, from which he died a few days after; was convicted of murder, and executed. What was held to be law in those cases, must be law now. General Darling has been publicly and officially accused of accelerating, if not occasioning, the death of Joseph Sudds. He must, therefore, undergo the like ordeal of Trial by Jury, otherwise General Picton was a persecuted and injured individual, and Governor Wall a MURDERED MAN. It matters not how “*gratifying*” the “*documents*” the Major-General has “*received*” may be to himself and “*his friends*,” or how “*satisfied*” they are of his conduct, as nothing short of a public trial will satisfy the cravings of justice, or convince the world that he is, “*AN HONOURABLE AND PERSECUTED INDIVIDUAL*,” or that “*Miles*” and “*the Morning Chronicle*,” have with “*falsehood and calumny*” “*foully and slanderously attacked his*

character." It is there, and then, that he must triumphantly prove that his honour is equally pure and unsullied.

A variety of papers, purporting to be "*Papers explanatory of the charges brought against Lieutenant General Darling, by William Charles Wentworth, Esq.*," were presented to the House of Commons by his Majesty's command," and "printed by order of the House," dated, "the 8th of July, 1828," and "the 1st of July, 1830."

The following is taken from the *Courier* of the 9th of July, 1828:—

"Mr. STEWART, rose to move for papers connected with the trial and punishment of privates Joseph Sudds and Patrick Thompson, 57th Regiment, which took place at Sidney, New South Wales, in November, 1826. The Hon. Member went into a statement of the case of these individuals, from which it appeared that in November, 1826, two private soldiers of the 57th Regiment, named Sudds and Thompson, committed a robbery in the town of Sidney in the open day, with a view to obtain their discharge from the service. They were tried, convicted, and sentenced to transportation (that is, removal to a penal colony and being kept to hard labour), for seven years. Subsequently, Lieutenant-General Darling, the then Governor of the Colony, commuted the sentence of transportation to working in chains on the public roads for the above term; after which the parties were again to be received into their regiment. A proclamation or general order was published, and read at the head of every detachment. The men were stripped of their regimentals, and dressed in felons clothes; chains of a peculiarly distressing kind were placed on them; they were marched up and down in the presence of their comrades, and after having been drummed out of the regiment, were sent back to gaol, where in five or six days Sudds died. The Hon. Member then moved that an humble address be presented to his Majesty, praying that his Majesty would order that there be laid before the House a copy of the record of the conviction of the parties, and other papers.

"Sir GEORGE MURRAY did not rise to oppose the motion of the Hon. Gentleman. An imputation had been cast on the character of a distinguished Officer, accusing him of oppression and cruelty; and the best reply to the charge was to produce every document that would throw light upon it. This was the most becoming course to be pursued as regarded the Hon. Member (Mr. Stewart), as regarded the individual (General Darling), who was chiefly implicated in the charge, and as regarded the House of Commons—for certainly the Representatives of the people had a right to be informed upon all points which related to a charge of injustice and cruelty. The Hon. Member, however, should be informed, that with reference to the 57th Regiment, several of the soldiers of that Regiment had mutilated themselves, in order to unfit themselves for service, and so to procure their discharge. The Governor, however, instead of granting them that which they wanted, had degraded them to the lowest grade in the army. The two individuals in question, not finding this plan answer, committed the theft of which they were subsequently convicted, thinking by this means to obtain their object;—and it was on this ground that they were punished in the manner described; no unnecessary harshness having been used. He would observe, that no regiment in the service had a higher character than the 57th.

"Sir C. COLE bore testimony to the excellent and humane character of the present Governor of New South Wales.

"Mr. HUME said, that the Hon. Member who brought forward this motion had greatly understated the facts. He was glad, however, that the Right Hon. Gentleman had consented to afford the information required. He complained that the Governor-General had unjustly changed the punishment awarded by the civil court.

"Sir GEORGE MURRAY explained.

"The motion was then agreed to."

Upon the 17th of June, 1830, when Mr. Stewart moved the House of Commons for the production of other Documents, which had been received at the Colonial Office; viz. a letter of impeachment of Lieut.-

General Darling, by Mr. Charles Wentworth, together with its accompaniments ; Sir George Murray objected to the Motion as it then stood, but observed " he would not object to the production of such documents as *he might find upon examination to be fit and proper* and necessary to be produced for the elucidation of the case." His amendment to the Motion therefore was for, "*such papers as may seem fit to the Colonial Secretary to produce.*" If the original motion was withdrawn, he pledged himself that, "*he would take care to produce all documents which were necessary for the subject,*" but, " he did not pledge himself to the production of the specific documents, as he was not able to say whether they were fit to be produced, he had no other desire than to bring under the notice of the House, the whole of this transaction."

The Public would expect that the fine speech of Sir George Murray, breathing, as it does, every disinterested, humane, patriotic and laudable feeling, would be acted upon up to the very spirit of the meaning of the words uttered. But not so ; his actions stultify his professions. Instead of "*every document being produced that could throw light upon the subject,*" the only one that could do so, the most important of all, Mr. Wentworth's letter of impeachment, dated March 1st, 1829, Sir George Murray, "*upon examination*" did not "*find*" it "*to be fit and proper and necessary to be produced ;*" and while every other document is given at full length, this has *been* so mutilated and cut up, more than one-third of it being left out, as to destroy the effect it would otherwise have produced. But this is what Sir George Murray considered, " THE BEST REPLY TO THE CHARGE," " the most *becoming* course to be pursued as regarded the REPRESENTATIVES OF THE PEOPLE," whom he *sneeringly* admitted, " had a RIGHT to be *informed* upon all points which related to a charge of INJUSTICE AND CRUELTY !—The very self same Sir George Murray who in the House of Commons (May 14) so pleasantly rang the changes upon " INCONSISTENCY ;" and declared that, "*he thought* there was a general understanding in the House that *no man* was to have any PRINCIPLE !" Of course he more particularly alluded to the Whigs, the execrable and detested Whigs ; and not to the immaculate and disinterested Tories.

Of the Tories " Miles " observed, " let their deeds be shown to exemplify, if exemplification is necessary, the degrading condition to which mankind was reduced whilst under their fangs. Their acts would best show their sense of honour, their love of truth, their great regard for justice."

Why and wherefore Sir George Murray omitted any portion of Mr. Wentworth's letter will be difficult to explain ; it is perfectly unaccountable but on one score. The letter of impeachment, prior to its transmission to England, had been laid by the Governor before the Executive Council on the 4th of May, 1829, and they sat daily until the 21st examining witnesses to refute the charges and afterwards made their report.

" Minute No. 8, Council Chamber, 4th May, 1829. His excellency the governor laid before the council the letter of impeachment against his excellency, addressed by Mr. W. C. Wentworth to the

Right Hon. George Murray, His Majesty's Secretary of State for the Colonies, and dated Sydney, the 1st of March, 1829." "His excellency, the governor, requested the council to examine into the truth or falsehood of the charges contained in the letter of impeachment; and particularly urged them on the council, in consequence of their conduct being arraigned in it."

The Council accordingly did "examine *into the truth* or falsehood of the charges" contained in the letter of Mr. Wentworth, of March 1st 1829; and after a sitting of eighteen days, examining of witnesses on "the principal points or charges advanced in the letter, which appeared to the Council to require investigation or merit attention;" "the Council proceeded to consider the evidence taken before them," and then made their report, which, according to their ideas, refuted every allegation set forth in Mr. Wentworth's letter; "the grossest and most absurd calumnies,"—as General Darling called them in his letter of the 20th of April, 1829. The Report of the Council, and all the depositions of the witnesses examined by them, has been presented to the House of Commons; as also a letter of General Darling's, dated 28th May, 1829, commenting upon those proceedings, as well as Mr. Wentworth's letter of impeachment. In that letter the General says:—

"The allegations or facts charged, are comprised under thirteen heads. As the course least troublesome to you in considering the facts represented by Mr. Wentworth, I must request you to refer to the testimony given before the Council, which will convince you of the total falsity of Mr. Wentworth's statement, as to the weight, construction, and torturing effects of the chains; as also of the utter groundlessness of the charges which he has ventured to prefer against the Government, of having fraudulently fabricated other chains; and interfered to prevent an Inquest being held on Sudds' body. Having referred you to the proceedings of the Council in refutation of the facts, I shall content myself with bringing under your notice a few only of the most palpable contradictions which appear throughout Mr. Wentworth's statements, and in doing so, I shall observe the order he has pursued in his letter."

From this it is evident, that the whole letter of Mr. Wentworth, in common candour and common honesty, ought to have been given:—otherwise how is it possible for any person to understand, or be satisfied, that there are "*the most palpable contradictions throughout it?*" Surely when both these gentlemen accuse each other of lying, prevarication, and falsehood;—the equitable way is to listen to both with caution, and to place no particular reliance on the statement of either. If the refutation of General Darling to the "*thirteen heads*" was given, it was "*fit and proper and necessary for the elucidation of the case,*" that the whole of the thirteen charges should also have been given; and without this it were impossible "*to bring under the notice of the House the whole of this transaction.*"

On the very same day that the council entered the Minute, No. 8, which unequivocally records the impropriety, illegality, and utter worthlessness of their proceedings, Mr. Wentworth addressed a protest to Lieut.-Gen. Darling against their proceedings; and which protest is among the parliamentary papers. In it Mr. Wentworth observes:

—“ I consider it only an act of duty to myself to protest against this solemn mockery of an enquiry on the following grounds :—

“ Because the Executive Council is not competent to administer an oath, and does not, therefore, possess the attribute which the law holds to be indispensable to the elucidation of truth, and because it has no jurisdiction over the matters which I have laid to your charge.

“ Because one of the members of this illegal conclave, Mr. M'Leay, is involved with you as accessory ; and because the third and last of them, Colonel Lindsay is your private friend ; and if he were even disposed to act impartially, he would be out-voted by your creatures in the council ; and besides, he possesses neither ability nor knowledge of the subject sufficient to enable him to direct a proper course of examination to the witnesses.

“ Because it is purely an *ex parte* proceeding, in which you are represented by the whole council, who are in fact your nominees ; whilst I, who ought to be equally a party to it, am not invited, or indeed suffered to be present, either in person or by my proxy.”

If Sir George Murray “ *upon examination* ” of the documents, saw it “ *to be fit and proper and necessary* ” to withhold the insertion of some portions of Mr. Wentworth's letter, because General Darling had observed that he “ HAD EXPRESSED HIMSELF IN TERMS WHICH ANY MAN PROFESSING A SENSE OF EVEN COMMON DECENCY, WOULD HAVE BEEN ASHAMED TO MAKE USE OF ; ” there can be no question in the mind of any man, still *less a gentleman*, that Sir George Murray out of “ *common decency* ” should have withheld the following audacious and infamous libel, contained in Governor Darling's letter of the 28th May, 1829, it being “ expressed in terms which any man professing a sense of common decency would have been ashamed to make use of.”

“ As to the system of “ *espionage* ” which Mr. Wentworth asserts, is established, if correct, it would be fully justified in the mind of any man who has a knowledge of Mr. Wentworth, Captain Robison, and a few of their factious and seditious associates, who are infinitely worse to the peace and tranquility of (A TYRANT) the Colony, than the convicted felons against whom every one is naturally on his guard ! ”

It is by no means difficult to understand the object of Sir Geo. Murray's amended motion, for “ such papers as may seem fit to the Colonial Secretary to produce ! ” Why has Captain Robison's protest against the proceedings of the Executive Council been withheld, or rather expunged from his evidence, as taken down with it by the Executive Council ?

All the world knows that Lieutenant-General Darling is an officer in the King of England's army, enjoying the patronage, protection, and favour of the Court. But of Mr. Wentworth, no body knows him even by name. It is therefore proper, at least, to mention who he is, to enable the reader to determine as to the degree of credit that is to be given to his address, as well as to form a just estimate of his motives. Mr. Wentworth was brought up to the Bar under Sir Samuel Romilly, and Sir James M'Intosh. His patrimonial estates laying in New South Wales induced him to settle there. He has distinguished himself as the leading Counsel at that Bar. He is one of the proprietors of the Australian Bank---the largest land-holder---the largest stock-holder in

the colony. Mr. Wentworth, in his letter alluding to the death of Sudds, says, "Up to that period I had visited at Government House as other Gentlemen of the Colony, and had always been received and treated by his Excellency with marked hospitality and respect. All private communication, however, instantly ceased between the Governor and myself."

Lieutenant-General Darling, in his letter to Lord Bathurst, dated the 4th of December, 1826, says—"an event which has recently occurred here, having been mis-represented in *The Australian* of the 29th of last month, and may consequently have an ill effect at home, I feel it my duty to put your Lordship in possession of the facts." He then narrates them pretty much the same as Mr. Stewart has done; observing that the "CEREMONY" took place on the 22d of November, and the prisoner "Sudds" was sent to the hospital the following day, Thursday, the 23d, and died on Monday the 27th!!! "That with respect to the chains which are designated "*instruments of torture*," it will be sufficient to state that they weigh only 13lbs. 12oz. The ceremony was intended to have an effect on the troops." "The extreme lightness of the construction of the irons prevented their being injurious in any respect to the individual." And he adds, "I feel that my duty imperatively required that I should check by every practicable means, the dangerous disposition which had manifested itself in the troops." (What would the Duke of Wellington have done had he succeeded to power and some of the soldiers have joined the people?) "If this has been accomplished, as I trust it has, a great and important service has been rendered the country at large."

Captain Robison, an officer of long standing and high repute, in his letter, dated January 3, 1829, states:—

"I commanded the Royal Veteran companies, when the punishment of Joseph Sudds and Patrick Thompson of the 57th Regiment took place; and in *my* opinion a greater act of torture could not have been well committed, with reference to the bad state of Sudds' health at the time. The unfortunate soldier (Sudds) was so unwell as to be unable to stand up, and was led into the Barrack-square from the gaol, supported by a man under each arm!! His whole body was much puffed up and swollen, particularly his legs and feet. The day happened to be one of extreme heat, it being the middle of summer in this country, and the length of time the iron collar took fitting, and rivitting round the neck of Sudds, as also the changing of his dress even to his shirt, for the yellow convict cloathing, oppressed him so much that he was obliged to be seated on the ground as he had not strength to stand. The other soldier Thompson, being in better health, and much more strong and active, had his collar and irons sooner fitted on him.

"With respect to the nature and weight of the chains, I beg to observe that a few months after Sudds's punishment and death (May or June, 1827) I was returning from the command of the Bathurst district, in company with Lieutenant Christie of the Buffs, and stopped a night at the Government station at Emu Plains.

"The chains which private Thompson worked in, as above-mentioned, had been left at Emu, and were brought for us to see. As they were of a very unusual description, and the iron collar reminding me of those I had seen on condemned slaves, &c. in South America, I was curious to examine them; and for this motive was induced to put them on my own person, as did also Lieut. Christie of the Buffs; we had but one opinion as to the torture they must produce. Indeed, I dare not trust to paper the remarks that Mr. Christie made on the occasion.

“ I found it quite impossible whilst I had the collar and irons on me to lie down, except on my back and face, there being two long iron spikes extending from the iron collar, which put it out of my power to turn over on either side; independently of which, there were two chains on either side, extending from the collar and communicating with those on the legs.

“ What the whole weight of these irons were, I cannot take upon myself exactly to say, but, in reply to a question, whilst I had them on, from Lieut.-Christie and others, as to what I considered their weight? I guessed it at about thirty or forty pounds or even upwards.”

Mr. Christie in a volunteer letter addressed by him on the 6th of Sept. 1829, to Sir George Murray, “in consequence,” he observes, “of a communication from New South Wales,”—but from whom he does not mention, but most probably General Darling,—says, “I deny ever making use of such observations, or of words that could have a similar construction:” viz.—that “the tyranny and cruelty of General Darling” was “so severe,” that Captain Robison “could not trust himself to commit them to paper;” “such statement made by Mr. Wentworth being false, malicious and unfounded.” However, Mr. Christie does not attempt to deny the observations he made regarding the weight of the chains. Indeed he well could not. James Kinghorn on his examination before the Executive Council of Sydney on the 7th of May 1829, ~~on~~ being asked “did Captain Robison and Lieutenant Christie (now Captain) make any remarks on the chains?” replied, “Mr. Christie said that they must weigh sixty pounds!” Mr. Alexander Kinghorn, on the 14th of May, was asked the same question, and replied, “I recollect Mr. Christie saying that they would weigh about sixty pounds.”

John Head, (a free man,) has upon oath, the 29th of July, 1829, at Sydney, deposed that, “he was hut keeper at Emu Plains, when Patrick Thompson was a prisoner there;—that he was desired by George Plumley, overseer of the gang, he not being able to read, to read to him a letter which he the said Plumley had received, purporting to be signed by Alexander M’Leay, Colonial-Secretary, by command of the Governor; and that it directed the said Plumley to take the chains and collar off the said Patrick Thompson, and to convey the same PRIVATELY to Government House;—that the said Plumley did accordingly take off the chains from the said Patrick Thompson, and put them in a bag, which the deponent, Head, carried on his back about half a mile to the Government House at Emu, and delivered them to Mr. James Kinghorn; and is of opinion that they could not have weighed less than from thirty to forty pounds weight.”—Why was this man not examined?

George Plumley says,—“I considered them to weigh between from nine to ten pounds!”

The state of health of the deceased “*Sudds*,” at the time the “CEREMONY” took place has been much questioned. A Magistrate, Mr. Icely, (a Darling) who was examined on the part of the Governor before the Executive Council, on the 6th of May, 1829, says, “I followed them half way through the barrack yard, when they had the irons on, on their way to gaol they danced to the tune of the rogues’ march, which was then playing, as they moved along, and held their caps in the

air as if to show their indifference to the degradation to which they had been subjected." But Colonel Shadforth, who commanded the 57th Regiment at the time, on his examination before the Council, the 9th of May, 1829, being asked "in what state did Sudds appear to be at the time; and did you observe any levity of manner after his irons were put on," replied:— "*Sudds* appeared to me to be in a sickly state. I did not observe any levity of manner in either of them after the irons were put on."

The Lieutenant-General in his dispatch to Lord Bathurst, dated December 12th, 1826, "conceiving it would be satisfactory to His Majesty's Government to have *authentic* information of every circumstance, connected with the death of private Joseph Sudds, of the 57th Regiment," transmitted "a Minute of Council," of which he himself was the President; Lieut.-Colonel Stewart, the Lieutenant-Governor, who commanded the parade when the punishment took place, and Mr. M'Leay, members. The Council, "had sat for two days," and come to the conclusion, "that Sudds' death could in no respect be attributed to the proceedings which took place." As a curious way of illustrating that conclusion, he says, "the statement of Thompson, the hospital attendant, who was remarkably collected, is clear and circumstantial; to the truth of which he has made oath." Now, what is it that this Thompson says?—

"In the early part of November, Sudds was ill, and was an out-patient: he was bled and took opening medicine. Some days after, about nine o'clock in the evening, he was brought into the sick-ward, and was very ill: he was much swollen; he complained of his head and bowels; I made him foment his belly on the following morning with hot water; it removed the pain and swelling from his belly, but the swelling in his legs and thighs still continued. When the Surgeon came in the forenoon, he ordered him to be discharged from the hospital; his head and bowels were then better, but the swelling in his legs and thighs still continued. He mentioned that he supposed it to be dropsy, the same complaint he had formerly had an attack of in the West Indies. He remained out of hospital a few days, when he again returned in a much worse state than he formerly was, I made him have recourse to the same fomentations and opening medicines. I asked him when he came into the hospital, "What is the matter with you?" he said, "My belly is like a drum." He remained in hospital with the goal irons on until the morning of the 22d; the irons were then struck off, and he was taken to the barracks. On his return he was again put in the "*fines*" room; the next day, (Thursday, the 23d), between twelve and two, he was brought to the hospital and placed in bed. Mr. M'Intyre saw him immediately, and ordered his irons to be taken off. Mr. Toole, to whom this order was given, replied, "that the irons had been put on by direction of the Government, and he could not remove them." (*A pretty TOOL indeed!*) Mr. M'Intyre observed, "the irons are too heavy to be worn here, and they must be taken off whilst he is in the hospital at any rate." About four o'clock in the afternoon, sometime after Mr. M'Intyre went away, the irons were taken off. Sudds continued to get worse, and was removed to the general hospital on Monday afternoon. He had complained from the first time he was taken ill, in the beginning of November, of a pain in his throat, and of a difficulty in breathing, which difficulty increased to such a degree, that he *could scarcely breathe*, and was totally unable to take nourishment after Friday, when he took in my presence a little arrow root and tea. On Saturday he was unable to swallow any thing but a little water, which I put into his mouth with the spoon, and this inability to take food continued until his removal."

The Governor in his despatch of the 12th of December, 1826, observes that, "no report was made by Mr. Bowman, the principal

surgeon, or his assistant, of the illness of Sudds; consequently the Government had no reason to suppose he was unwell." This is no excuse for the Governor, it was his duty to have enquired into the state of their health before inflicting such a punishment. Indeed he ought to have been present, for Baron Garrow on the trial of General Picton, who was absent when the torture was applied, said, "I complain, gentlemen, that the defendant was not present"!! Was Mr. Bowman held responsible for this gross dereliction of his duty, and the melancholy consequences which ensued? Was he not, the rather, shortly afterwards made Inspector-General of hospitals?

THOMPSON, the fellow-sufferer of Sudds in his examination on the 23d of April, 1827, before the Colonial-Secretary, Mr. M'Leay, the Attorney-General, and Mr. Wentworth, says:—

"For the last six days previous to the 22d, I for the most part got Sudds' bread. He could not eat it himself." "The basils of the irons cut his legs during the time we were coming from the barracks to the gaol. It was owing to the sharpness of the basil and of the weight of it, that we were cut." "The night of the day of our punishment, Sudds was so ill, that we were obliged to get a candle about eight o'clock from Wilson the under-gaoler, in order to keep a light during the night. About ten o'clock he was getting very ill. I requested a fellow prisoner to get up and look at him, who said he was dying, and he did not think he would live long. He said he had a wife and child in Gloucester, and begged that if he did not get better by the next night, I would read some pious book to him." "On Sunday the 26th of November, he was removed to the general hospital, being carried on the shoulders of two men down the steps of the gaol to the entrance, and from thence carried in a small cart, as I was informed, to the hospital." "The collar put on Sudds was so small, that it would not admit any thing between it and the neck, but a cotton handkerchief. The collar was so small that Sudds would not allow it to be turned round his neck, saying that it would hurt him if it was stirred. I think, on Saturday the 25th of November, I broke the chain of my irons to enable me to turn the collar and lie at ease. My chains remained broken till Monday morning, when Wilson took me to the outer yard to get my irons removed and Sudds's put on. Sudds's irons were then put on me, the whole of them—collar and all."

"The death of Sudds," says Mr. Wentworth, (and why this paragraph has been omitted Sir George Murray alone can explain), "would have softened any heart not of stone; and yet you will perceive, Sir, that on the very day of this awful admonition, and as if to set the warning voice of the Eternal at defiance, the instruments of death are again resorted to, and again used with an almost similar result." If this be not wanting "with authority and command," if it be not proof, strong as holy writ, of the existence of a most "wicked, depraved, and malignant spirit," it will be in vain to seek for proofs of "express malice" among the recorded acts of "the greatest monsters of antiquity."

The Council of Sydney in their minute of the 9th of December, 1826, say,---"the chains were evidently intended to produce an effect on those who were witnesses to the 'ceremony,' and not to subject the prisoner to any extraordinary punishment." "Why then," as Mr. Wentworth asks, "did not the 'ceremony' itself cease with the parade?" Why after the conclusion of "the ceremony" were not the ordinary irons in which felons on the roads are worked, substituted for these fantastical embel-

ishments ? Why were these instruments of torture persevered in until Sudds was dying ; and again, after his death, until Thompson had contracted incipient dysentery ?

General Darling, in his letter of the 28th May, 1829, thus explains it :—“ it was not originally intended that they should have been worn after the prisoners should leave Sydney, but as the opposition papers made an outcry on the occasion, it was considered inexpedient to remove them at the moment.”

General Darling, in his Letter to Lord Bathurst, December 12th, 1826, says, “ He,” Sudds, “ marched to the Barracks on the 22d ;” “ on the following day, the 23d, he was reported to be ill, and the chains were consequently removed.” Thompson, the Hospital attendant, whom General Darling observes, “ *was remarkably cool and collected,*” and “ his statement clear and circumstantial,” corroborates this assertion of the Lieutenant-General: he says,—“ the next day, (Thursday the 23d),” between twelve and one, he. (Sudds) was brought to the Hospital, “ about four o’clock that afternoon, some time after Mr. M’Intyre went away, the irons were taken off.” Martin Wilson the under-gaoler confirms it; “ he,” Sudds, “ complained of being ill on Thursday the 23d ; he was taken the same day to the Hospital, and the irons were taken off.” Mr. M’Intyre, however, the Surgeon of the gaol, in his deposition before the Executive Council, on the 4th of December, 1826, denies this: he says,—“ I discharged him from the Hospital on the 16th, and did not see him until the 24th November: he was taken into the Hospital on the 24th, and was treated by me. I ordered his irons to be taken off.” If Mr. M’Intyre is to be believed, Sudds had his irons on for 48 hours instead of 28, as it has been made to appear ; and this seems to be the real fact ; if Mr. M’Leay, the Colonial-Secretary, is to be credited ? for in his letter to the Editor of the *Australian* of the 1st of December, 1826, he says,—“ He, (Sudds) was not ill when the chains were put upon him on Wednesday, the 22d ; and his subsequent illness took place on the 24th (Friday), when he again reported himself sick, and was forthwith a second time admitted to the Hospital. On admission, the irons in which he was confined were immediately removed.” Mr. M’Leay adds, “ I have no doubt, in justice to the Government, you will insert this letter in your next paper.”

But here is another manifest and palpable contradiction. Mr. M’Leay says—“ Sudds was not ill when the irons were put on him on the 22d.” Thompson, the hospital attendant, whom General Darling declares, his evidence to be “ *clear and circumstantial,*” says, after being discharged on the 16th, “ he remained out of the hospital a few days, when he returned in a much worse state than he formerly was.” This must have been on or about the 20th. Thompson, the other sufferer, says,—“ for the last six days previous to the 22d, he for the most part got Sudds’s bread he being so ill he could not eat it.” Captain Robison proves that he was so ill he was obliged to be supported by two men when led to the parade. Yet Mr. M’Leay dares to assert that “ HE WAS NOT ILL !”

General Darling, in his Letter to Lord Bathurst, of the 4th of December, 1826, says, "With respect to the chains which are designated instruments of torture, it will be sufficient to state, that they weigh only 13 lbs. 12 ozs." The Colonial Secretary, in his Letter to the Editor of the *Australian* of the 1st of December, 1826, says,—“If you have any desire to examine the chains you are at liberty to do so; they are now at my office, and are the counterpart of those put on Thompson. They weigh exactly 13lbs. 12 ozs.” But, it is clearly proved by Thompson, that at this very period, Sudds’ irons, which weighed 14 lbs. 6 ozs. were absolutely on his neck; for the Executive Council, in Minute No. 10, of Wednesday, 6th May, 1829, say,—“Second set, originally put on the prisoner Sudds, and afterwards worn by Thompson: weight, 14lbs. 6 ozs.” (14 lbs. 6 ozs. !!). There must then have been a third set, as Thompson had broken his. The Council, in Minute No. 20., thus describe them: “They were made of round bolt iron, formed into a collar for the neck, with two projections extending from a foot to 18 inches from the collar, and weighing about 14 or 15lbs. each. On this subject, the Council think it proper to remark, that, from the peculiar construction of the irons put upon Sudds and Thompson, the greater part of the weight must rest upon the shoulder, or hang equally from two opposite sides of the neck, and that the heaviest set of the two weighs only fourteen pounds six ounces, which is only six ounces more than the weight of a common musket!” Which, General Darling asserts, may be worn without “BEING INJURIOUS in any respect to the individual,” owing to their “EXTREME LIGHTNESS!” and Sir George Murray declares, “WITHOUT UNNECESSARY HARSHNESS!!”

Mr. Wentworth in his letter of impeachment observes:—

“Immediately upon the death of Sudds, and the appearance of the *Australian* of the same day the public mind became agitated to the highest degree, the feeling was universal that Sudds had been murdered. In this state of public ferment, and when it became necessary, in the opinion of the Governor, to cause Mr. M’Leay (Colonial-Secretary), to address to the Editor of the *Australian* the letter contained in appendix B, with a view of allaying the general indignation, there would evidently be no difficulty in forging at the lumber yard where Thompson’s Irons had been, it appears, originally made under the superintendence of Captain Dumaresqu, (General Darling’s brother-in-law), who had charge of the department, a set of Irons of the same shape and dimensions, though of a very different weight; and to exhibit these at the Colonial-Secretary’s Office, as the identical Irons which the deceased Sudds had worn.”

Colonel Dumaresqu (General Darling’s brother-in-law), on his examination before the Executive Council, May 6th, 1829, was asked, “for what purpose were those chains made?” to which he replied, “expressly to be put on Sudds and Thompson.” “What is their weight?” “At the time they were made I did not weigh them; but I subsequently ascertained, that the first set exhibited in the Colonial-Secretary’s Office, weighed

thirteen pounds twelve ounces. The two sets of chains were ordered to be made exactly alike; but I, two days ago, ascertained, that the set worn by Thompson at Emu Plains, exceeded somewhat the other set in weight." [This proves the gross and palpable falsehood, as to the weight of the irons, "*the first set*" exhibited at the Colonial Secretary's Office.] "Were any other chains of a similar size and appearance, made at any other period by order of Government?" "*No, never!*" John Gibbons, storekeeper to the engineer in the lumber yard, being asked "whether any other chains of a similar size and appearance were made at any other period by order of Government?" replied, "*Not to my knowledge, of that kind.*" Benjamin Constable, overseer of Blacksmiths, "saw them made," and on being asked "where any other chains of a similar size and appearance made at any other period by order of Government?" replied, "*I never saw any made with collars and small chains but on this occasion.*" None of these witnesses assert that no others were made—they only say, they never saw any. But Joshua Thorp, assistant engineer, "under whose inspection they were made;" being asked "what is the weight?" replied, "I have no recollection." "I think the *first set* made was found too *heavy*, and a collar of a lighter description substituted for the original one, which was broken up!"—What then went with *the first set* of chains made, they, THE CHAINS, being found too heavy?

"If," observes Mr. Wentworth, "there be one moral stigma which justly attaches to this community and forms its distinguishing deformity, it is the notorious and disgusting perjuries which daily stain the proceedings of our tribunals, and render it frequently impossible for judges, juries, or assessors, to distinguish truth from falsehood. This too in cases where a dollar, or at most a pound, forms the perjurer's reward. But in a case where a governor should be concerned, the temptations to perjury, which are at his disposal, are so numerous, that they form altogether a mass of influence from which no one however independent his station or circumstances, is altogether exempt!"

General Darling in his letter to Sir George Murray, dated, "May 28th, 1829, paragraph 19th," says, "Mr. Mitchell has now been examined, and it will be seen by his evidence, and that of Doctor Bowman, *Inspector-General of Hospitals*, (since the death of Sudds), that the chains could not have occasioned Sudds's death." The Executive Council at paragraph 8, of their Minute of the 21st of May, 1829, say, "in consequence of the absence of Mr. M'Intyre, at a distant penal settlement, the Council has had no opportunity of examining him; but they consider this to be very immaterial as Mr. M'Intyre has already been twice examined before the Executive Council on this subject." Question to Dr. Bowman by the Council, May 4th, 1829:—"Where you present when Sudds' body was dissected, or did you see it subsequently?" Answer,—"*I was not, nor did I see it afterwards!*" "Have you seen the irons which were put on Sudds?" "Yes I have seen them." "In your opinion would the wearing of those irons, for twenty eight hours, seriously injure the health of a man otherwise

free from disease?" "I should think not, indeed!" Mr. Mitchell, Surgeon of the General Hospital, examined May 7th, 1829,—“Did you examine the body of Sudds after death?” “I attended the examination, and assisted Mr. M’Intyre in opening the body.” “What appearance did you observe on the body to indicate the proximate cause of death?” “The body appeared in general healthy, and no particular organ was so materially affected as could justly be called the proximate cause of death. The liver seemed to indicate that he had lived freely, but it was more functional derangement than organic disease.” “Did you examine Sudds’ throat after death?” “I did not; I was called away; but I do not believe that the windpipe or *bronchia* was diseased.” “In your opinion could the wearing of those irons for twenty-eight hours seriously injure the health of a man otherwise free from disease?” “I do not conceive that the wearing of those irons for the period above specified would seriously injure the health of a man otherwise free from disease.” Mr. M’Intyre in his evidence before the Executive Council, December 5th, 1826, the Governor presiding, says,—“On opening the body, I first examined the abdomen, which appeared quite healthy; and then examined the liver, which seemed to me larger than in general; it was healthy in all other respects. I then examined the head, and found the brain quite healthy; I then examined the throat, and discovered mucus of a slimy frothy description; the windpipe was rather inclined to reddish colour.” Mr. Wentworth observes that “Mr. M’Intyre’s first declaration before the Governor and Mr. M’Leay after the death of Sudds, was, that there was “AN INFLAMMATION, OR INFLAMMATORY APPEARANCE, EXTENDING FROM THE CHEST UPWARDS TO THE THROAT WHERE IT WAS MORE EXTENSIVE, AND WHICH HE OBSERVED WAS TERMED, ‘BRONCHITES.’”

Those witnesses then would make it appear, that Sudds was free from disease; and that if he were not, the irons might “*seriously have injured his health.*”

It is incontrovertably proved that Sudds, previous to the application of the irons, was in a bad state of health; and his very throat was affected. Thompson, the hospital attendant, says:—“He had complained from the first time he was taken ill, in the beginning of November, of a pain in his throat, and of a difficulty in breathing, which difficulty increased to such a degree that he could scarcely breathe.” From this fact it is clear to all who have the slightest knowledge of the important structure of the throat, its contiguity to the more important parts of vitality;—viz. the lungs, of which the unfortunate sufferer complained, and in conjunction with the strong mental affection of the brain, must have led to the melancholy catastrophe. Mr. M’Intyre asserts that when he “examined the throat,” he “discovered mucus of a slimy, frothy description;”—and which must have been produced by the violent efforts made to obtain respiration. The medical men have given an opinion that the irons were not the cause of his death; but none of them have dared venture to assert that it did not accelerate it! They contradict each other as to the cause. Dr. Mitchell considers “the principal cause” of

Sudds' "decease," to have been "a dropsical affection and bowel complaint," but does not minutely detail the nature or appearances on dissection. Dr. Bowman considers the death to have proceeded "from inanition." But of the state of the heart and lungs, the medical men are all silent; and either, or both of them, might have been seriously affected, sufficiently to have caused death, without any other organ being affected. Mr. Mitchell, indeed, admits that some of the "organs" were diseased, for he remarks, "the body appeared in general healthy, and no particular organ *was so materially affected* as could justly be called the proximate cause of death!"

Governor Darling in his despatch of the 28th May, 1829, says,—“Is it possible then, if (the collar and chains) by their weight or pressure, occasioned or accelerated the death of Sudds, that they would not have left some mark on his body, either externally or internally, indicative of their injurious effects?” It may then be asked what occasioned the “*delirium*,” the “*pain in his throat*,” “*difficulty of breathing*,” the “*mucus of a slimy frothy description*,” the “*reddish colour of the windpipe*,” the “*inflammation, or inflammatory appearance extending from the chest upwards to the throat*?”

“I would ask,” says Mr. Wentworth, “if Sudds died from natural causes unconnected with his punishment; why was not a regular Coroner’s Inquest held on his body? Why, too, was he removed from gaol merely to die in the hospital? Was it the same Mr. M’Leay who proposed that “Bronchites” should be falsely inserted in Mr. M’Intyre’s official report to him, contrary, as Mr. M’Intyre states, to his deliberate opinion, and contrary to what would have been, and what will be, if ever he should be examined in a court of justice, his recorded oath? Was it, I repeat, at the instance of this busy accessory in this dark transaction; this would-be suborner of perjury, that the dying sufferer was not allowed to run out the closing sands of his existence in peace? Was it at his instance, or was it the spontaneous act of Mr. M’Intyre himself? I have, Sir, only my own surmises on the subject; but this I can say, that if Sudds had died in gaol, the then Sheriff of the Colony, who is an old lawyer, and true lover of the Constitutional usages of his country, would have failed in his duty had he not caused that inquest to be held on the body of the deceased, which is *enjoined* by the law. This I know, and this the Governor must have known also. The necessary result of such an inquest would easily have been anticipated by the Governor; and to relieve himself from the *awful* dilemma in which it would have placed him was obviously of the first importance. Hence I infer that the removal of Sudds, after his recovery was hopeless, originated in a desire on the part of his Excellency, that his body, before the spark of life was quite extinct, should be placed where the Sheriff’s statutable jurisdiction, as a Coroner, did not exist.”

“Instead, however,” says Mr. Wentworth, “of this old constitutional mode of inquiry, (A CORONER’S INQUEST), the Lieut.-General, it appears thought fit to convene, on the 6th of December, an Executive

Council, presided at by his Excellency himself, and consisting besides, as I am informed, of Chief Justice Forbes, Colonel Stewart, the Hon. Lieutenant-Governor, and Mr. M'Leay, the Colonial Secretary. This Council adjourned once and closed its sittings on the 9th of the same month, when they recorded an opinion, beneath the shelter of which, his Excellency, without doubt, expected to be as safe, at least as beneath any verdict which he could expect from a Coroner's Inquest." The Lieutenant-General in his despatch to Lord Bathurst of December 12, 1826, while forwarding this "recorded opinion," says,—“The Council sat two days, and examined the persons employed in the gaol hospital, who had an opportunity of seeing Sudds during his confinement. Your Lordship will perceive by the Minute of Council, which I have the honour to enclose, that Sudds' death can in no respect be attributed to the proceedings which took place.” But, Mr. Wentworth properly observes, “the Executive Council in expressing this *recorded opinion*, wandered altogether out of their orbit”—and, “the very act of assembling the Council to inquire into and pronounce an opinion on the circumstances attending the death of one of his Majesty's subjects, amounted in fact to an usurpation of the jurisdiction vested by law in a Coroner's Inquest; and if I am not greatly mistaken, amounted in law to a high misdemeanor, not only in the Governor who convened the Council for such purpose, but in every member of it who lent himself to such a proceeding.”

“We have,” says Mr. Wentworth, “Sudds' version of the proximate cause of his malady, in the simple and affecting words of the broken-hearted soldier to his comrade, on the very night of the day of his inhuman exposure; when his wife and child being uppermost in his recollection, he exclaimed, “they had put him in them irons until they had killed him.”—“The irons”—“the irons”—then, were the Alpha and the Omega of this catastrophe; and had Mr. M'Intyre's opinion as to the accelerating and proximate cause of the death of this victim, been sifted before a Coroner's Inquest, it is fairly to be inferred, that it would not have differed from the opinion of the dying soldier himself.”

The state of Sudds' health at the time the “*ceremony*” took place did not appear to excite much of the attention of the governor; but in his despatch of the 28th May, 1829, he considers it to be a point of great importance; for he says,—“I declare that I never heard of Sudds' illness, either before the ceremony or afterwards, until I was informed of his death.” It is evident he knew of it immediately afterwards; and although in his letter to Lord Bathurst of Dec. the 4th, 1826, he says, “an event having recently occurred here having been misrepresented in the *Australian* of the 29th of last month, and may consequently have an ill effect at home, I feel it my duty to put your Lordship in possession of the facts;” he does not notice it, but thus indifferently speaks of the event,—“as to the fate of Sudds, it can hardly be supposed, that a man who could deliberately commit such an act, with so base an intent, could possess any sense of shame or really feel the degradation to which he had wantonly and wilfully subjected himself.”—However,

the fate of Sudds, and his illness was too notorious not to demand attention; accordingly on the 5th of December, 1826, "the governor brought under the consideration of the council, the circumstances connected with the death of private Sudds." It was then proved that Sudds had been long ill. On the 12th of December the governor in his despatch to Lord Bathurst, with those proceedings, thought it expedient to state that, "No report was made by Mr. Bowman, the principal surgeon, or his assistant, of the illness of Sudds: consequently, the government had no reason to suppose he was unwell."

Why then was not Mr. Bowman punished for his scandalous, dereliction of duty, and held responsible for all the melancholy and fatal consequences?—Why was not the Lieut.-Governor, Colonel Stewart, who commanded the Parade when the ceremony took place, dismissed, or brought to a general Court Martial, for carrying into effect the orders of the Governor under such circumstances? Lieutenant-Colonel Shadforth, who commanded the 57th regiment on that day, swears; that he was but "from five and twenty to thirty yards from Sudds at the time the irons were put on;"—that "no medical officer was present!"—that "Sudds appeared" to him "to be in a sickly state!"—that "he did sit down to have his convict shoes put on, which he seemed to effect with difficulty, his feet being swollen!"—Other officers have proved that, "*the unfortunate soldier* (Sudds) was so unwell as not to be able to stand up, and was led into the Barrack-square from the Gaol, supported by a man under each arm, his whole body puffed up and swollen, particularly his legs and feet!" and that, "the length of time the iron collar, &c. took fitting and rivitting round his neck, oppressed him so much, he was obliged to be seated on the ground; he had not strength to stand!"—Instead of making Mr. Bowman responsible for the melancholy and fatal consequences of this profligate neglect of duty, *why was he subsequently made* INSPECTOR-GENERAL OF HOSPITALS?

The following will shew the effect Mr. Wentworth's letter of impeachment of the 1st of March, 1829, must have produced on the mind of the Governor:—

"General Order, No. 58. Sydney, 20th March, 1829. The Lieut-General is pleased to order that private Patrick Thompson of the 57th Regiment, who was transported to Moreton Bay, shall join the detachment of his Regiment stationed at that Settlement; he is to be taken on the strength of his Regiment from the 2nd instant, the day on which orders were given for his pardon."

Will any man, after this, deny that "*by the acts and conduct of General Darling, the character and honour of the army has been compromised beyond any thing upon record?*" Even Patrick Thompson himself thought so; for when released he positively refused to do duty. He was confined in the guard-house, and still persisted that he would not; saying, that he had been drummed out and nearly killed with Sudds' irons and collar, and until he had satisfaction and redress he would never be drummed in, and that, "*if ever called, concerning the death of his comrade Sudds, he would declare that the weight of the irons,*

and a tight collar round his neck, was the cause of his death !— After all they were obliged to give him his discharge, and smuggle him out of the country. He is now safe in England, a living witness, ready to appear at the tribunal of Justice.

W. Dumaresq, Esq. (General Darling's brother-in-law, who constructed the irons), when upon his oath, May 9, 1829, before the Executive Council, deposed, with regard to the circumstance which led to the removal of the "Slave-Irons" from off the neck of Thompson, that he "wrote to Mr. Kinghorn by order of the Governor to desire, that all extra irons worn by Thompson should be struck off, in consequence of the reported good conduct of Thompson." The "*good conduct*" however, of Thompson, is better described by G. Plumley, *overseer of No. 1, Iron Gang*. Being asked by the Executive Council "why was he, Thompson, sent to Penrith gaol?" replied, "*because he refused to work ;—he said that as long as he had that ring round his neck, he would not work for Jesus Christ. I, in consequence, sent him by my assistant overseer, to be delivered over to the keeper of the lock-up house.*" But Governor Darling in his letter of the 28th May, 1829, best explains the cause,— "*Thompson having communicated some information he had received, when in Penrith gaol, respecting the cattle stealers, advantage was taken of the circumstance to order the removal of his chains.*" Now, why was not the real truth told, that it was at the *interference* of the Chief Justice *the chains were ordered off*?

Sir George Murray has much to *answer* for, in withholding the most important parts of Mr. Wentworth's letter of "IMPEACHMENT."— *What were his motives* for withholding the following portions of that letter?—

"That the Governor possessed no authority, either by virtue of his Military Commission as Commander of the Forces, or his Civil Commission as Governor of the Colony, to inflict any portion of that punishment deemed '*THE CEREMONY*,' which these men underwent in presence of the garrison on the 22d November, it would be a waste of words to labour. As *COMMANDER IN CHIEF*, his authority over them as soldiers *ceased with the sentence passed on them by the CIVIL OR SUPREME LAW*, at least during the continuance of that sentence. This authority over them as Governor of the Colony, is derived from the Act or Ordinance in question ; (*entirely left out of the papers printed*) and *that*, it has been shewn, gives him no power over soldier-culprits, which he does not equally possess over culprits of any other class that come within its purview. All the material parts of the punishment, therefore, or '*CEREMONY*,' directed by his Excellency's General Order, *viz.*—The stripping off their uniforms ; the dressing of them in felons' clothes ; the putting of them in new-fangled and barbarous irons, differing from the ordinary irons placed on offenders of the like degree ; the drumming of them as rogues out of the garrison ; all these acts of which '*THE CEREMONY*' was composed, were, it must be self-evident, not only illegal, but have no ground or *colour* of justification in any *lawful authority*, Civil or Military, with which his Excellency was, or is invested. I take it to be demonstrated then, upon a full view of the Act or Ordinance of Council, upon which the Governor has rested his justification in law, for the punish-

ment inflicted by his authority on Sudds and Thompson, on the 22d Nov. 1826, that this—his main ground of excuse—fails him in every respect ; fails him as to withholding these men from transportation ;—fails him as to ‘ THE CEREMONY,’ which he caused them to undergo on the parade ;—fails him in fine as to the ‘ EXTRAORDINARY CHAINS’ which *he ordered* to be placed on them.

“ This attempted justification in fact, is too purile to require commentary, and shews conclusively the wretched shifts to which he was driven for an excuse, when he could imagine himself, or hope to make others imagine, that there existed any analogy between the condition of troops stationed here in a British Colony, in the most perfect state of subjection to the Mother Country ; and troops serving in America, after the Peninsular War, and deserting over to the enemy by fifties of a night.* Why the Lieutenant-General’s very order and despatch shews, that no possibility of any such desertion existed here ; else why did the seven soldiers alluded to in these documents, commit “ robberies and maim themselves *to obtain their discharge from the service ?* ” Supposing it to be strictly true that the whole of these men were actuated by the same ‘ *intent*,’ where still was the just ground for inferring ‘ that any dangerous disposition had manifested itself in the Troops ? ’—Was the example of infatuated wretches lingering out a painful and laborious exile of seven years, amongst the most ‘ atrocious criminals,’ likely to be so seducing ? Would any but madmen prefer seven years of such toil, degradation and exile, to the comparative ease, and the honourable chances of “ A Soldier’s life” here or elsewhere ? Had the seven men alluded to indeed, formed part of an invading army, like those referred to in the Lieut.-General’s despatches, and this been an enemy’s country, where deserters would have been received with open arms, and rewarded for their treachery by grants of land and those other temptations which proved too powerful for the patriotism of our Troops in America, the case of Sudds and Thompson, combined with the case of other Soldiers referred to, might have created some apprehension in the mind of a Commanding Officer, and justified, during a state of Martial Law, the application of strong measures of example and prevention. But in a British Colony whose tranquility was as little disturbed as the very head and seat of the parent empire itself ; where the ordinary tribunals of the country were in full operation, and competent to visit every offence with its due weight of punishment ;—in a case too where the aid of those tribunals had been invoked ; and where they had not only meted out that measure of penal infliction which the law had annexed to the crime of these men, but had actually through the ignorance of the dispenser of the law, meted out a much heavier measure ;—in such a country and in such a case, it would be absurd to suppose that any parallel existed between the existence of Soldiers here and in America during the war, and in England. Nor is it credible that any such supposed analogy could have misled the judgment of any man of sound understanding—of any in short but an idiot or lunatic.—But pitiful as

* As would be the case at Sydney if the mother country from a continued inattention to and disregard of its wants, and countenancing violence and oppression, should goad it to throw off its allegiance, and a British Army be sent to reduce it to submission.

this excuse in fact is, I am sorry to be under the necessity of informing you, that I believe it to be in part fabricated."

"Having already proved that the grounds of justification relied on by his Excellency are of no validity in fact or in law, I shall close this letter with an examination of the *last and principal question* connected with the character of the homicide thus committed.—Was there any of that malice in the act, express or implied, which is the essence of murder? "The nature of malice," (*says my Lord Chief Baron Macdonald, in his charge to the Jury in the case of Governor Wall*), "as it is now understood, and has been for ages in this country, and wisely so, is not merely personal malevolence or spleen against an individual, or what would, in vulgar terms, be called spite; but we understand, by the word malice, the act of putting to death, (which is the same), the act of killing, attended with such circumstances as in ordinary experience shew, (of which experience a Jury is the proper judge), a wicked, depraved, and malignant spirit: It therefore means a killing from a wicked and corrupt motive; and, indeed, one might say, that all the cases which we can find of the malice which is inferred from circumstances, turn on the single point, that the fact has been attended with such circumstances, as carry with them the plain indication of a heart regardless of the life of man, and bent on mischief." This definition of malice, by my Lord Chief Baron Macdonald, is more amplified, but does not differ in substance from the definition of it contained in the admirable work of Mr. Justice Foster.—"Malice aforethought," says this author, "is when the fact is attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit, or an action flowing from a wicked and corrupt motive; a thing done *malo animo; conscientia*." Foster, C. L. 256. Chitty, in his notes on Blackstone's Commentaries, Vol. iv. Page 150, has a still pithier definition of malice.—He calls it "*doing an act without a just cause*"; and, according to Lord Hale, "*homicide is allowed to be malicious, and of course to amount to murder, until the contrary appeareth upon evidence*." It is clear, then, that the death of Sudds is an act upon which the law inscribes a presumption of malice; and I feel, Sir, that in bringing home this act to the Governor, and in proving, as I have proved, that it was neither necessary nor justifiable, I have made out a *prima facie* case of murder against his Excellency, from which nothing short of the verdict of a Jury of his Peers, can or ought to relieve him. But although the law makes no distinction between express malice or implied, either in the character or the consequences of murder, or any crime of which malice forms an ingredient, and although I confidently anticipate, that you would not shrink under any circumstances from the performance of that duty towards your country, which the indefensible homicide of Sudds has cast upon you in your high office of Secretary of State for the Colonies; it may, perhaps, render the performance of this duty less painful, if I satisfy you, Sir, that the death of this unfortunate victim was "attended with such circumstances as in ordinary exercise show a wicked, depravity, and malignant spirit," or, in other words afford evidence of that "*inward intention*," which constitutes "*express malice*" in law. The

nature of the delicate and important duty which your situation casts on you, Sir, is well described in the opening of my Lord Chief Baron Macdonald's address to the Jury, in the before-mentioned case of Governor Wall. It is a two-fold duty, as respects the public, and as respects the Lieutenant-General. In the words of that grave judge, it will "require your closest and best attention; for, in the first place, the charge is the heaviest which our law knows; his life is at stake, and that of itself, would, I am sure be sufficient to excite every degree of care and attention in you; but in other respects, it seems to me of peculiar importance. For on the other hand, as the Attorney-General has most liberally and most sensibly said, when a well-intentioned officer is at a great distance from his native country, having charge of a member of that country, and it shall so happen that circumstances arise which may alarm and disturb the strongest mind, it were not proper that strictness and rigour in forms and in matters of that sort, should be required when you find a real, true, and genuine intention of acting for the best, for the sake of the public. You see they are in a situation distant from assistance and from advice. In these circumstances, if a man should be so much thrown off the balance of his understanding, as not to conduct himself with the same care and attention that any one in the county of Middlesex would be required to do, and does not exceed greatly the just and proper line of his duty, allowance for such circumstances ought to be unquestionably given to him.

"But on the other hand, it is of consequence that when a commander is so circumstanced, that is, at a distance from his native country; at a distance from inspection; at a distance from immediate controul, and not many British subjects there—if he shall by reason of that distance *wanton* with his authority and command, it will certainly be the duty of the law to controul *that*, and to keep it within proper bounds. The protection, therefore, of subjects who are serving their country at that distance, on one hand is one of the objects you are to have in view to day; the protection of a well-intentioned officer, if such he be, who does not by his conduct disclose a malevolent mind, but may disclose human infirmity to a certain extent; who being in trepidation and alarm of mind, overlooks some things he ought otherwise to have regarded; such a man's case is on the other hand, deserving of great attention." Now, Sir, it appears to me, that what my Lord Chief Baron Macdonald laid down as fit considerations for the Jury in that case to rest their judgments upon in determining the guilt or innocence of Governor Wall, will form very apt and proper matters for your consideration, in determining whether Governor Darling shall, or shall not, through your intervention, be subject to the like ordeal for the death of Joseph Sudds, to which Governor Wall was subject for the death of Benjamin Armstrong. The death of the latter, you will be aware, Sir, took place at the Island of Goree, of which Colonel Wall was then Governor, and was occasioned by a very unusual assemblage of certain of the troops of the garrison, of whom Benjamin Armstrong was the leader. At the trial of Governor Wall, there was conflicting evidence as to the object and spirit of the troops with whom Armstrong took part; the witnesses for the crown stating that their conduct was orderly and proper, and the witnesses for the prisoner stating that their conduct, and particularly that of Armstrong,

was highly mutinous and insubordinate. This, however, is certain, that they went in a body thrice to the Governor's house, to demand certain arrears of pay which they claimed to be due to them ; and that soon after their last visit, Colonel Wall hastily called together the officers of the garrison, and with, or without a drum-head Court Martial (for on this head too, the evidence was conflicting), caused Benjamin Armstrong to undergo the punishment of which he died a few days afterwards. At this time it was admitted in the Attorney General's speech for the prosecution, that there were only six military officers in the garrison, and it does not appear that there was any judge, or indeed any civil officer whatever on the establishment of the Island. Governor Wall, therefore was literally "*in a situation distant from assistance and advice,*" and the act for which his life was forfeited, might have been the result of that trepidation and alarm which the conduct of Armstrong and the other troops who took part with him excited. But in the case of Sudds and Thompson, it cannot be pretended, that there was any thing to excite apprehension of danger in any mind ; for his Excellency was surrounded with a numerous staff ; by a numerous garrison of officers and soldiers ; by a numerous establishment of civilians of all description ; and above all by a numerous and loyal Colony. In this state of things, therefore, nothing could occur "*to throw him off the balance of his understanding, or to prevent him from conducting himself with the same care and attention that any one in the County of Middlesex would be required to do.*" His situation in fact was perfectly analogous in all respects to your situation, as one of the King's Ministers in Downing street. He had his Executive Council ; he had his Attorney-General ; he had the Judges of the land to consult with, if he thought fit. There was abundance of advice within his reach ; why did he not ask it ?"

Why all the foregoing has been omitted by Sir George Murray, while printing the "*documents*" as not being "*fit or proper,*" he alone can explain, and, explain it he must, for the "*Representatives of the people*" have certainly no right, while requiring "*information upon all points which relate to a charge of injustice and cruelty,*" to be thus misled and imposed upon.—Mr. Wentworth's remarks upon the conduct of Lieutenant-General Darling, on a similar occasion may be considered somewhat applicable here "*It was indispensable,*" says Mr. Wentworth, "*that the whole Act or Ordinance should have been among the enclosures subjoined.*" This course, however, the Lieutenant-General was perfectly aware would not ensure his ends ; and, I do not hesitate, Sir, to denounce to you as *a most uncandid, dishonourable, and infamous trick*—a trick which could only have arisen in a consciousness of guilt—the suppression by His Excellency of the preceding five sections of the Act or Ordinance in question, which would have *satisfied the most superficial inquirer* of the *illegality* of his conduct ;—and the *appending* to his despatches the 6th and last section *only*, because it was the *only section* from which *even a colour* of justification could be drawn." "What does trickery of this kind amount to ?" "It clearly belongs to that class of frauds which are

termed "*Suppressio veri*," and which in law as in morals, are held sufficient to vitiate any contract based upon such fraud!"

"The death of Sudds then," says Mr. Wentworth, "having been, as I conceive, thus clearly hastened or accelerated by the punishment inflicted upon him by the authority of the Governor, on the 22nd November, the next question is, what does it amount to in law? *Is it murder? I think it is, and must be so held.* In cases of murder, according to the charge of Lord Chief Baron M'Donald, in governor Wall's case,— "the first thing is, to establish the fact that the prisoner was the cause of the death of the deceased. That being done on the *part* of the public, it throws upon that individual the burden of proving either, that it was justifiable, or that it was necessary, or whatever qualification that fact may receive, and it is from evidence on his part that he is to explain that to the jury." The fact, that the Lieut.-General was the cause of the death of the deceased Sudds, having been, as I conceive, clearly established. "The burden of proving that it was justifiable, or that it was necessary, or whatever qualification that fact may receive, according to my Lord Chief Baron M'Donald, is thrown upon the Lieut.-General."

Upon the trial of General Picton for torture, many years after it had taken place, the Attorney General observed,— "The indictment reposes on two broad principles. The first is, that the act done was unlawful, or in other words, that by the law which the defendant was sworn to administer, he had no right to order the torture to be applied. The next ground, and which is the main foundation of the charge, that it was not only illegally but maliciously done—and without any sufficient cause." Lord Ellenborough (*The Tame Elephant's Sire*), observed, "Every thing against law is presumed to be malicious." "If the act, (said the Noble Lord), be unlawful, it is a sufficient ground of conviction, although the party may have erroneously committed it." "Error" he observed, "was a very good reason for mitigation of punishment, but no ground for his not being convicted."

General Darling lays great stress upon his ignorance of the state of Sudds' health. General Darling ought to have known of it; it was his duty to have enquired, and the duty of the Officer commanding the parade to have reported it, and stayed the proceedings. It took place by order of the Governor, he must therefore be responsible in every respect. Baron Garrow on the prosecution of General Picton said:—

"I complain, Gentlemen, that the defendant was not present." (Why was not General Darling present?) "*If those were always by who give the order for the torture, I believe there would be fewer victims sacrificed, and I will do the defendant the justice to think that if he (as the Captain of the Veterans properly observed at the time in Sudds' case), had been present at this horrid transaction, instead of Begorot (the Alcalete), if he had seen the unhappy creature in the first moments of her agony when with quivering lips, with pain, she was making the extorted confession, the watch would not have gone its appointed round, but he would have been glad to*

restore her to happiness and her friends." But, continued the Learned Counsel, when you find that General Picton is the sole inventor of this kind of torture, (and General Darling of the irons), will you have the least doubt in saying that he is not justified by the written law?" "If, Gentleman, you find, as I confidently trust you will, that there is no such law as warrants the torture (*or the use of such irons*), in that case you will say the defendant is guilty of having wilfully, maliciously, and with a view to oppress Louisa Calderon, (*Joseph Sudds*), committed this offence against the laws of the Island in which he was placed as Governor." "Gentlemen," continued the Learned Counsel, "it remains to the disgrace of the British character, that the only person who ever gave such an order was the Governor." "My friend tells you that General Picton (General Darling) is neither a lawyer nor a civilian. No, Gentlemen, he is not, but he is a British Governor and had an English heart beating in his bosom; and when he saw the unhappy victim of cruelty in that dreadful situation, he ought to have required no legal advice, no auditor, and no assessor, to have told him of its illegality."

But what are we to think of General Darling, who on "the very day of Sudds' death," caused "Sudds' irons to be placed on Thompson;" and "working of him *in those irons* afterwards on the roads?"—"IRONS," as Mr. Wentworth observes, "that, notwithstanding their *extreme lightness*," exceed in weight the irons placed on MURDERERS and other atrocious criminals for the mere *purpose of safe custody* between the interval of sentence and execution, by at least 11 lbs. 12 oz.; and the irons used in chain-gangs consisting of *twice and thrice convicted felons*, and being in general, bodies of the most abandoned ruffians or incorrigible rogues, desperate either from their love of plunder, or from their insatiable inclination to fraud or theft, by 9 lb. 12 oz."

These transactions occurred under a Tory Government. Has not Sir James Scarlett given an opinion that, an indictment would not lay against General Darling? Why and wherefore let him explain! Has not my Lord Hill, with his Adjutant-General on one side, and Quarter-master-General on the other, stoutly supported General Darling?

As another proof of Sir George Murray's idea that the best reply to the charge "was, to produce every document that could throw light upon it;" and that the "Representatives of the people had a right to be informed upon all points which related to a charge of *injustice and cruelty*," the following has been entirely left out of the "documents" printed:—

"I have now, Sir, presented to your view, a picture of fraud, falsehood, and cruelty, which I believe is not surcharged in any part with any undue colouring—and which, I hope, for the honour of the British character, has been rarely equalled in the atrocities which it unfolds. The author and his abettors are now made known to you; and I will take care that they shall at least be held up to public scorn and execration. I call upon you to deal with them as they deserve. The many

excesses which have been committed in our Colonies of late years, it appears to me, require some great public example, as well to convince Governors, that there are bounds within which they must move, as to satisfy the colonists themselves, that they are not to be surrendered as a matter of course to a brutal and irresponsible despotism. If I have unfolded, in this Letter, only one act, or rather one series of acts of cruelty, oppression, and injustice—it is not that I cannot unfold many more. It was my intention, but for the length to which this has extended itself, to give the case of Alexander Lookaye, *alias* Edwards, who was but a short time since driven, by the barbarous and illegal conduct pursued towards him by the Governor, to terminate a wretched existence, which he had attempted before, and which his Excellency knew at the time that he would attempt again. The case of this man, which I will detail to you in my next letter, involves, in my opinion, another charge of murder against General Darling;—and of this at least I am satisfied, that if it be not murder, it is something so like it, that it will require the nicest casuistry to define the difference.—Misdemeanors by which I mean high indictable misdemeanors, punishable by fine and imprisonment, or both, are the ordinary sports of this Government as it is now constituted;—and I will be content to forfeit all claim to honour and veracity through life, if I do not, before any competent tribunal, establish twenty acts of this character, to which the Governor and his Secretary have been parties. Let me have but the means to arrange and produce the evidence of such acts which this colony affords: put General Darling to the bar of British Justice; and I will make out, to the satisfaction of the universe, such a series of fraud, tyranny, and corruption, as I trust have never occurred before in the history of our Colonial Government; and as I know it will be difficult to find any high delegate of his Majesty capable of committing again.

“Reverting finally, however, to the acts of outrage which I have just brought under your attention, and which form, in my opinion, a system of crimes of which murder itself glares as the centre—You will perceive on referring to the files of *The Sydney Gazette*, in your office, which paper, by a high judicial functionary here, Mr. Justice Dowling, was not long ago designated ‘the paid organ of the Government’—that the Colonial Secretary acting, doubtless under his Excellency’s directions, caused “the return to an address of the Honourable House of Commons,” in Appendix B, to be published in that paper of the 10th of January last. The motive of this publication was obviously a hope on the part of his Excellency, that the people here, whose spirit has been broken by three successive bad harvests—by an unprecedented and ruinous weight of taxation, and by an organised system of tyranny, the combined effects of which have cast a gloom over every independent mind amongst us—would suffer this ‘triumph and refutation,’ as ‘the paid organ’ termed it, to pass over *sub silentio*, and that the Governor would thus be able to write a despatch to you, Sir, and say, ‘see the people here are satisfied at least with the integrity of my intentions, if the act itself should not have been altogether regular.’ This insidious expectation, however, has been happily frustrated by *The Australian* and *Monitor* newspapers, both of which contain, as you will perceive on perusing the accompanying numbers

of them, the most cutting and bitter analysis of his Excellency's defence. The opinions which have been expressed by the Editors of these papers, are responded by every honest heart amongst us, and afford conclusive proof of the general opinion which still pervades the people of these colonies as to the character of the act which terminated the life of Sudds. It is in vain that his Excellency, after provoking the re-expression of these opinions, has since caused the Attorney-General to encumber the files of the Supreme Court with a load of *ex-officio* informations to punish the authors of them. The judgment which was pronounced by the independent press at the date of the perpetration of this act, will never be revoked—the act was pronounced to be murder then; and you will see, Sir, that after a lapse of more than three years it is pronounced to be murder still—in language as plain, at least, as people under this meridian dare breathe—And should the Governor in running a muck against the expression of this universal feeling obtain a conviction for libel, what Court of Justice could, in decency inflict more than nominal punishment on the conviction for the publication of a just commentary on facts, the truth of which a whole community will be ready to depose to? What do these publications and these prosecutions indicate? but that the moral force and efficacy of the King's Government has ceased with the commission of this atrocity by the King's Representative; and that the public respect and confidence can never be restored until that Government be committed to other hands.—Ever since the hour of Sudds' premature death, the Colonists have felt that he who should have been the first to evince his veneration for the laws, has been among the number of the greatest violaters of them; and that he alone of all the King's subjects here, has been suffered to trample upon them with impunity; whilst others, much less offending, have been compelled to yield up their lives a just forfeit to the outraged Majesty of those very laws, of which he has continued, notwithstanding his own high offences, to be the indecorous executor. It will be evident, Sir, that it is altogether immaterial as respects the honour of his Majesty and the dignity of his crown, whether this opinion of the character of the acts committed by his Delegate, be well or ill founded. It is an opinion at least which is almost universal: and which has taken such deep root among us, that no thing short of the verdict of a British Court of Justice, founded upon the fullest inquiry, can ever shake it: and I, therefore, finally submit for your consideration, as one of his Majesty's confidential advisers, whether it is decent—whether it will not in fine be an outrage on the feelings and opinions of all his Majesty's loyal subjects in this Colony to suffer any one, who stands thus guilty and degraded in their estimation, whether justly or not, to fill any longer the dignified office of His Most Gracious Majesty's Representative among them, and whether the inevitable tendency of such a state of things will not be to bring the office itself into public hatred and contempt."

Upon the day of Sudds' death all the shops in the town of Sydney half-closed their shutters. Upon General Darling's departure from the Colony universal rejoicing took place, illuminations and bonfires were general throughout the Island. His successor was received with every mark of respect and joy. But what the feelings of the Colonists will

would be the consequence if they found a Whig Government should determine to countenance these transactions; and, if report be true, resolve to throw every impediment in the way of retributive justice. They will not now resist the appointment of Committees of the House of Commons to inquire into the state of affairs of this Colony.

When Mr. Hume made his motion in the House of Commons, on the 7th of February, for a copy of the New South Wales Insolvent Debtors' Act, "*five or six of the PRINCIPAL OFFICERS of the Government 'having taken the BENEFIT of it,' as soon as it passed,*" Lord Howick, Under Secretary of State, flatly contradicted a statement made in the *Morning Chronicle* of the 9th of December, in which it was asserted that, "the recall of the Governor was an act of the present Ministry, in consequence of the very serious nature of some of the charges that had been brought against him by Gentlemen of the first consideration, holding Government appointments;" his Lordship declared,—"*I think it only just to Governor Darling to state that he has not been recalled!*" He added, "Governors held their office for six years; and that term having expired in the case of Governor Darling, Lord Goderich thought for the interest of the service that another person should be sent out to the Colony.—But that by no means implies a censure on Governor Darling;" and;—"*I must say that in all the violent party disputes of New South Wales, no allegation, SERIOUSLY affecting his character, has ever been SUPPORTED by even the APPEARANCE OF TRUTH!* Surely Lord Howick will now think otherwise.

Some few months since a Major-General Darling published a pamphlet, entitled, "Refutation of accusations made by Joseph Hume, M. P., and others, against Lieut.-General Darling, Governor of New South Wales; in which the author stoutly maintains that his brother "had done injustice to no one," and says "if any man asserts that he ever did that which is dishonourable or unjust, I deny it, and challenge his accuser to the proof." Exultingly he exclaims, "so far from having any thing to regret, it may be considered extraordinary, that after an administration of five years, the faction by which he has been opposed, with all their subtilty and vigilance, can produce so few instances of what they are pleased to term oppression: these admit of the easiest and most satisfactory explanation." He enters into a justification of a variety of colonial matters connected with his brother's mal-administration; but does not once mention the name of Sudds and Thompson, or allude to the case; though he condescends to deplore the nature of a Governor's situation in such a colony as New South Wales, if the "calumnies published in the pages of a pamphlet like that of Mr. Wentworth's be resorted to for evidence, on which he is to be held up to the world as guilty of the most flagrant crimes and wanton cruelties." He thinks it, however, expedient to notice the name of "Lookaye," a man, "(who had been brought up as an attorney)," (*as though in the General's opinion all attorneys were rogues and vagabonds*) "of most dangerous and infamous character, who put an end to his existence," as Mr.

Wentworth intimates ; and gravely asks, —“ Surely the Governor of that receptacle of hopeless criminals, is not to be made accountable for the death of every unhappy creature, who commits suicide.” Certainly not ; but he must be held responsible for the death of every “ *unhappy creature* ” who may be *driven by barbarous and illegal conduct* ” to “ *terminate his wretched existence*,” as well as those whom by direct violence may have lost their lives. After entirely passing over the affair of Sudds and Thompson, and not even mentioning their names, the Major-General says, “ should there be any particular aspersion on his (Lieutenant-General Darling’s) character, to which he has omitted to reply, the omission is unintentional, and not in any instance occasioned by apprehension or difficulty in refuting it on his arrival in England, when he will be enabled to adduce that evidence, which could not perhaps be entrusted to private correspondence!” ’Tis odd, ’tis passing odd, the convenient and short memories of some people ; and with what grace they can varnish over a doubtful story !—The Major-General seems, however, to have forgotten what his brother the Lieutenant-Colonel said about “ simple accusation, not amounting to proof !”—It is a happy thing, and must be very consolatory to the relations and friends of the Lieut.-General, the apprehension of *no difficulty in repelling any aspersion or charge* ; but the evidence he must produce must be such as will satisfy a British jury, not his friends, that too in his own person at the bar of the tribunal of justice. From this nothing will save him, neither the “ *entreaties* ” of his friends, the patronage of the Whigs or Tories.—It is in vain the Major-General assuring us that, “ he has acted according to the best of his judgment.” So did Governor Picton ; so did Governor Wall, nevertheless they were tried. How childish, after all such boasting, such self complacency, such aberration from the path becoming modest submission and resignation in the face of such glaring facts, to “ ask, if it is equitable to WEIGH the proceedings of the governor of such a Colony with that NICE BALANCE which might be REASONABLE IN OTHER CASES ! ” Weigh him? Why not? —and with the same NICE BALANCE? Indeed without this be done, adieu, good-bye to British justice, for all the world will with one voice cry out, GOVERNOR WALL WAS A MURDERED MAN. No, the British public will not, to please all the DARLINGS in the world, play the part of fraudulent bakers, by having two sets of weights, or one side of the scale made heavier than the other, for the purpose of cheating justice.

Of Mr. Wentworth’s letter of impeachment, which the Major-General calls “ *unfounded accusations*,” and denounces as “ *calumnies*,” and asks if it is upon such “ *evidence* ” that “ *he is to be held up to the world as guilty of the most flagrant crimes and wanton cruelties* ; ” it is proper to observe, that a jury has pronounced them to be facts, undoubted truths, as notorious as that the Sun is in the horizon at noon-day. “ *Attention to veracity* ” is as essential on the part of Major-General Darling as “ *Mr. Hume*.”—Let him “ *refute what I have stated by proving his assertions : if he cannot do this, others will perhaps take the liberty of judging of his claim to attention in future*.”

He may treat "*Mr. Hume and his associate in the work of slander and abuse*," as he calls it, with all the indignity of coal heavers; but it will not serve his cause, or shake the basis of truth; and the "*purity and integrity*" of his brother's character will still be found" as, "*much above*" the "*comprehension*" of the world as it is to Joseph Hume and Co.

The REVEREND Ralph Mansfield, Editor of *The Sydney Gazette*, (a pretty employment for a Divine!) had a criminal information filed against him June, 1830, by Mr. Wentworth, for having published in the Sydney Gazette HIS EXCELLENCY'S REPLY to the Landed Proprietors of New South Wales, in which it was stated:---

"As to the "Impeachment,"—a gross and absurd compound of base and incredible calumnies—it carries with it its own antidote, and furnishes ample means of judging of the character and motives of the author."

The Jury found the Reverend Divine Guilty of publishing a gross libel on Mr. Wentworth, and fined him.

Dr. Wardell, for the prosecution, in his address to the Court observed:—

"A certain letter called an "impeachment" of General Darling, is charged as being a compound of gross and incredible lies, carrying with them on account of their grossness, an antidote to the motives and intentions of the author. If that had been the case, would it not have been better to have left it to its own punishment in the proper quarter? and after it had passed through such ordeal, and had failed, it might then have been time enough to have published such statement. Was it fair to publish respecting the prosecutor, that he had set forth statements that were so bad as to carry their antidote along with them? Would you, Gentlemen, if this libel be true, associate with a man against whom such charges were made? I will ask you if there was not an indecency in giving an opinion on this letter of impeachment? Is it to be endured, that a person is to be held up to the gaze of mankind, as capable of committing acts like those attributed to the defendant, namely, that he is guilty of telling lies?"

Mr. Therry for the defence said:—

"This is a very important case, as it involves many points, and I would almost tremble as stranger in this Colony, were it not clear that my clients case rested on the strongest basis, and that this day he will have a triumphant and honourable acquittal."—"The defendant in this case is Mr. Wentworth; and hurt, as I must feel, on making comments on a Gentleman of the profession, who, I think I may say, without eulogy, is the very head of that profession. I little expected to see Mr. Wentworth the prosecutor of the press; for I understand he has gained himself reputation in its defence. But it shews the people in what way these vaunted champions of the press really adore the god of their idolatry. The liberty of the press; freedom of discussion, will soon be done away with, if my client be found guilty this

day. We are charged with a libellous publication of a letter: We plead, **NOT GUILTY**. We do not deny there is a publication in which the defendant has made some remarks, and by that he will stand or fall."

The Learned Judge, in his charge to the Jury observed :---

" Gentlemen, It is with feelings of the most painful, I may say personal kind, that I ever enter upon trials of this sort; and, in the present instance, those feelings are increased by the undefended way in which this case has been left for your consideration."

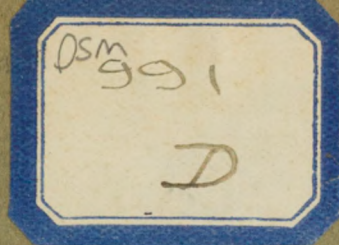
How far Lieut.-Colonel Darling's menaces to Mr. BLACK, and his silly letter in the *John Bull* will have served the cause of Governor Darling, will be collected from the fact, that although it silenced one paper at the time,—and checked a partial discussion,—it will now set to work a hundred fearless champions of justice,—guardians of the laws, and public rights; and who only require truth to direct their all powerful and commanding energies to demand and enforce the due administration of justice. But for the Lieut.-Colonel's letter in the *John Bull*, this would never have appeared. The writer would not have taken the trouble, but to prove to the world how little Mr. Black, or his correspondent, deserved the *pleasant* epithets bestowed upon them. Of Governor Darling MILES knows nothing, but from his public despatches and the recorded acts of his administration. These are public property; and the right of every individual to comment upon.



MILES.

FINIS.





AN 2881248

DSM/ 991/ D
Governor Darling's
refutation of the charges of
cruelty and oppression of
the soldiers Sudds and
Thompson, at Sydney, New So

**STATE LIBRARY
OF N.S.W.**



N2025880

