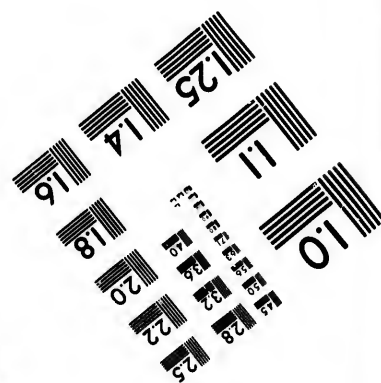
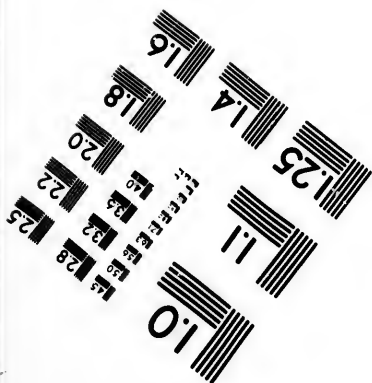
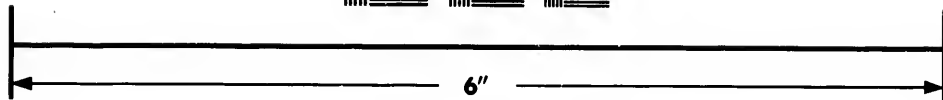
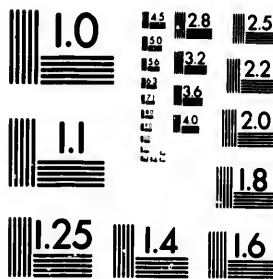


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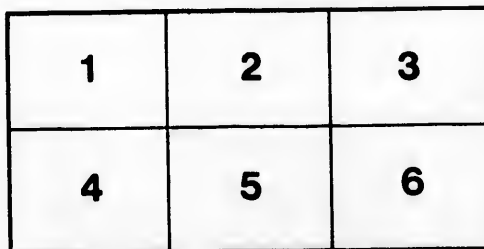
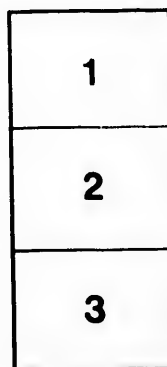
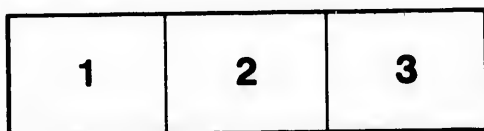
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No 242  
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SPEECH

36

OF

SIR WILLIAM MOLESWORTH, BART.

ON

TRANSPORTATION.

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DELIVERED IN THE HOUSE OF COMMONS ON THE 5th MAY, 1840.

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# SPEECH

OF

SIR WILLIAM MOLESWORTH,

ETC.

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SIR,

IN submitting to the consideration of the House the motion of which I have given notice, the task which I have to perform is both difficult and painful; difficult on account of the extent of the subject; painful on account of the nature of many of the facts to which it will be my duty to refer. I assure the house, however, that I do not approach this subject without having long and carefully studied it, or without having carefully examined and weighed every opinion and every fact connected with it. I therefore presume to solicit a patient and attentive hearing.

The Report of the Committee to which this motion relates, was laid on the table at the end of the session of 1838. Two reasons prevented me last year from bringing the topics contained

in that report before Parliament. First, I entertained the hope that the executive government would have come forward with some general measure founded upon that report, which would have rendered any motion unnecessary. I was unwilling, therefore, to embarrass the government in a matter which is one of great difficulty, by any premature steps. Secondly, as that report contained many facts reflecting on the moral character of the penal colonies, I was earnestly entreated, by several persons connected with those colonies, not to call upon Parliament for an opinion, before an opportunity could be afforded to the colonists to peruse those statements, and to contradict them if incorrect. Now that full time has been given both to the government to mature their plans, and to the colonists to reply to any mis-statements, there can be no objection to asking Parliament to consider the subject of this motion.

The committee in question, and of which I had the honour to be chairman, was appointed for the threefold purpose, first, of inquiring into the efficacy of transportation as a punishment; secondly, of ascertaining its moral effect on the penal colonies; and lastly, the committee were directed to consider of what improvements the existing system was susceptible. A very few words would be sufficient to state the result of



those inquiries, if I could suppose that honourable members had read any considerable portion of that report; but, as it cannot be supposed that such has been the case, I must endeavour, as briefly as I can, to state the grounds upon which the committee came to their conclusions.

The materials from which the committee formed their opinions, were of the best possible description. They were chiefly official documents, furnished by the Colonial Office, consisting of despatches, reports to and from the governors of the penal colonies, and criminal returns. Numerous witnesses were examined; but in order to avoid any cavil as to the credibility of those witnesses, not one fact of any importance has been stated by the committee in their own report, which is not corroborated by official documents. And for the same reason, in the observations which I shall make to-night, I shall confine myself almost entirely to those documents.

The first subject of which I shall speak, is the nature of transportation, and the condition of the convict under that punishment. Transportation is a compound punishment, consisting of three distinct elements: banishment from this country; compulsory labour in a penal colony; and the various punishments by which that compulsory labour is enforced. It is not necessary at present to say anything of the effects of mere

banishment; I will proceed at once to describe the condition of the convict in the penal colonies. The penal colonies of Great Britain are, first, and largest, New South Wales, founded in 1787. To this place 75,200 criminals have been transported; and in the year 1836, the number of offenders under punishment there were, men 25,254; women 2,577. The next in magnitude is Van Diemen's Land, founded in 1804; to which, since 1817, 27,759 convicts have been sent; and of which the criminal population, in 1835, consisted of 14,914 men, and 2,054 women. The third is Norfolk Island, a dependency of New South Wales, which contains about 1,200 convicts. The last which must be mentioned is Bermuda, containing about 900 convicts. Bermuda need not again be referred to, as the condition of the convicts there is nearly the same as that of convicts in the hulks: my observations will, therefore, be confined to the Australian colonies.

The greater portion of the punishment of the convicts in these colonies, consists in compulsory labour: that labour is either enforced by officers of the government, or by private individuals, to whom the convicts are assigned as servants. I will first speak of the latter class; which is by far the most numerous one, as it contained in 1836, about 29,000 convicts. A

convict is said to be assigned, when the right of the government to the labour of the convict is made over to some private individual, who becomes his master. The master determines, according to his will and pleasure, the nature and amount of labour to be exacted from his convict servant; therefore, as the house must at once perceive, the condition of an assigned convict depends entirely upon the character, temper, position in society, and occupation of his master; and is, consequently, as uncertain, as those circumstances are uncertain. For instance, some convicts become domestic servants, and frequently receive wages; others, if possessing mechanical skill, are employed in various trades, and are highly prized; the greater portion, however, are occupied either in agriculture, or in tending flocks and herds. In the families of some settlers, convicts are as well treated as servants ordinarily are in this country. In other families, their fate is far different; they may be considered to be slaves; for the power of the master to cause punishment to be inflicted on his convict servant is very great, and the punishments, even for trifling offences, are very severe. In proof of this, the words of the law may be cited, by which it will appear, that a convict may be summarily punished for "drunkenness, disobedience of orders, neglect of work,

absconding, abusive language to his master or overseer, or any other disorderly or dishonest conduct, by imprisonment, solitary confinement, labour in irons, or fifty lashes." And this law is by no means inoperative. In 1835, the convict population of New South Wales did not exceed 23,000; the summary convictions, chiefly for the offences just mentioned, amounted to 22,000; and the number of lashes inflicted, exceeded 100,000. In Van Diemen's Land, in 1834, the convict population was about 15,000; the summary convictions were nearly 15,000; and the number of lashes inflicted there exceeded 50,000. On the other hand it should be remarked, that a convict, if ill-treated by his master, may apply to a bench of magistrates for redress; but then the majority of those magistrates are generally owners of convict labour.

Instead of troubling the house with any observations of my own on the general effects of the assignment system, I will read a few short extracts from the written opinions of the persons who must necessarily have been best acquainted with this subject, and whose authority will have the greatest weight with the house. Sir George Arthur, late Lieutenant-Governor of Van Diemen's Land, has given a most graphic description of the assignment system, in a despatch

which is inserted in the report of the committee. He says, "You cannot have an idea of the vexations which accompany the employment of convicts, or of the vicissitudes attendant on their assignment. Their crimes and misconduct involve the settlers in daily trouble, expense and disappointment. There is so much speculation, so much insubordination, insolence, disobedience of lawful orders, and so much drunkenness, that reference to the magisterial authority is constant. There can be no doubt things appear better in the colony than they really are." Such are the statements of the Lieutenant-Governor of the one penal colony, as to the general conduct of assigned convicts. I will now quote the opinion of the Lieutenant-Governor of the other colony, as to the great inequality of this punishment. Sir Richard Bourke states, as the result of his own experience, that "it is one of the most apparent and necessary results of the system of assignment, to render the condition of convicts, so placed, extremely unequal, depending, as it must, on a variety of circumstances over which the government cannot possibly exercise any controul. It would be quite impracticable to lay down regulations sufficient to remedy this inequality." The only other authority, which it is necessary to quote, is that of Captain Maconochie, secretary to Sir J. Franklin, the present

Lieutenant-Governor of Van Diemen's Land. Captain Maconochie describes, from his own careful observation, the moral effects of assignment, in the following terms: "The practice of assigning convicts to masters is cruel, uncertain, prodigal; ineffectual either for reform or example, and can only be maintained in some degree of vigour by extreme severity. Some of its most important enactments are systematically broken by the government itself; they are, of course, disregarded by the community. The severe coercive discipline, which is its principal element, is carried so far as to be at issue with every natural, and in many cases even every laudable, impulse of the human mind. It defeats, in consequence, its own most important objects; instead of reforming, it degrades humanity." And, in confirmation of these statements, Sir F. Forbes, the late Chief Justice of Australia, declared, that under the assignment system, "it frequently happens, that lesser offenders against the law come to be punished with disproportionate severity, while greater criminals escape with comparative impunity."

It would be useless for me to attempt to add anything to these emphatic condemnations of the assignment system, coming, as they do, from persons of the highest authority on these matters, and which remain unimpugned and uncontra-

dicted. It is stated that the government intend to put a stop to the assignment of convicts: I trust they will persevere in that intention; and will discontinue a system, which confides one of the most important and difficult functions of an executive government, namely, the task of punishing offenders, to the uncertain interests and capricious feelings of private and irresponsible individuals.

I said there are two classes of convicts; one composed of convicts in assigned service; the other of convicts under the superintendence of officers of the government. I will now speak of the latter class; which will be the only one, if the assignment system be abolished. The government convicts are employed on various public works, in the gaols, on the roads, in the marine and survey departments; and, as the house will be surprised to hear, in Van Diemen's Land they are appointed constables in the police. I think I may, without exaggeration, describe the government convicts as the most profligate and desperate portion of the criminal population of the penal colonies. They are generally collected together in a narrow space, without any attempt at classification or separation. They have full opportunities of communicating with each other: they perform very little labour, and are subject to a very lax super-

intendence. Gangs of these convicts, called "road parties," were once scattered over the colony of New South Wales, for the purpose of making roads, and were little better than so many bands of robbers. I do not reproach either the general or the colonial government for the management of these convicts; for it was utterly impossible to obtain in those colonies the requisite amount of efficient superintendence; and without efficient superintendence penal discipline is impossible, even in the best constructed prisons. How much more must this have been the case, when the greater portion of the government convicts can hardly be said to have been confined in a prison at all. The utter impossibility of obtaining efficient superintendence, is proved by the fact, to which I have referred, that it was found necessary to establish a police composed of convicts; and Sir George Arthur declared that that convict police was better than any police of free men he could obtain in the colony of Van Diemen's Land. I wish to call the especial attention of the house to these facts; because it has been proposed to continue transportation, and to place all convicts under the superintendence of the colonial government. If this be done, transportation will become, in some respects, similar to the punishment in the hulks and gaols at home; but, with this important difference, that



on account of the cost of transport and of proper superintendence, it would be more expensive than the most perfect system of prison discipline in this country. This is the opinion which the committee have recorded in their report, after a most careful examination of all the facts. I shall return again to this subject, when I speak of the expense of transportation.

From the want of efficient superintendence, from the nature of the assignment system, and from other causes, hardly any of the means, which have been devised to prevent misconduct amongst offenders during the period of their punishment, were applicable to transportation. In order to preserve some degree of discipline amongst the convicts, a vain attempt has been made to terrify them into good behaviour: for this purpose, minor offences have been converted into crimes, and severely punished; and the convict code of the penal colonies has not its equal in severity, at least in the civilised world. Captain Maconochie, speaking of these punishments in Van Diemen's Land, says, "They are severe, even to excessive cruelty. Besides corporal punishment, to the extent of fifty to seventy-five lashes, and even, in some rare instances, a hundred lashes, solitary confinement, and months, or even years of hard labour in chains (on the roads, or at a penal settlement), are lightly or-

dered for crimes in themselves of no deep dye: petty thefts (chiefly in order to obtain liquor), drunkenness, indolence, disobedience, desertion, quarrelling among themselves, and so forth."

It is necessary to make a few observations with regard to these punishments. I have already referred to the great amount of flogging in the penal colonies. There is ample proof, in the documents laid before the committee, of the severity with which it is inflicted. It is the favourite punishment with the masters of convicts; for it does not deprive them of the services of their servants, as is the case when they are sent to the chain gangs.

The punishment of the chain gangs, according to Sir George Arthur, "is as severe as can be inflicted upon man." The number of convicts suffering this punishment was about 1,700 in the two colonies. They are described by competent witnesses as being "locked up, from sunset to sunrise, in caravans or boxes which hold from twenty to twenty-eight men; but in which the whole number can neither stand upright nor sit down at the same time (except with their legs at right angles to their bodies), and which in some instances do not allow more than eighteen inches in width for each individual to lie down upon the bare boards; they are kept to work under a strict military guard during the

day, and liable to suffer flagellation for trifling offences, such as an exhibition of obstinacy, insolence, and the like." This description fully bears out the statement of Sir R. Bourke, that the condition of these convicts is one of great privation and unhappiness. Connected with the subject of the chain gangs, I would direct the attention of the house to the evil effects upon the discipline of soldiers which ensue from employing them in guarding convicts. Colonel Breton, an officer in command of a regiment in New South Wales, told the committee that his regiment was greatly demoralised by this description of duty, and likewise by association with the convicts, amongst whom the soldiers not unfrequently found near relations. I observed last year in a Sydney newspaper, that at one time, the 14th December 1838, a lieutenant and twenty-one soldiers were confined in the gaol at Sydney on criminal charges.

The last and greatest in the scale of these punishments is the penal settlements. In speaking of them I must entreat the indulgence of the house; for it will be my painful duty to state horrible and appalling facts, which I could not have credited, which I could not have believed that a Christian country would have permitted, were they not proved beyond doubt by the concurrent testimony of governors, judges,

and ministers of religion. The penal settlements to which, as I have already remarked, convicts are frequently sent for offences of no very great magnitude, are two in number ; the one Norfolk Island, a dependency on New South Wales ; the other Port Arthur, in Van Diemen's Land. In these places there are about 2,000 convicts, who, with their guards and keepers, constitute the sole inhabitants. According to the authority of the superintendent of convicts in Van Diemen's Land, "the work appointed for these offenders is of the most incessant and galling description the settlement can produce, and any disobedience of orders, turbulence, or other misconduct, is instantaneously punished by the lash." Sir Francis Forbes, chief justice of Australia, the most unquestionable authority on such a subject, declared in a letter to the law reform commissioners, that "the experience furnished by these penal settlements has proved that transportation is capable of being carried to an extent of suffering such as to render death desirable, and to induce many prisoners to seek it under its most appalling aspects." The same learned judge, in his examination before the committee, gave the following remarkable evidence. He said, "I have known cases in which it appeared that men had committed crimes at Norfolk Island for the mere purpose of their being sent up to Syd-

ney to be tried, and the cause of their desiring to be sent was to avoid the state of endurance under which they were placed in Norfolk Island. I think they contemplated the certainty of execution, from the expressions used by them. I believe they did deliberately prefer death, because there was no chance of escape, and they stated they were weary of life, and would rather go to Sydney and be hanged." And, in reply to a question from my honourable friend, the member for Liskeard (Mr Charles Buller) Sir F. Forbes said, "If it were put to myself, I should not hesitate a moment in preferring death, under any form that you could present it to me, to such a state of endurance as Norfolk Island." In confirmation of these statements, the authority of Sir R. Bourke may be quoted. That gentleman, during the period of his government of New South Wales, was obliged to apply for an act of parliament to establish a criminal court in Norfolk Island; and he did so on the express grounds, that if criminals were tried and executed on the spot, it might tend to prevent the commission of the crimes to which I have alluded. The statute required was passed in 1834.

It is not to be wondered at that, driven to desperation, as these convicts are, they have not unfrequently attempted to mutiny. In 1834 an attempt of this description was nearly successful.

Nine convicts were killed in the struggle which took place; twenty-nine were condemned to death, and eleven executed. Mr Justice Barton was sent to Norfolk Island to try them: on his return he told the jury of Sydney, that "it was painful in the extreme to see the convicts in this place, herding together, without any chance of improvement." A Catholic priest, of the name of Ullathorne, went to Norfolk Island to afford religious consolation to the convicts, who, I said, were condemned to death for mutiny. He was examined before the committee; and in his examination he gave the following account of the strange scene he witnessed, when he first made known to the condemned the names of those amongst them who were to be executed, and of those who were to be reprieved. The following are his own expressions:—"I said a few words to induce them to resignation; and I then stated the names of those who were to die; and it is a remarkable fact, that, as I mentioned the names of those men who were to die, they, one after the other, dropped on their knees, and thanked God that they were to be delivered from that terrible place, whilst the others remained standing mute. It was the most horrible scene I ever witnessed. Those who were condemned to death appeared to be rejoiced."

Sir! A human being cannot be made unnut-

terably wretched, without becoming in an equal degree depraved. The extremes of misery and of immorality are generally found existing together. In both respects Norfolk Island has not its parallel in the world, except perhaps at the kindred settlement of Port Arthur. In proof of this I will refer to the official report on the state of Norfolk Island, which was drawn up by officers resident there, at the order of Lord Glenelg. The Rev. R. Stiles, the resident chaplain, stated, "that blasphemy, rage, mutual hatred, and the unrestrained indulgence of unnatural lust, are the things with which a short residence in the prison wards of Norfolk Island must necessarily familiarise the convict." Mr Arnold, the deputy assistant commissary general, stated in his report, "that it is much to be feared that that horrible crime which brought down fire from heaven on those devoted cities of Scripture, exists, and is practised here to a great extent; indeed, I have been informed by one who has the best opportunity of judging of the truth of the information (the colonial surgeon), that actually, incredible as it may appear, feelings of jealousy are exhibited by those depraved wretches, if they see the boy or young man with whom they carry on this abominable intercourse, speak to another person. Crimes, too, of a bestial nature, it is also to be feared, are too fre-

quent. The dying confession of an unfortunate being, who was executed some time ago, proves the truth of this." These are statements from official documents in which the most implicit reliance can be placed. Similar statements were made by Sir F. Forbes and Dr Ullathorne. The latter gentleman considered that two-thirds of the convicts in Norfolk Island were guilty of unnatural offences. And, lastly, Messrs Backhouse and Walker, two members of the Society of Friends, who had been for five years in the penal colonies investigating the effects of transportation, have declared in their report, that "by the acknowledgment of the persons themselves, those crimes were extremely prevalent among them."

With reference to Port Arthur, the penal settlement of Van Diemen's Land, Sir George Arthur stated that he had known instances of prisoners at that place actually committing murder, "in order to enjoy the excitement of being sent up to Hobart Town for trial, though aware that in the ordinary course they must be executed within a fortnight after arrival." I will not, however, revolt the house by repeating with regard to Port Arthur, horrid details similar to those which I have stated with respect to Norfolk Island.

The only other class of convicts, which must be mentioned, includes those who have obtained



indulgences, consisting in a remission of penal labour. A convict generally at the end of four, six, or eight years, according to the length of his punishment, obtains what is termed a ticket of leave, unless he has committed in the colony some considerable offence. A ticket of leave enables the convict who holds it, to work on his own account; and, as there is a great demand for labour in the penal colonies, the holder of a ticket of leave can easily obtain good wages. As this indulgence is liable to be taken away in case of misconduct, it is on the whole a considerable inducement to good behaviour; and it appears to me to be by far the least objectionable portion of the transportation system. At the same time it cannot be denied that the greatest abuses have existed in the granting of tickets of leave. But it is not my intention, indeed it would be impossible within the limits of a speech, to mention the various and complicated abuses which have existed in connexion with transportation. My object is to describe that system as a whole, supposing it to be administered in the best possible manner, and omitting from my consideration those defects in the existing system to which it is asserted that remedies can be applied. And upon this description I call upon the house to pronounce an opinion in favour of the discontinuance of that punishment.

With this object in view, I now ask: does transportation fulfil the conditions of a good punishment? I answer it does not, for reasons I will immediately state. The object of punishment is to prevent crime. For this purpose the Legislature threatens to inflict certain punishments for certain offences. When an offence is committed, then the Legislature is bound to punish the offender, not for the sake of revenge, but in order to fulfil its promise, and to prove that its threats are not vain and empty menaces. By this means it endeavours to supply an additional motive from without, which may restrain the evil-disposed and inspire them with apprehension. At the same time, it gives to the community the best security in its power against the commission of acts noxious to its well-being; and allays that general alarm, which would be the consequence of the impunity of crime. The chief aim of punishment, therefore, is to produce terror by the example made of offenders. "*Pæna in paucos ut metus in omnes,*" is the basis of all good penal legislation; and to this consideration every other is subordinate. It is equally evident, however, that the great object of punishment, namely, terror, should, as far as possible, be attained with the least amount of human suffering. For it cannot be too often repeated, that the end of punishment is not to make an offender suffer,

but to warn others from imitating his example. Therefore, if more than the amount of suffering requisite for this purpose be inflicted, the punishment becomes a cruelty. Indeed, the ideal but impossible perfection of punishment would be found in such an one as would appear to mankind clothed with all the horrors of Tartarus, yet would conduct the offender to Elysium. At all events, however, a punishment is bad when it causes much more pain than is either threatened in the law, or generally believed to be inflicted. For then superfluous pain, that is, pain not producing terror, not accomplishing the object of the law, is inflicted.

If transportation be tested by these principles, its defects, as a punishment, are at once apparent. For what is the amount of apprehension it produces? What are its effects on the minds of the criminal population in inspiring terror? The sentence of a judge, in condemning an offender to be transported, may be summed up in the following words. He says to the culprit, "You shall be removed from the land of your birth to a country with which you are unacquainted." "You shall be separated for many years, perhaps for ever, from your friends and relations." And lastly, "You shall be compelled, in your new dwelling place, to toil for the benefit of others." The two first threats, of banishment and separation from friends (whatever might have been their

effect in former times), have gradually lost the greater portion of their penal terror. Because convicts are no longer transported to an unknown and strange land, but to countries inhabited by thousands of their companions in guilt, and to which tens of thousands of voluntary emigrants have been hastening, as to a land of promise. It not unfrequently happens, that whilst a judge is expatiating on the miseries of exile, at the same time, and perhaps in the same place, some active agent of emigration may be found magnifying the advantages of the new country; lauding the fertility of its soil and the beauties of its climate; telling of the high wages to be obtained, the enormous fortunes that have been made; and offering to eager and willing listeners, as a boon and especial favour, the means of conveyance to that very place to which the convict in the dock has been sentenced by the judge for his crimes. During the last and preceding year, 10,000 free emigrants and 5,000 criminals were landed on the shores of the penal colonies; many of them became servants in the same families, labourers in the same fields; innocent and guilty were thus confounded together, to the subversion of all notions of punishment, and to the destruction of all morality. Can anything be said in defence of such an anomaly in legislation as this?

To return to the subject of the apprehension produced by transportation. It must be borne in mind that punishment is meant to operate chiefly upon those persons who are inclined to commit crimes. It is comparatively useless to persuade the well-disposed that a punishment is a severe one. It is upon the minds of the criminal population that such a conviction ought to be impressed. Now, except in a few cases, all that the latter class can apprehend from such a punishment as transportation, must consist in the penal labour and privations, to which they may be subjected in the colonies. But who can tell beforehand, what will be the amount of that labour, or the nature of those privations? It has been shown that the condition of a convict is the merest chance; that it ranges between the two extremes, of a servant subject to trifling restraint, and of a slave enduring long and tedious misery. My conviction is, that much more suffering is inflicted in the penal colonies than is credited in this country; suffering, therefore, unknown; unproductive of good; pure, gratuitous, evil. Nor, from the remoteness of those places of punishment, is it possible to make the criminal population understand the actual condition of a convict. The accounts which they receive, are generally from convicts who have been fortunate in this lottery of punishment, and are therefore

too favourable. On the other hand, in the very few cases in which the unfortunate communicate with their acquaintances in this country, it is proved that they generally deny their sufferings; prompted thereto partly by a desire to bring the laws into discredit, and thus to revenge themselves upon the lawmakers and their punishers; partly by the wish, common to such degraded beings, to have companions in misery. In the despatches of Sir George Arthur many instances of this kind are stated; and that gentleman proposed (with a view to obviate the misapprehensions arising from these sources) that statements of the actual condition of convicts should be published and circulated by the government. It is evident that this means would prove ineffectual; for the criminal population would place but little reliance in official statements as compared to their own sources of information. If, however, they were better acquainted with the nature of transportation, than in my humble judgment they are or can be, still, all they would learn is that transportation is a most unequal and uncertain punishment; that it is (as I have already said) a mere lottery, in which there are both many prizes and many blanks. And, judging from all experience with regard to such persons, the hope of obtaining the prizes would with them, as with gamblers, more than counter-

balance the fear of the blanks. For these reasons, and supported by the testimony of most persons acquainted with the feelings of the criminal population, I do not hesitate to assert that transportation produces very little apprehension, far less than that which should correspond to the actual suffering inflicted.

Independent of the production of terror amongst the evil-disposed generally, which is the main object of punishment, there are other but subordinate objects, which a good punishment should effect with regard to the offender himself. I will merely enumerate them. It should make it difficult, if not impossible, for a criminal to commit crime during the period of his punishment. It should so improve his moral character as to render crime distasteful to him; or, if it does not improve him, it should at least, by the experience of the suffering endured, deter him from fresh crimes after the termination of his punishment. And, lastly, it should, if possible, ultimately place him in a position in which he would not be exposed to strong temptations to relapse into vicious habits. In every one of these respects transportation is inefficient. The immense number of summary convictions of which I have already spoken, and the other criminal returns to which I shall presently refer, prove that crime is very common amongst con-

victs both during their period of punishment and subsequently. Even the tortures of Norfolk Island and Port Arthur do not deter them from committing crimes which cause them to be sent to those places a second and a third time. And this is not extraordinary; because such punishments degrade the human being into a brute; destroy his reflecting faculties, and leave him no other thought or wish but the immediate gratification of his appetites. With regard to the reformation of the offender by transportation, Mr Stephens, the late Attorney General of Van Diemen's Land, has declared "at all events, if that be one of the objects of punishment, it is on the present plan of transportation hopeless, in the existing state of things nearly all the tendencies of the plan are the other way." And Captain Maconochie asserts, "by transportation the prisoners are all made bad men instead of good; it is shown," he says, "by the official reports transmitted with his papers, that scarcely any are reformed, and human nature does not stand still, if not improved it gets worse." Every witness examined, every document laid before the committee, confirmed these positions. My examination of the effects of transportation, as a punishment, may be concluded with the observation, that the offender at the expiration of his sentence is left in a community, where I may say without ex-



aggeration that vice is the rule, and virtue the exception.

This brings me to the next question ; what has been the moral influence of transportation on the state of society in the penal colonies ? An answer is afforded by their criminal returns ; which demonstrate that an enormous amount of crime is committed in those colonies ; the greater portion of which may be attributed to transportation. For it is evident that in communities like those of Australia, where there is a great demand for labour, where wages are high, where every man who is willing to work can easily obtain a comfortable subsistence, a large amount of crime can only be ascribed to the depraved character of the population, and not to those economical causes which produce misery, want, and immorality, in old and densely peopled countries.

In order that the house may form a notion of the amount of crime in those colonies, I will first refer to the summary convictions in Van Diemen's Land in the year 1834. I select that year, because there are materials in the despatches of Sir George Arthur, from which a more accurate estimate can be formed of the convictions in that year than in any other. The house should bear in mind that the community of Van Diemen's Land was then a very small one. Its population in 1834 did not exceed 40,000; of whom 16,000 were con-

victs, 1,000 soldiers, and 23,000 free inhabitants ; what proportion of the latter had been convicts it is impossible to say. In this small community the summary convictions amounted to about 15,000 in the year in question ; amongst which there were about 2,000 for felony, 1,200 for misdemeanour, 700 for assaults, and 3,000 for drunkenness. 11,000 of these convictions were of convicts, who are summarily punished for all offences to which the penalty of death is not attached. Some of their punishments were very severe, as about 260 convicts received extension of sentence, about 100 were condemned to the penal settlements, 1,000 to the chain gangs, 900 to the road parties, 900 to solitary confinement or the treadwheel, and 1,500 were flogged and received about 51,000 lashes. Amongst the 23,000 free inhabitants, the summary convictions were between 3,000 and 4,000. About 2,200 (that is, nearly one-tenth of the free population) were in one year fined for drunkenness ; 200 were fined for assaults ; and 800 for offences under colonial acts. In New South Wales the summary convictions were nearly the same in proportion to population as in Van Diemen's Land.

In order to complete the account of the state of crime in these colonies, I must next refer to the criminal trials before the supreme court and

quarter sessions. It should be remembered that convicts are not tried before these courts, except for offences to which the punishment of death is attached. Therefore a great portion of the following convictions must have been of free persons. On the average of the seven years from 1829 to 1835, both inclusive, these convictions amounted every year to about one in a hundred of the whole population; an enormous proportion; as convictions in England are about one in a thousand, and in Scotland about one in thirteen hundred of the population. A large portion of these convictions were for offences of the greatest magnitude. This appears from the fact that, during the period of which I have spoken, whilst the average population of the penal colonies did not exceed 90,000, the annual number of convictions for murder and attempt at murder were about 34; for rape, seven; for highway robbery and bushranging, 66; for burglary, 50; for forgery, 13; for sheep and cattle-stealing, 53; for larceny and receiving stolen goods, 367. The average number of sentences of death were 132 a year; of executions, 52; and of sentences of transportation, 369. Thus in seven years, in these communities, whose population did not exceed one-half of that of Westminster, 923 persons were condemned to death, 362 executed, and 2,586 transported; without including the

convicts who were summarily transported or had their sentences extended, and who probably amounted to twice as many more. And it may be stated, on the authority of Captain Maconochie, Mr. Justice Burton, and of the criminal returns, that crime has gradually increased in those colonies in a greater proportion than population.

In order to give the house a more accurate notion of the state of crime in the penal colonies, than these figures will of themselves convey, I will read a short extract from the report of the committee, in which they calculate what would be the amount of crime in this country, if our criminal statistics were similar to those of the penal colonies. They state, "that in proportion to the respective population of the two countries, the number of convictions for highway robbery (including bushranging) in New South Wales exceeds the total number of convictions for all offences in England; that rapes, murders and attempts at murders are as common in the former as petty larcenies in the latter country. In short, in order to give an idea of the amount of crime in New South Wales, let it be supposed that the 17,000 offenders who were last year tried and convicted in this country for various offences before the several courts of assize and quarter sessions, had all of them been condemned for capital crimes; that 7,000 of them

had been executed, and the remainder transported for life: that, in addition, 120,000 other offenders had been convicted of the minor offences of forgery, sheep-stealing, and the like; then, in proportion to their respective populations, the state of crime and punishment in England and her Australian colonies would have been precisely the same." In addition, it should be observed that the committee have omitted entirely from these calculations any reference to the immense number of summary convictions, (some of them for very grave offences), to which I have already referred.

That these statements are not in the slightest degree exaggerated, may be proved by the testimony of Judge Burton who, in the charge already mentioned, gave the following fearful picture of New South Wales. He said, "It would appear to one who could look down upon that community, as if the main business of them all were the commission of crime and the punishment of it; as if the whole colony were in motion towards the several courts of justice; and the most painful reflection of all must be, that so many capital sentences and the execution of them had not had the effect of preventing crime by the way of example."

It may likewise be stated upon the same incontrovertible authority, that there are a great

number of crimes committed in New South Wales, the authors of which are never discovered. That much crime should escape detection, is a fact not to be wondered at, when it is known, that the limits of location in New South Wales, embrace an area greater than the whole of England ; and that over this vast territory, some thousands of convict shepherds and stockmen roam at large, generally with arms in their hands. I hardly ever take up a newspaper from New South Wales, in which there is not some account of bushranging. For instance, it not unfrequently happens, that a runaway convict, mounted and armed to the teeth, will ride up to the residence of a remote settler, and commit a robbery in the middle of the day ; the convict servants generally standing by as idle spectators, and refusing to assist their master in any attempt to resist or arrest the robber.

The most atrocious and wanton cruelties are frequently perpetrated by the convict shepherds on the natives. I will mention, as an example, one case which occurred the year before last. In the vicinity of one of the remote cattle stations of New South Wales, a body of natives, amounting to about fifty in number, had been residing for a considerable period of time in perfect tranquillity, molesting no one. On a sudden there arrived at this place some eleven

convicts. They seized thirty of the unoffending natives, tied them together with a rope, led them away a short distance from the station, and then put every one of them, men, women, and children, to death, with the exception of one woman, whom, on account of her good looks, they kept as a concubine for one of their comrades. The murderers were subsequently apprehended and tried. The first jury refused to convict, though the evidence against them was conclusive. They were tried a second time for the same, though technically a different, offence, and on the same evidence; they were convicted, condemned to death, and seven of them were executed. It may be remarked, as illustrative of the state of feeling in the penal colonies with regard to the natives, that not only did the first jury refuse to convict, but the second jury signed a petition in behalf of the murderers. Petitions likewise were presented in their favour from a considerable body of colonists. Some of the colonial newspapers loudly condemned the governor (to use their own words) "for putting white men to death for having killed a few black cannibals." And the condemned themselves, in their last moments, declared that they were not aware at the time that they were committing any offence in destroying the blacks, as similar acts had been frequent in the colony; and of the truth of this

assertion there can be no doubt. In Van Diemen's Land, likewise, similar atrocities have been committed by the convicts. It is recorded that in many instances they killed or castrated the native men, in order to obtain possession of their women. These outrages led to repeated attacks from the natives on the persons and property of the colonists, which at one time threatened the existence of that colony. The settlers found it necessary, in self defence, to hunt down the natives as if they had been so many wolves. And, as the house is probably aware, the aborigines of Van Diemen's Land are now exterminated, with the exception of a few, who have been removed to perish in Flinder's Island. Throughout the whole of the Southern Ocean, New Zealand, and the islands of the Polynesian Archipelago, traces are to be found of the cruelties practised by escaped convicts on the aborigines, which have produced amongst them the greatest antipathy to our race, and have been most injurious to our commerce.

Sir: though the amount of crime of which I have been speaking appears enormous, yet a moment's reflection on the nature of the materials of which these communities are composed, must dispel all astonishment at its extent. Fifty years ago, when New South Wales was founded, one of the greatest and most original thinkers



that this country ever produced, I mean Bentham, foretold the consequences of planting a colony with criminals, subject to a punishment which had no tendency to improve their character; and the result is in strict conformity with his anticipations. Up to the year 1836, 100,000 convicts had been transported, whilst the number of free emigrants to the penal colonies could not have exceeded 60,000. It is evident, even without the confirmation of the facts just stated, that this almost equal admixture of innocent and guilty, could conduce but little to the improvement of the latter, whilst it must have tended greatly to the deterioration of the character of the former.

Independent, however, of the pernicious consequences of assembling so many criminals in the same place, where they can form a criminal class, and keep each other in countenance, transportation has operated injuriously to the moral well-being of those communities in another manner. It has caused a great disproportion of sexes. Of the 100,000 convicts of whom I have spoken, not 13,000 were women. According to the last census, the proportion of men to women in the whole population of the penal colonies was as five to two; amongst the convicts in the towns, as seven to two; and in the agricultural districts, where the convicts chiefly reside, it was seventeen to one. The question

may be asked, why have so few women been transported, when the deplorable consequences of such a disproportion of the sexes are self-evident? The answer puts in the strongest light the great imperfection of transportation as a punishment. The answer is this; that the colonial authorities were generally opposed to the transportation of any considerable number of women, because they found it impossible to devise any means of punishing them which were not liable to the most serious objections. The conduct of female convicts was so invariably bad, that respectable settlers were generally unwilling to receive them as assigned servants in their families; and preferred the services of men in those domestic occupations which are usually performed by women. In some families, in which they were received, the most lamentable results ensued, from the corruption of young children entrusted to their charge. And it is needless for me to describe what were the consequences of their being assigned to the lower description of settlers; they were such as the colonial authorities could neither sanction nor overlook. Lastly, the women who were assigned, were constantly returned to the government to be punished for misconduct; and the government was, as I have already observed, utterly at a loss what to do with them. Sir, penitentiaries are

the only modes of punishment suitable for women. But in the penal colonies there were no means of establishing a good penitentiary system. Indeed, for a considerable period, the penitentiary in New South Wales was little better than a brothel, and a lying-in hospital. As the only means of disposing of female convicts, marriages were encouraged between them and the free and convict populations; and numerous marriages did take place. Though this plan of dealing with female offenders is at variance with every notion and object of punishment, yet I do not hesitate to declare my opinion, that it was the best and wisest under existing circumstances. In support of this position, the high authority of Captain Maconochie may be quoted, who has had the best means of ascertaining the moral effects of transportation. That gentleman thought it would be desirable to give the greatest possible extension to the marrying of female convicts; and for this purpose he even proposed that "convict married women, whose husbands refused after a given time to join them, should become free to form fresh connections." And Captain Maconochie asserted, that he could "prove the expediency of this plan, by statements of the consequences of the want both of husbands and wives in the penal colonies, as would make the blood curdle." It is not neces-

sary to make any observations as to the propriety or impropriety of such a plan ; but I ask the house to consider what must have been the impression made upon the mind of a highly intelligent gentleman, by the disproportion of sexes in the penal colonies, which could induce him to recommend a scheme so utterly inconsistent with the ordinary notions with regard to marriage. The difficulties which beset the question of female transportation appear to me to constitute most grave and valid objections to the whole system of transportation ; but, in my humble judgment, they are not sufficient to justify the discontinuance alone of female transportation. For if this country continue to send thousands of its worst offenders to become first slaves, then citizens in Australia, they must be accompanied by women ; otherwise those disgusting vices, which there is every reason to believe prevail among the convict population, will fearfully increase, and spread their contamination throughout the whole community.

A short time ago an attempt was made to render the proportion of sexes in the penal colonies more equal, by means of free female emigration. This attempt completely failed ; partly from mismanagement. It was undertaken by some benevolent individuals, who were very ill qualified for the task. They formed a com-

mittee for the purpose, and obtained a grant of money from the government. Their secretary was one Mr John Marshall, who at the same time undertook the incongruous functions of chief agent for the selection of emigrants, and contractor for their conveyance to the colonies. In short, he became the committee itself. The result was, that the streets of Sydney and Hobart Town were crowded for a time with female prostitutes; and vice became, perhaps less disgusting, but more apparent. In this manner some forty or fifty thousand pounds of public money were expended. It is vain to think of altering the proportion of sexes in the penal colonies by means of good female emigration, as long as transportation continues; because respectable women will not consent to go alone to dwell among convicts.

Attempts have been made in the penal colonies to deny the demoralizing effects of transportation on the state of their societies; and resolutions to that effect have been passed at meetings composed of persons who considered that they had a deep pecuniary interest in the continuance of convict slavery. Such resolutions, unsupported by facts, and in direct opposition to the undoubted facts which I have stated, are of little value; unless they may be considered as evincing the moral insensibility of those who agreed to

them, and thereby proving the contrary of what was intended to be proved. There are, undoubtedly, amongst the officers of the government and the higher class of settlers many very respectable individuals; nevertheless, it appears to me that the pernicious moral influence of transportation must be felt by all persons resident in those colonies. Let honourable gentlemen picture to themselves the life of a settler in a community where three-fifths of the population have been convicted of transportable offences; where, to use the words of Mr Justice Burton, the main business of all seems to be the commission of crime and the punishment of it; where some of the wealthiest inhabitants, the greater portion of the tradesmen, publicans, and innkeepers; where almost all the servants in private families, the labourers in the fields, and the workmen on the roads; where the police (as in Van Diemen's Land), the superintendents of the convicts, the gaolers, witnesses in the courts of justice, members of the jury on the trial, and even at one time magistrates on the bench, and instructors of youth in the schools, were or had been convicts. Thus, at every moment, and in every occupation of life, the settler is brought into contact with criminals. He is surrounded by crime, and haunted by the spectacle of cruel and degrading punishment. On the roads and in every public place he con-

stantly meets gangs of wretched beings in chains, displaying all the outward tokens of misery. The shopkeeper with whom he deals has probably been convicted of swindling. The servants who attend upon him are all convicts; the women, at best, drunken prostitutes; the men hardened ruffians; in order to make them work, he must either connive at their vicious conduct, disobey the regulations of the government and pay them wages, or he must have constant recourse to a magistrate and to the infliction of the lash. Let honourable members reflect upon what may be the consequences of all the servants in a family being criminals, sometimes of the worst description. A gentleman, long resident in one of those colonies, informed me that he had on his establishment four convict servants; that on inquiry he found that one had been transported for forgery, another for burglary, the third for an attempt at murder, and the fourth for some bestial offence. He was obliged to retain them in his service, because he could get no others; and his friends were no better off than himself. It is easy to imagine what may be the consequences of such an establishment of servants; and that crimes, unparalleled in this country, are sometimes perpetrated in the interior of the most respectable families. I will mention a horrid case, which occurred in the family of a wealthy

and respectable settler in Van Diemen's Land. It was discovered that his two daughters, one an infant of five years old, the other a girl of thirteen, had had repeated connexion, not with one, nor with two, but with all the convicts in their father's establishment, which was a large one. Three of the offenders were hung for rape on the infant, and all of them would have been executed had their master brought them to trial. Such was the statement made to the committee by a gentleman who was on the jury. He gave the details of the case, over which the decencies of the house compel me to cast a veil.

To conclude the description of the life of a settler in the penal colonies. In Van Diemen's Land the convict police may break into his residence at any hour of the night, on pretence of searching for a runaway convict; and may even arrest him on the public road, on suspicion of his being a prisoner of the crown. In New South Wales, if he be summoned to attend on a jury, he frequently finds that some of his fellow-jurymen have been convicts; that they sympathise with the criminal in the dock, and are determined at all events to acquit him. If he be a magistrate, his constant occupation is to order the infliction of the lash for trifling offences, and, in some instances, by personal inspection to ascertain that the convict scourger



does his duty with sufficient severity. In short, he dwells in a vast and ill-regulated gaol. He is himself, to all intents and purposes, a gaoler, and of the worst description; because, induced to undertake that revolting task, not by any peculiar mental or moral fitness for its due performance, but by the insatiate desire of wealth. His object is not to execute the threats of the law, or to improve the offender entrusted to his care, but to extract the greatest amount of labour from a slave. This description of the position of a free settler in a convict colony is as true as it is disgusting. What must be its effect upon his character? All experience proves that slavery of every kind has a bad effect on the character of the master; that it tends to make him harsh, cruel, and tyrannical; yet in ordinary slavery, as, for instance, in the United States, there are many causes which tend to mitigate its evil effects; such as the permanent interest of the master in the slave; the circumstance that master and slave are frequently brought up together in childhood, and the kindly feelings which thence ensue. None of these causes, however, can operate when the slave is a criminal, and the master has no permanent interest in him. The feelings on one side must be those of distrust and apprehension, on the other of hatred and fear. Hence it may reasonably be inferred that convict slavery must be the most injurious of all to the

character and temper of the master. It can hardly be doubted that it must be equally injurious to his children. Yet, strange to say, the contrary opinion has been held. It has been maintained that transportation encourages the virtuous sensibilities of the rising generation of the penal colonies; that, as of old the Spartans were wont to intoxicate their Helot slaves in order to impress upon their offspring the hideousness of drunkenness, so, it is said, the perpetual spectacle of crime and punishment stimulates the moral energies of the youth of Australia, and renders them peculiarly averse to dishonourable and disgraceful conduct. This absurd doctrine, according to which a gaol would be the fittest place for the education of children, has been propounded in sober seriousness by some of the interested advocates of transportation. I need not stay to refute it.

But let me now ask honourable members what benefit of any kind, sort, or description, is derived from such a system as transportation? Does it prevent crime? Certainly not; for it produces very little apprehension. Does it improve the character of the culprit? On the contrary; it leads to his utter demoralisation. Does it diminish the number of offenders? No; the abode of some of them is changed at an enormous expense, and a small portion of our burden of crime is transferred from England to

be increased a hundred-fold in Australia. Is it then a punishment of which a civilised nation may boast? Sir, it is unequal, uncertain, productive of more pain than terror, cruel, tyrannical, and disgraceful. Bad as it is as a punishment, it is still worse as a means of colonisation, for it has given birth to the most depraved communities in the universe. I may therefore, without presumption, assume that some change at least must be made in the existing system.

The question still remains, can any such alterations be made in transportation as shall render it a good punishment; or should some other punishment be substituted in its stead? In my humble judgment, the latter alternative ought to be adopted, and transportation should forthwith be abolished. In holding this opinion, I am sorry to be obliged to disagree with the noble lord the Secretary of State for the Colonies, (Lord John Russell), who has suggested the continuance of a portion of transportation. I say he has merely suggested it, because he has not pronounced a decided opinion on the subject; and I cannot help hoping that he may be induced to reconsider that opinion. The plan of the noble lord is contained in a letter from him to the late Secretary of State for the Colonies; which was laid, at the end of last session, on the table of the house. In that

document the noble lord states, with great force and ability, all the arguments against transportation; and concludes with recommending; first, the immediate discontinuance of the assignment system; secondly, that convicts sentenced to seven years' punishment shall cease to be transported. So far I entirely agree with him. But, lastly, he proposes that convicts sentenced to more than seven years' punishment shall be transported to Norfolk Island, where they are to undergo the severer portion of their punishment; subsequently they are to be removed to the public works in New South Wales. This plan is liable to the same objections which have been urged against the existing system of transportation; and of this the noble lord is well aware. For in the paper to which I have referred he has stated one of the most serious of those objections in the most explicit terms. In the twenty-first paragraph he says, besides other objections to the sending of convicts to Norfolk Island, there is this defect in the proposal, "that it would leave the main evil of transportation in full vigour. No one would advise the transport of criminals to the distance of Norfolk Island with the intention of bringing them back at the expense of the public to England. The consequence must be, that at the expiration of their sentences they will flock to the Australian

colonies, and render that noxious atmosphere more foul by the addition." And in the next paragraph he calls this a "fatal objection." It does, indeed, seem a fatal one; and I, therefore, presume to beseech the noble lord to reconsider this portion of his plan. But there are other, and equally fatal objections to it. I ask what description of punishment is to be inflicted upon convicts in Norfolk Island? Is the existing system to be continued there? I hope not, after the description I have given of it, and after the emphatic condemnation of it by the noble lord himself. But what other system can be established, which will preserve discipline among the convicts in those settlements? Herein consists the difficulty. The cruel system of the penal settlements did not result from any love of cruelty on the part of the officers who managed those settlements, but from the attempt to enforce discipline by means of coercion alone; hence frequent and severe punishments for the most trifling offences, and a state of things worse than death. But if severe coercion be not employed, all experience shows that the only other means of preserving discipline among large numbers of offenders, is by well-constructed gaols or penitentiaries. Will you build gaols and penitentiaries in Norfolk Island? Who are to build them? The convicts? But how is discipline to

be preserved amongst those convicts while the gaols are building? You cannot even have a hulk at Norfolk Island, for there is no harbour there except for boats. Discipline must, therefore, still be preserved by the lash. Then the horrors of Norfolk Island will have to continue for an indefinite period of time. And this I cannot believe that either the noble lord intends, or that the house will sanction. But I will suppose that it is your intention to build gaols and penitentiaries in Norfolk Island. Have you calculated the expense of building them in a small island, without timber, without harbours, in the midst of the Southern Ocean, one thousand miles from the abode of civilized man? The history of convict labour in New South Wales and Van Diemen's Land proves that it is only the commonest description of labour, and a very small quantity of that, which can be extracted from a criminal by punishment. In order to build, you must therefore have free skilled labourers of various descriptions, superintendents acquainted with building, and artificers of every sort. How will you get them, except at an enormous expense? And when you have got them, how will you persuade them to remain in your convict island, with the labour market of New South Wales, South Australia, and New Zealand open to them, offering to them the

highest wages, and temptations which you cannot permit in your penal settlement, without a subversion of penal discipline? In short, what inducements can you offer which shall tempt them to reside in a place, where life is so miserable, that even your own soldiers have lately risen in revolt? For these reasons I feel persuaded that the cost of building penitentiaries in Norfolk Island, with the assistance of convict labour, would far exceed the cost of building better penitentiaries in this country, and of maintaining, at the same time, the convicts, if necessary, in idleness.

Again, how are the home authorities to exercise the requisite degree of vigilant superintendence over these remote places of punishment? Why, I ask, have you lately appointed inspectors of prisons in this country, and directed them annually to report to Parliament? Because you have become aware that without constant inspection you cannot enforce proper penal discipline even at home, that you cannot trust to unobserved authority even at your own doors. Have you any reason for placing greater confidence in gaolers at Norfolk Island, or will you send inspectors yearly to the antipodes? And even then a year must elapse before a remedy can be applied to the best proved abuse.

Again, will you send women to Norfolk Island,

or is it to be inhabited only by men? Have you well considered this matter? Is it necessary to repeat the statements of the highest authorities, that wherever large numbers of male offenders are collected together in the penal colonies, there unnatural crimes are fearfully prevalent? The only means of preventing those crimes is by the complete separation of prisoners; and this cannot be effected till gaols are built.

What can be said in reply to these objections? The only argument I have ever heard in favour of the Norfolk Island plan is, that that island is said to possess the average degree of fertility common to places in the vicinity of the tropics; hence it is supposed that convicts might there raise the greater portion of their own subsistence, and that their punishment would be an economical one. Passing by the fatal objection to this plan, that it would require the employment of large bodies of convicts together in the fields, and consequently a system of coercion analogous to the present one; I utterly disbelieve that the attempt, if made, would be successful. First, because all similar attempts have hitherto failed; secondly, because the island in question is a very small one, not containing above 17,000 acres, most of which is dense jungle, and unfit for the growth of corn. But if this attempt do fail, or only partially succeed, reflect what will be the



cost of conveying supplies of food from Sydney to this place, which by nature is almost inaccessible. Remember, likewise, that the cost of subsistence and of every necessary in Sydney, is always much higher than in England. Judging from experience, a notion may be formed of what the expense of such a settlement is likely to be. In 1836, when the number of convicts did not exceed 1,000, the rations of salt meat alone in Norfolk Island cost 12,500*l.*; and, according to the commissariat officer resident there, the expense of that settlement to this country has been 30,000*l.* a-year, or about 30*l.* a-head for each convict. Now estimating the average duration of each convict's punishment there to be four years, and the cost of transport to and from Norfolk Island not to exceed 25*l.*, the whole expense for the punishment of each convict would be 145*l.*, which is one-half more than the sum for which the noble lord estimates that convicts could be kept in the most expensive penitentiaries, like that of Millbank. I, therefore, again presume to ask the noble lord to reconsider this portion of his plan : for I feel convinced that if it be adopted, it must ere long be abandoned, after a worse than useless expenditure of public money ; because, after an exhibition on a larger scale of that portion of the existing system which

all authorities concur in condemning as most foul and disgraceful.

It is necessary to say one word with regard to a totally new mode of punishment, which is suggested in the noble lord's letter to the late Colonial Minister. I mean what is called the social system of Captain Maconochie. According to that system criminals are to be associated together in small parties of seven or eight individuals, each of whom is to be held responsible, not for his own conduct, but for that of all the others with whom he may be associated. And thus it is expected, that with the usual opportunities for crime which attend on being at large under the transportation system, offenders would be induced to abstain from crime by their mutual regard for one another. This curious proposal outrages every law of human motives; it is in direct opposition to every principle of punishment, as a check to crime; it would almost seem to have been intended for a purpose of mockery. It is like bestowing riches on the profuse at the expense of the thrifty; like rewarding the reckless with the deserts of the careful. It is, in fact, to all intents and purposes, punishment of the innocent for the crimes of the guilty.

Sir, in recommending the immediate abolition of transportation, the House will expect that I

should offer some substitute in its stead. This I will now endeavour to do, entreating the house, however, to make allowance for the imperfect manner in which I am afraid I shall execute this attempt. I propose that convicts, instead of being transported, shall be punished in hulks, gaols, or penitentiaries to be built for that purpose. It is true that the hulks are not the best description of punishment, but they would afford an immediate substitute for transportation till penitentiaries can be built. They are, however, positively preferable to transportation; because they produce much more apprehension; because convicts in the hulks can be subjected to much more efficient superintendence and inspection than in the penal colonies; and lastly, because they are a somewhat less demoralizing, and, as I will presently show, a less expensive punishment than transportation.

The ultimate and permanent substitute for transportation should be one or more forms of the penitentiary system. Experience has shown that the best form is that which was first suggested by Mr Bentham, and recommended by him in preference to the formation of the penal colony of New South Wales. I mean the separate system. According to that system, offenders are kept entirely apart, and never allowed to associate together or to become acquainted; they

are visited by persons appointed for the purpose, whose duty it is to afford them religious and moral instruction; and they are permitted, not compelled, to work. This description of punishment has most of the qualities of a good punishment. It produces a great degree of terror. It is certain and equal. It is easily apportioned to various degrees of crime. It renders the commission of crime during the period of punishment almost impossible. It prevents the formation of those acquaintances amongst criminals during punishment, which are found to be one of the greatest sources of crime, and which generally lead to the permanent demoralisation of the culprit. It entirely severs for the period of punishment, all connexion between the offender and the rest of the criminal population, and thus breaks through his vicious habits. It tends by the opportunity afforded for reflection, and by intercourse with properly chosen instructors, to improve, as far as possible, the moral character of the offender. And, lastly, arbitrary punishments are not required in order to preserve discipline or enforce labour: labour, therefore, becomes a source of enjoyment instead of pain, and the culprit is thus best fitted for a subsequent life of honest industry.

The ordinary objection to the separate system is its expense. Though when a great moral

advantage is to be obtained, the question of expense is one of minor importance, yet it cannot be entirely overlooked. With regard, however, to the separate system, it can be proved that it would cost less than any of the proposed substitutes for the assignment system ; which I assume it is the intention of the government to persevere in discontinuing. It may even be shown, that it would not be more expensive than transportation has been. In proof of these positions, it will be necessary to state what appears, from the best authorities, to be the expense of various kinds of punishment. First, of transportation as it has existed. From the foundation of the penal colonies to the year 1836, the total expenditure of this country on account of these colonies has exceeded eight millions. During that period 98,000 convicts have been transported. Their punishment has, therefore, cost at least 817. a piece up to 1836. At that time there were still 46,000 of these convicts under punishment ; the subsequent expenditure on their account, which there are no data for ascertaining, must be added to the sum just mentioned, in order to make up the total cost of their punishment. This proves at once that transportation has been one of the most costly descriptions of punishment, equal at least to the system of the penitentiary at Milbank. This fact may astonish honourable members.

It has escaped attention, owing to the circumstance that the expenditure on account of transportation is scattered over a variety of estimates. For instance, one portion of it is to be found in the navy estimates, another portion amongst the army estimates, the third amongst the ordnance estimates, and the remainder in the miscellaneous estimates. It has never been presented as a whole to the house previous to the labours of the transportation committee.

It may, however, be said, that great and unnecessary expense was incurred in the earlier periods of transportation, and that it has now become much less costly. I am by no means persuaded of the truth of this position. In the year 1836-7, the public expenditure on account of the penal colonies amounted to nearly half a million. It consisted of three items :

Transport of convicts to the penal colonies,	- - - -	£73,000.
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Expenditure on account of convicts in those colonies,	- -	241,000.
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Military expenditure,	- -	174,000.
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Total,	- -	<u>£488,000.</u>
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In addition to this sum, the colonial expenditure on account of the administration of justice, gaols, and police, was 90,000*l.* a year ; an enormous amount, as it is nine times as great in

proportion to population, as that of the United Kingdom for similar purposes. The greater portion of this expenditure evidently belongs to transportation. And it should be mentioned, that the Legislative Council of Van Diemen's Land refused the estimates for two-thirds of their portion of this expenditure, on the plea that it ought to be defrayed by this country. Supposing, however, that only one half of the military and judicial expenditure ought to be attributed to transportation, the average cost of each convict's punishment would be 8*l.* a year, exclusive of transport. If the average duration of a convict's punishment be taken at only seven years (the shortest period of transportation), and the cost of transport be reckoned at 15*l.* a piece, then the whole cost of a convict's punishment would be 71*l.* under the existing system of transportation and assignment.

If assignment be abolished, and the convicts be placed under the immediate superintendence of the colonial government, it appears from Sir G. Arthur's estimates that an additional expenditure would be required of at least 10*l.* a year for each convict; the whole expense of a convict's punishment would therefore be 141*l.* It should likewise be remarked, that at present the masters perform the duties of gaolers and guards to their convict servants; therefore, if those convicts be placed under

the immediate care of government, according to Sir Richard Bourke a large increase of military force would become necessary.

If the Norfolk Island plan be adopted, and even if, on account of the greater severity of that punishment, only four years be taken as the average duration of a convict's punishment, then, for reasons which I have already stated, the cost of this punishment would be 145*l.* for each convict, without including the cost of the subsequent portion of his punishment on the public works of New South Wales.

I have thus endeavoured to state what appears to me to be a fair estimate of the expense of the existing system of transportation, and of the two proposed modifications of that system; namely, the employment of convicts on the public works of the penal colonies, and the Norfolk Island plan.

I ask the House to compare these estimates with those furnished by the noble lord with regard to hulks, gaols, and penitentiaries. The noble lord reckons four years to be the average duration of punishment in gaols and penitentiaries. This, it should be remarked, is generally considered to be a punishment equivalent to fourteen years' transportation. Therefore my estimates, founded upon the supposition that seven years are the average duration of transportation, will be considerably too low as compared with



those of the noble lord ; which I will now read :  
“The average expense of each convict kept in the convict hulks in England for a period of four years would not be less than 30*l.* ; if kept in a house of correction, such as those of Wakefield or Coldbath Fields, would not be less than 55*l.* or 56*l.* ; and if kept in a penitentiary, similar to that of Millbank, would not be less than 96*l.*”

From these estimates it appears that if the punishments, of which I have been speaking, be arranged according to their expensiveness, the first and most expensive of all would be the Norfolk Island plan, which would cost at least 145*l.* for each convict. The next in the scale of expense would be the employment of convicts on the public works of the penal colonies ; the cost of which would amount to more than 141*l.* a convict. The third would be penitentiaries similar to that of Millbank, estimated by the noble at 96*l.* a convict. The fourth would be the existing system of transportation and assignment which costs at least 71*l.* a convict. The fifth would be houses of correction like those of Wakefield and Coldbath-fields, amounting to between 55*l.* and 56*l.* for each convict. And the last and cheapest would be the hulks, the expense of which is much under-estimated by the noble lord at 30*l.* a convict. None of these

descriptions of punishment precisely include the separate system, which I have proposed as the substitute for transportation. In the Glasgow Penitentiary, the only one in Great Britain on the separate system, the average cost of each convict's punishment has not exceeded 5*l.* a year, or 20*l.* for the four years. I may, however, suppose, on the authority of the prison inspectors, that the average cost of a convict's punishment in the best penitentiaries on that system, would be about 18*l.* a year, or 72*l.* for the four years. Thus it appears, that whatever description of penitentiaries be adopted, they would cost less than either of the proposed modifications of transportation.

These estimates only refer to the maintenance and superintendence of convicts; they do not include the cost of building the requisite gaols or penitentiaries. With regard to this subject, it should be borne in mind, that at present all the assigned servants, who constitute the greater portion of the convicts, are lodged, clothed, and guarded by their masters. If the assignment system be abolished (and there is no one, I presume, who will propose the continuance of that system, condemned as it is by the government and all competent authorities), then, whatever system be adopted, buildings must be erected to contain the convicts. What would be the cost

of such buildings? From the high price of labour, and of every material, they would be much more expensive in the penal colonies than in this country. I think it may be asserted, without exaggeration, that they would cost one half more in New South Wales than in England, and twice as much in Norfolk Island. From the best information which I have been able to obtain upon this subject, namely, from the prison inspectors, it appears that the most perfect description of penitentiaries might be built for about 120*l.* a cell. How many cells would be required? The noble lord estimates that if transportation were abolished, the number of convicts to be disposed of would be about four thousand a year. If the average duration of their punishment be four years, then ultimately sixteen thousand cells must be built. Sixteen thousand cells, at 120*l.* a piece, would cost 1,920,000*l.* This sum, at four per cent., would be equivalent to an annual expenditure of 76,800*l.* From these data it is easy to reckon the cost of the system proposed. The maintenance, superintendence, &c., of 16,000 convicts on the separate system, at 18*l.* a piece a year, would amount to 288,000*l.* a year. The interest of the money expended in building penitentiaries would be 76,800*l.* a year. Total cost of the separate system, 364,800*l.* a year. If honour-

able gentlemen would take the trouble of making similar calculations with regard to the Norfolk Island plan, or that of employing convicts on the public works of the colonies, they would find that, exclusive of the cost of building the requisite gaols, the annual expense of these punishments would be from 500,000*l.* to 560,000*l.* a year; or from 140,000*l.* to 200,000*l.* a year more than the separate system for the same number of convicts.

It appears to me, however, that a system of punishment is incomplete, which does not make some provision for the future career of the culprit at the termination of his punishment. The questions, "What is to be done with offenders at the expiration of their sentence?" "How are they to be prevented from returning to criminal pursuits?" are undoubtedly questions of considerable difficulty. Some persons consider that transportation solves these questions. This I deny. The effect of transportation is merely to remove offenders from England, and ultimately to turn them loose, unreformed in Australia; where they find a large class of criminals to associate with, and where, as has already been shown, they commit innumerable offences. What benefit, then, from such a system? No one would consider that any advantage would be obtained, if the means employed in diminishing

crime in Cornwall, for instance, augmented in a greater degree the number of offences in Yorkshire. This is, however, precisely the effect of transportation with respect to England and Australia. By this proceeding the sum total of offences in the British dominions is certainly not lessened but considerably augmented: and the legislature fails in obtaining the great object of punishment, which is to prevent crime, not merely to change the place where it is committed.

In order to prevent a criminal from perpetrating fresh offences, when the period of his punishment is over, his moral character ought to be improved by it, and he should be placed in a position in which he would not be exposed to strong temptations to relapse into criminal habits. In both these respects, the inefficiency of transportation has been demonstrated. On the other hand, it is acknowledged by every person conversant with the subject of penal discipline, that the separate system tends, more than any other punishment, to improve the moral character of an offender. It cannot, however, be denied, that if at the expiration of his sentence, a prisoner were turned loose in this country, with a character blasted by punishment, he would have great difficulty in finding employment, and might, in many cases, be com-

pelled to maintain himself by crime. To meet this difficulty, a plan has been proposed by the Archbishop of Dublin. The house is aware, that the Archbishop of Dublin has been of late years the great opponent of transportation; in his steps I have endeavoured humbly to follow; and to him I feel most deeply indebted for the advice which he has kindly and graciously afforded me with regard to this subject. The plan of the Archbishop of Dublin is contained in a letter inserted in the report of the committee. It is simply this: that liberated offenders, who would consent to emigrate, should be furnished with the means of conveyance to portions of the globe where they would easily find employment, and where their previous career would be unknown. They should on no account be all sent to the same place; because they would there form a criminal class, and thus reproduce many of the worst effects of transportation: and for this reason, they should not be permitted to go to the penal colonies for the next fifty years. By being dispersed amongst the moral and industrious, far removed from the scene of their transgressions, and without any known taint on their character, the good feelings and habits acquired in confinement would be strengthened, and a new career would be opened to them; which cannot be the case under the existing system of trans-

portation, or any of its proposed modifications. This plan, or some analogous one, seems to me to be a necessary accompaniment to a good system of punishment. It would entail an additional expense of about 15*l.* a head, at the utmost, for every prisoner who would consent to emigrate. How many would consent so to do it is impossible to estimate; but supposing all the 4,000, who it may be considered would annually become free, were to consent, their emigration would cost the country about 60,000*l.* a-year. This sum added to my previous estimate for the building of penitentiaries and the maintenance of 16,000 convicts in them, would make a total amount of 424,800*l.* a-year for the system proposed. The house will remember that I stated the cost of transportation to be at present 488,000*l.* a-year. Therefore the expense of the separate system, including the plan of the Archbishop of Dublin for providing for the subsequent career of the prisoner, would be 63,200*l.* a-year less than that of transportation. It is true that if transportation were abolished, the whole of the expenditure on account of the penal colonies would not at once be saved. There would, however, be a considerable immediate diminution of expense: first, of at least 73,000*l.* a-year for the transport of convicts: secondly, it is probable that by the end of four years, when the new system would come into full operation,

the convict and military expenditure might be diminished to one half its present amount. Now, making these allowances, and the proper calculation, the result would be, that the additional expense to this country from adopting the system I propose, would not exceed 144,000*l.* a-year, and be ultimately much less. The additional expense which would ensue from adopting the Norfolk Island plan, or that of employing convicts on the public works of the penal colonies, would, for reasons already stated, be much greater; though how much greater there are no means of calculating. In making these estimates, I have been most anxious not to mislead the house by putting down the expense of the separate system too low. I do not deny that penitentiaries might be expensive, but only assert that they would be less expensive than any of the proposed alterations in the existing system of transportation. I do not recommend them merely as being cheap punishments. I entreat the House not to be led away by any notion of an economical punishment; for, by its nature, punishment must be an expensive thing. All our attempts at economical punishment have hitherto signally failed; and the result has been bad and expensive punishment. It is a matter for sorrowful reflection, that if at the end of last century we had listened to the voice of that great philosopher, Bentham, we might ere this, for



a less expense than transportation has cost us, have had the best system of prison discipline in the world; and our secondary punishments would have been a model for mankind, instead of being, as now, a deep reproach to the empire. As a great change must immediately be made in our system of punishment; I implore the House to take warning from our predecessors, and not to commit errors similar to theirs, which would entail disgrace upon us with posterity.

The only other objection to the punishment of criminals at home, to which I need to allude, is an official one; and is frequently urged by persons connected with the administration of punishment. It is said, that if offenders were punished in penitentiaries, the Home Office would be beset with memorials for the mitigation of punishment; that those memorials, supported as they frequently would be by political partisans and other influential persons, could with difficulty be rejected; that a check is now put to inconvenient solicitations on behalf of convicts, by removing them to a distance; and that at present a considerable portion of an offender's punishment is inflicted before a remission of sentence can reach the penal colony. To this I answer, either the application for the mitigation of a particular convict's punishment is, or

is not, well founded. If it be well founded, then a grievous injustice is done to the convict by removing him to such a distance, that he cannot at once obtain that remission of punishment to which he is entitled. On the other hand, if the application for mercy is unfounded, then the conduct of a minister of the crown, who consents to a remission of sentence, is highly reprehensible. He is guilty of a great offence against society, by rendering punishment uncertain, and diminishing the force of the motives to abstain from crime. If it be said that such abuses will exist as long as the Secretary of State for Home Affairs possesses his present power of pardoning; then I reply that power ought to be limited, or placed in other hands; for so exercised, it is evidently inconsistent with the public good. And I cannot help thinking that the power of pardoning should be transferred to some judicial tribunal, which would act according to rule, and which should clearly and distinctly explain its reasons in each particular case for remitting or mitigating punishment. At present, the remission of a sentence is an arbitrary act of a minister of the crown, for which he assigns no reasons, and which every person interprets according to his own fancy. This tends to produce uncertainty as to the execution of the laws; and causes many an offender, who has powerful

protectors, to hope (justly or unjustly it matters not) for impunity. This subject well deserves the serious attention of Parliament; but it is one which I cannot enter upon at present. I will only observe again, that the plea that the Home Secretary would be compelled to abuse his power of pardoning with regard to prisoners in penitentiaries, is not a valid argument in favour of transportation, but furnishes good reasons for depriving him of that power.

The question may still be asked, what is to be done with the convicts in the penal colonies? This is a mere question of time. So much of the present penal system must be retained, as is necessary for the punishment of the offenders now in the colonies. By the termination of four years after the abolition of transportation, a very considerable portion of the convicts would either have become free, or half free, by obtaining tickets of leave. The remainder should be withdrawn from assigned service; the worst characters should be punished in the gaols or public works; and the well-conducted might be permitted to be at large under certain restrictions. These are questions, however, of mere administrative detail, which a person on the spot could easily solve. Send out a governor well acquainted with the subject; arm him with sufficient powers; make him responsible for bringing

the existing system to a satisfactory termination ; and four or five years would enable him to accomplish the greater portion of his task. Amongst the great evils of having once adopted any bad system, is the difficulty which attends the getting rid of it, the length of time which must elapse before all its pernicious consequences can be rooted out, and the excuse which is thus afforded for hesitation and delay. Remember, however, that in this case delay will only increase the difficulties of those who will have ultimately to abolish transportation ; and every ship-load of convicts which you send to those colonies will render (to use the Noble Lord's own expression) " their noxious atmospheres more foul ;" and consequently, their period of purification more remote.

I will conclude with a few observations on the effects of the abolition of transportation on the wealth of the penal colonies. The House is, without doubt, aware of the extraordinary and unparalleled rapidity with which those colonies have advanced in wealth ; and that that progress is mainly to be attributed to the fact, that the settlers have been abundantly supplied with convict slaves, who have enabled them to pursue various profitable branches of industry. Now that the government has determined to abolish the assignment system, the settlers will, in a

short period, be deprived of convict servants ; and the prosperity of those communities will terminate, unless they be supplied with labour from other sources. The only source from which they can be beneficially supplied with labour, is by free emigration from this country. There are, however, several difficulties which beset the question of free emigration. Persons who are inclined to emigrate, have of late become acquainted with the unfortunate moral state of the penal colonies : many of them are, in consequence, unwilling to confound themselves with convicts by going to a convict settlement. I am not surprised at it. I cannot conceive how any respectable or virtuous man, how any person who is or intends to become the father of a family, in short how any individual in whom the thirst of gain does not outweigh every other and better consideration, can consent to become an inmate of one of these communities of felons, as long as there is any doubt as to the total discontinuance of transportation. To the honour, be it said, of the poorer classes of this country, there is a great and growing disinclination amongst them to emigrate to these colonies. This feeling prevails especially in Scotland. It exists in England, and has been excited in Ireland through the exertions of the Archbishop of Dublin, who has felt it to be his religious duty to discounte-

nance emigration to New South Wales. Therefore, with the discontinuance of the assignment system, the industry of the penal colonies will be materially injured, if not subverted, unless transportation to them be entirely abolished. And even this will not be sufficient, if the Norfolk Island system be adopted, and convicts be ultimately turned loose in New South Wales; a project to which, I may assert, the colonists are unanimously opposed, as perpetuating all the moral evils of the existing system, without any of the economical advantages of convict slavery.

Abolish transportation, and there will be no difficulty in procuring emigrants for those colonies. But still it may, and not unjustly, be objected to me by some persons who might ask, "Would you promote emigration to communities which you have described as so demoralized? Would you send innocent persons to places where they would be almost certain to be contaminated by intercourse with the guilty?" I answer, that the amount of emigration should be such as would, within a very short period, entirely swamp the convict population, and completely alter the moral character of those communities. If only a few thousand emigrants were sent out every year, a considerable portion would, in all probability, be demoralized. If, however, their numbers were to be reckoned by tens of thousands, the convict portion

of the population would soon become an inconsiderable minority. As this subject was discussed last year in a debate on the motion of my honourable friend, the member for Sheffield, I will not repeat the calculations, from which I inferred that if (supposing transportation abolished) 100,000 persons were to emigrate during the next four years to the penal colonies, those communities would be completely purified and amply provided with labour. They would then take their proper station amongst the colonies of England. They would be qualified to receive those free institutions without which they can never be well governed, but which it would be absurd to bestow upon them as long as they are gaols, or one-half of their population is composed of offenders.

The expense of such an amount of emigration would probably be 1,500,000*l.*; estimating, in accordance with the returns of the emigration commissioner, that 15*l.* a-head is the average expense of emigration to New South Wales. I will, however, suppose that 2,000,000*l.* would cover all possible expenses. This sum could easily be raised at four per cent. on the security of the sales of waste lands, provided there were the guarantee of an act of Parliament that it should all be expended in emigration. There would be ample security for the payment of the interest (which would amount to 80,000*l.*

a-year) out of the yearly sales of land ; for during the last three years the land fund of New South Wales has exceeded 130,000*l.* a-year ; and no one can for a moment doubt that it would greatly increase if emigration were carried on to the extent proposed. In support of this plan I refer honourable members to last year's report of the emigration commissioner, in which they will find that a similar plan of borrowing 2,000,000*l.* for the purposes of emigration, has been proposed and approved of by a large body of the most intelligent and extensive proprietors in New South Wales.

It is necessary that there should be the guarantee of an act of Parliament, that the whole of the loan should be applied to the purposes of emigration. First, because the perpetual changing of the Colonial Minister (we generally have a new one, unacquainted with his business, every nine months) renders it impossible to place any reliance in promises which his successor is not bound to keep. Secondly, because the Land Fund, which it was always supposed in this colony, and generally believed in this country, to be intended for emigration, has been appropriated by the government to other purposes. And the colonists most loudly and, in my opinion, most justly complain of this act as a most grievous abuse, as a sort of robbery.



From the commencement of the sale of lands in 1832, to the end of 1838, 571,000*l.* has been paid into the land fund. Of this sum not above 171,000*l.* have been employed in emigration. Of the remainder, 138,000*l.* may have been expended in the sale, management, &c., of the land. The residue, amounting to 262,000*l.* has been alienated from the purposes originally intended, and applied by the government to the support of the enormous police and gaol establishments, which transportation has rendered necessary; and which the colonists, with no small show of justice, contend ought to be defrayed by this country. Such was the state of the Land Fund in the beginning of 1839. Since that period the same system has been pursued; and I am credibly informed that the Land Fund has been completely exhausted by the drains upon it by the government. Indeed, in the middle of last year, the noble lord, the Secretary of State for the Colonies, was obliged to order the discontinuance of emigration to New South Wales. Therefore, unless a loan be raised, emigration to New South Wales must stop, to the most serious injury of that colony, as every person well acquainted with this subject will readily acknowledge.

I now thank the house for the patient manner in which it has listened to me. I have been

obliged, for fear of wearying the house, to pass over many points of considerable importance. I hope, however, that I have succeeded in proving the following positions. That transportation is a very bad punishment. That it is not susceptible of any improvement. That it ought, therefore, to be abolished. That the best substitute for it is penitentiaries. That the penitentiary system would be less expensive than any of the proposed modifications of transportation. That a large additional outlay of public money would not be required in order to establish penitentiaries, and to bestow upon this country the best system of secondary punishments in the world. And, lastly, for the sake of the moral well-being and economical prosperity of the penal colonies, that systematic emigration should be carried on in the manner I have proposed.

I will conclude by moving, "That the punishment of transportation should be abolished, and the penitentiary system of punishment be adopted in its stead as soon as practicable;" and "That the funds to be derived from the sales of waste lands in New South Wales and Van Diemen's Land ought to be anticipated by means of loans on that security, for the purpose of promoting extensive emigration to those colonies."

