

LIST OF UNCLAIMED LETTERS ADDRESSED TO CHINESE.

November 11th, 1879.

又二封顏鏡蓉收	一封廣源隆收	一封鄭發明收	一封交阿七收入
又未先付家嫂收	一封忠和收入	一封伍學錫收	一封交陳折章收
又一封羅汝統收	一封曾來錦收	一封智記收入	一封交張瀚元收
又一封顏益禮收	一封楊亞才收	一封朱錦堂收	一封交劉茂收
又一封黃泰連收	一封蔡奇晃收	一封張維章收	一封交鍾星橋收
又一封羅雙嬌收	一夏垣佳收入	一封司徒進收	一封交王天足收
又一封李鄧烘收	一和興泰收入	一倪石苑收入	一交黃熾南收入
又一封張逢芳收	一封廖鏡堂收	一封關逢利收	一封劉亞愛收入
又一封交陳杜收	一封王田司收	一封賴娘嬌收	一交黃友賢收入
又一封廣榮泰收	一封楊行富收		
又保家信一封交李敬業收入		又保家信一封交周敬亭收入	
又保家信一封交雷學實收入		又保家信一封交伍福昌收入	
又保家信一封交林康收入		又保家信一封交陳澤沾收入	
又保家信一封交葉李清收入			

近有付往外埠吉信數封無人到取現由外埠付回香港驛務總局如有此人可即到本局領取茲將原名號列左

寶松付星架坡信一封蘇鶴年收
 茂蘭付雪梨信一封賀亞壬收入
 鄭開麟付舊金山信一封和記棧收
 一封付日本大板田中屋樓收入
 一封付西印度呂坤收入
 一封付上海柯志收入

付雪梨信一封交余羅嬌收
 一封付星架坡和美收
 一封雪梨林英華收入
 一封付橫濱保田吉駒收入
 一封付上海柯志收入

現有由外埠付到要信數封貯存驛務總局如有此人可即到本局領取茲將原名號列左

MEETING OF THE LEGISLATIVE COUNCIL.

The following Report, extracted from the *Daily Press*, is published for general information.

A Meeting of the Legislative Council was held on Thursday, the 6th November, 1879. There were present:—

His Excellency Governor POPE HENNESSY, C.M.G.
 Honourable Sir JOHN SMALE, (Chief Justice).
 Honourable W. H. MARSH, (Colonial Secretary).
 Honourable J. RUSSELL, (Acting Attorney General).
 Honourable M. S. TONNOCHY, (Colonial Treasurer).
 Honourable P. RYRIE.
 Honourable W. KESWICK.
 Honourable J. M. PRICE.

MINUTES.

The minutes of the last two Meetings were read and confirmed.

THE COMMERCE AND FINANCES OF THE COLONY.

HIS EXCELLENCY.—Gentlemen, in opening what I may call the session of 1879-80 and laying before you the Estimates for 1880 my first duty is to briefly refer to the financial statement I made last year when introducing the Estimates for 1879. In September, 1878, I ventured to anticipate that the prosperity of the Colony of Hongkong would be shown at the end of that year by the shipping returns. This is one of the largest depôts of shipping in the world and the prosperity of the Colony is best gauged, no doubt, by the amount of shipping that comes into and leaves the harbour. In spite of

commercial depression elsewhere, I thought we should have no reason to despair of the year 1878. It will be satisfactory for you to know that so far my anticipations have proved to be correct, and that the tonnage of vessels recorded as entering Hongkong in the year 1878 exceeds the tonnage that has been hitherto recorded in any year in the history of this Colony. I find in the year 1875 the total tonnage was 3,326,774, in 1876 this rose to 3,900,891, in 1877 it was 4,244,543, and in 1878 it reached 4,352,668; and the Harbour Master says that his returns show that the total tonnage entered and cleared at his office in 1878 was 8,982,593. The total tonnage cleared and entered in the year 1877 was 8,594,348, showing an increase of 388,245 tons. Now, to enable us to estimate the magnitude of this commercial movement it is natural enough to compare it with the total tonnage entered and cleared in the United Kingdom, and I find that according to the last authentic returns before me that it amounted in the year 1877 to 51,531,000, whereas ours in 1878 was 8,982,000. In other words our tonnage, we may safely say, was something like one-sixth of the total tonnage of the United Kingdom. And another fact of interest is this, that if you endeavour to ascertain, which we cannot do here with accuracy, what is the value of this depôt trade, we find that in England, where they can do so, the total value of imports and exports amounted to £646,000,000, and as our tonnage is something like one-sixth of what it is in the United Kingdom, I think a predecessor of mine who estimated the value of trade of this Colony inwards and outwards at £100,000,000 was not far off the mark. And another gentleman who has a large knowledge of the commercial history and position of this Colony, Mr. GRANVILLE SHARP, in the early part of 1877, before I arrived in the Colony, printed a little statement respecting the commercial resources of the Colony, containing statistics of the leading import and export trade of Hongkong by which the probable accuracy of this estimate is confirmed. So far we have, therefore, no reason to complain of the year 1878. And I may, perhaps, remind the Council that that was the year in which it was asserted, by some otherwise highly intelligent gentlemen, that there was great insecurity of property in the Colony owing to a policy of undue leniency on the part of the local Government towards the criminal classes. We now know, however that, as far as a flourishing revenue and a flourishing commerce are any indications of general security, the result has not been unsatisfactory.

With respect to the Oriental trade, the Harbour Master says:—"There has been a considerable increase in the trade between this port and India and Singapore, as well as with Japan." As regards the latter, I am disposed to think from what I have myself seen in Japan and ascertained from the merchants there, that the Japanese trade with South China and Hongkong will increase more rapidly, in proportion, than any other branch of our Eastern commerce.

Now, gentlemen, with respect to the Estimates which I propose to lay upon the table, it has been hitherto my practice to submit from time to time the details of the Estimates to the Finance Committee of the Legislative Council, so that in fact the Finance Committee had before them the applications, more or less numerous, for increase of pay, the various applications of the Surveyor General for the expenditure of public money, and the applications of the officers who have the spending of money in other departments. But instead of pursuing that course this year I have, under instructions from the Secretary of State, adopted the course I am now taking, which is that of laying the Estimates before you on my own responsibility, and then, after the statement I make to-day, and to-day's proceedings close, the Council will be able to adjourn when the Finance Committee can go through the Estimates, and then, at a reasonable time, the Council will meet and deal with the Appropriation Ordinance embodying the Estimates.

The revenue that my honourable friend the Acting Colonial Treasurer, Mr. TONNOCHY, anticipates for the year 1880 is based upon the actual receipts which he finds recorded in his books for the first nine months of 1879. My Honourable friend arrives at the conclusion that our revenue will reach the figure of \$1,017,956. You will notice that under the head of taxes there is a falling-off. This is to be accounted for by the fact that under the head of Stamps I estimate for \$115,000 only and under the head of Police assessment, Water-rate, Lighting rate, and Fire Brigade rate, I anticipate receiving a smaller sum than was actually received in the year 1878. But, as you are no doubt aware, the falling off in the house tax arises from the fact, not that the Colony is less prosperous, not that we have fewer houses—for even in spite of the fire that destroyed 366 houses in December 1878 we have more houses at this moment than we had at any other period in the history of the colony—but it arises from the fact that last year I took the responsibility of reducing the rate from twelve per cent. to ten per cent. When I referred in my financial statement last year to the possibility of a reduction in taxation I drew your attention to the fact that there was a great difference between reducing such a tax as that levied on the native junk trade and reducing the house-tax, inasmuch as I stated that the former would require a legislative enactment, which it would be very difficult to go back upon, whereas the Governor in Executive Council is bound to review every year the question of the house-tax, and determine what should be the rate for the ensuing year. Therefore the reduction in that rate for the current year was not constituted a permanent reduction. I may inform the Council that an important proposal has been submitted to me by three gentlemen,—my Honourable friend the senior unofficial member (Mr. RYRIE), and two of the officers of the Government suggesting that water tanks be erected along the side of the hill overlooking the town to provide a supply of water for the extinction of fires. A de-

putation waited upon me and expressed, on behalf of the community, an earnest desire that the views of that Committee should be carried out. I have reported that to the Secretary of State. The estimate for the proposed scheme amounts to \$50,000, and if I am called upon to expend that sum for this purpose I think I may appeal to you, and the whole community that for getting that sum—or \$30,000 at all events—I would be fully justified in asking the householders to contribute, and therefore it would be my duty next month, when I have to consider this question of the house rates, if Her Majesty's Government approve of the expenditure, to re-impose the two per cent. to get the money to pay for that which is practically a fire brigade service, and of course affects, more than any other, the actual householders. At the present time you won't find this \$50,000 included in the Estimates, because it requires the sanction of the Secretary of State; and you will see that the Colonial Treasurer has estimated the house-rates at the lower rate of ten and not twelve per cent.

There is a change, under the head of Postage. The amount of expenditure has increased and the receipts have also increased. On that subject it is only necessary to remind you that for some time past—for a year or two—there has been a question, which has not been discussed at this Council table, but has been discussed in another form, as to how far the Postal revenue is correctly stated on the Estimates. I entertain a decided opinion that we should deal with postal revenue as with everything else, that the Postmaster should include in his estimate of expenditure all the money expended, and in his estimate of receipts the gross receipts. However, he entertained a different opinion and handed in figures of a different character. This occurred during my absence in Japan. Mr. MARSH referred these figures back to him, pointing out what was the practice elsewhere, and what he himself, with his experience as Auditor General, thought it was the proper one to be followed. On returning to the Colony, I therefore placed before the Treasurer the figures which the Audit Office had resolved upon on a careful investigation of the whole subject, which were the figures showing the gross receipts and gross expenditure.

The total estimated expenditure is \$964,355, and as the estimated revenue is \$1,017,956, the estimated surplus on the transactions of the year 1880 is \$53,601. The most important change is that under the head of Police. Now the question of the Police Force in this Colony has engaged the attention of the Government more than once. We have had of late years two Committees or Commissions sitting upon the subject. I appointed a Committee presided over by my lamented friend, Mr. MAY, to investigate the question of Police and crime in the Colony. I had previously taken the responsibility, I think in August, or September, 1878, of giving instructions to Mr. DEANE, the Captain Superintendent, to strengthen the night force, and I pointed out the desirability of having the night duties of the force increased thirty-three per cent. The Committee I appointed examined Mr. DEANE, Mr. CREAGH, and a number of the Inspectors and other persons competent to give advice on the subject. No one indeed was more competent than the Chairman himself to form an opinion upon it. They arrived at the conclusion that the two-thirds night system, as it is called, should be tried, and that the system would probably tend to diminish crime, for they expressed a decided opinion that the Colony was not adequately policed at night time. Well, that report was laid before Her Majesty's Government, and about the same time, or indeed a little before that report reached the Government, they also received, from two important sections of the Community, the opinions of those sections upon that very question, as to the Police. Sir MICHAEL HICKS-BEACH received a memorial addressed to him by all the leading Chinese merchants of the Community, in which amongst other things, they expressed an opinion that the town had not been for some years adequately policed at night, and expressed a hope that he would sanction a moderate increase of the Police Force. On the other hand, a resolution was also laid before Sir MICHAEL HICKS-BEACH in which some of the European section of the Community took a different view, and thought no change was necessary in the Police arrangements of the Colony. Well, that point has been considered carefully by the Secretary of State, and he has conveyed to me the decision that he entirely approves of the two-thirds system of night duty, and he asks me also carefully to consider the question whether some increase ought not to be made in the Police Force. Sir MICHAEL HICKS-BEACH also points out that Mr. MAY's Committee called attention to the fact that on one particular day in October, to which they referred, there were 106 members of the Police Force employed on what were called special duties, that is five or six at Government House, a few employed taking care of the Courts of justice, and in different parts of the Colony the Police were engaged in that way—my Honourable friend Mr. TONNOCHY had twenty in the Gaol—and in various ways 106 members of the force were diverted from what were really their proper duties. Sir MICHAEL HICKS-BEACH directs that these Policemen should be paid for by the different departments that were using them. Accordingly, in preparing the Estimates, I have charged the various departments with these Policemen who were formerly charged to the Police vote, and I requested Captain DEANE to state what increase in the force he would require, inasmuch as all the money not so required would be struck off the Police vote. Mr. DEANE in his minute expresses his views, and is content to have an increase of thirty-six men in the Police force. The sum which will be charged to the various departments, amount to \$12,245. However, with certain reductions of salaries which you will see by the pay list—the net increase in the salaries of Police force will be \$10,680, and there is a further expenditure for the present year of something over \$11,000 in connection with steam launches for the Police. I have told you what the opinion of the

Committee was. I am now able to give you also the opinions of competent persons in the Police force itself as to the actual results of this question of the two-thirds night duty. During my absence in Japan, the Administrator called upon Captain DEANE to let him know how this new system worked, and Captain DEANE reported as follows:—"I have collected reports from the different Inspectors, and their opinions coincide with mine, it has had a decidedly beneficial effect in diminishing the amount of crime during those hours." Chief Inspector HORSPOOL says he was always in favour of the two-thirds system, it was the system under which he worked in London, and it has been most beneficial here; and all the other Inspectors say the result has been most satisfactory and has diminished crime. Captain DEANE was of opinion he required a few more men so as to increase the day duties, and he is now content with the comparatively small increase of thirty-six. So far, I hope our Police system has been improved. I may add that the Senior Acting Magistrate informed me that during the time this system has been in operation, there has been a marked diminution in the number of cases of serious crime.

Now, gentlemen, there is one slight increase in the establishment charges which I am instructed to make in a despatch from the Secretary of State, No. 105 of the 15th August. Sir MICHAEL HICKS-BEACH was good enough to say.—"In consideration of the expense entailed on the Governor by the numerous entertainments he is called upon to give, I am of opinion the allowance made to him for lighting Government House, etc., should be increased from \$1,440 to \$4,800, such increase to date from the 1st January last."

There is another change which you will see, and which really does not involve any question of money, it is merely a transfer from one department to another department, and that follows from the fact that Mr. FORD is now placed at the head of the Botanical department. I shall lay before you the various minutes and papers which explain how it came to pass that Mr. FORD, arriving in this Colony in 1871 and being placed in the position to which he was appointed, and being in that position for some time, was subsequently, some two years afterwards, deprived of his position as the independent head of a department. For you will see that this was not known to Her Majesty's Government, but that when the attention of the Government was called to the position and duties of Mr. FORD despatches arrived the result of which is I now have to place before you a separate department at the head of which is Mr. FORD. The despatches of the Secretary of State, minutes, and some subsequent correspondence, will all be printed for the information of the Council.

With respect to the financial proceedings of the year 1879, I think my Honourable friend (Mr. MARSH) in his capacity as Auditor looked very carefully into what would be the result of the year's transactions and endeavoured to anticipate what they would be some months ago, and I think my Honourable friend communicated a despatch to the Secretary of State during my absence in which he expressed his views on the subject, and what he anticipated from what he had then seen would be the surplus of revenue on the year. I think it was something like \$60,000.

The COLONIAL SECRETARY said that was the amount; and he might add that he had looked over the figures for the third quarter, and they verified the result of the first six months.

His EXCELLENCY.—It is very satisfactory to me to know that an Honourable member of such great experience in Colonial finance should have verified so far my anticipations as to the prosperous state of revenue in the year 1879 and I think we may look forward with confidence to having a very respectable surplus at the end of this year's transactions. I believe our balances have continued to increase, and on that subject I may say in a whisper, which I hope will not reach Singapore, that in the Straits Settlements, with their opium farm increase, I notice there has been a serious diminution in the item of interest—in other words it seems their balances have been declining—ours have been increasing, and my Honourable friend anticipates an income of \$20,000 in the year for interest, which is a far larger sum than has ever been received in this Colony before. Apart from ordinary local expenditure, I think it well, on Imperial grounds, that a Crown Colony should have a substantial balance in the Treasury chest. Contingencies may arise at any moment not contemplated in the usual items of Colonial expenditure. So far for the actual state of the Colony and our prospects. The Estimates, as I told you, will come before you in Finance Committee, and you will have to undertake the ungracious task of cutting down to any extent you may desire the various items of expenditure. It is, I think, a part of our constitutional system that members of Finance Committee are debarred from the privilege of proposing an increase or additional votes, but you can always exercise that power which members of the House of Commons exercise, or try to exercise, of cutting down votes. I now propose the first reading of the Appropriation Ordinance. The Estimates will be laid on the table.

FINANCE VOTES.

The COLONIAL SECRETARY proposed the confirmation of a number of votes which had already been before the Finance Committee.—Agreed to.

SUPPLEMENTARY APPROPRIATION ORDINANCE, 1878.

The COLONIAL SECRETARY proposed the first reading of a Bill to appropriate \$70,000 to defray the supplementary charges for 1878.

NAVAL YARD POLICE FORCE AMENDMENT BILL.

This Bill passed through Committee, and was passed.

SURVEY OF STEAMSHIPS AND BOILERS BILL, AND THE MERCHANT SHIPPING CONSOLIDATION BILL.

The ATTORNEY GENERAL said that with reference to the first of these Bills difficulties had occurred, and when it was before the Committee it was thought advisable to refer the matter to Her Majesty's Government. On the 18th October His Excellency received a despatch from Sir MICHAEL HICKS-BEACH stating that the points which had been referred to him had been considered and were thought proper by the Board of Trade to be introduced into the Bill, namely, the placing of foreign steamers carrying passengers from Hongkong in the very same position as British ships, so that there would be no unfairness. The matter had been referred to the Board of Trade, and they had reported to Sir MICHAEL HICKS-BEACH that the Council would be at liberty to apply the provisions of the Bill to foreign steamers provided they recognised the certificates of survey and certificates of masters and mates from the vessel's country which were of equivalent value to British certificates. With reference to the Merchant Shipping Consolidation Ordinance, carrying out His Excellency's instructions in reference to it, he had been able to proceed with the Bill, which had been before the Council since 1874, and which incorporated the Survey Bill. He thought it would save time if they read that Bill a second time, instead of going into Committee on the smaller measure. Owing to Mr. PHILLIPPO's illness the report of the Select Committee had never been drawn up, but Mr. WODEHOUSE had taken very copious notes, and he (the Attorney General) had been able to give effect to most of the discussions. The consideration of it, however, would take considerable time, and he proposed that the Bill be now read a second time and its consideration in committee be adjourned until some day next week, or whenever it might be convenient to His Excellency and Honourable members. He thought the Bill embraced all the amendments in the Merchant Shipping Act to date and would be found a very useful measure. It embraced also the River Steamer Ordinance which had been brought in by His Excellency. The present system was a tonnage measurement, the allowance of passengers being three to every two tons net. The present Bill left it entirely in the hands of the Governor in Council to decide in every case what number of passengers a ship might carry, and in that the Governor would be guided by the surveyor. He thought this would really meet the want felt by some of the agents and owners of the river steamships, and if this Bill passed the old Ordinance would be repealed, but until that time the old Ordinance was, of course, still in full force. He thought with a little energy they might get through the Bill by the end of the year.

Honourable W. KESWICK thought it would be convenient if the debate on the second reading were postponed until the next meeting in order that members might make themselves acquainted with the contents of the voluminous Ordinance.

His EXCELLENCY said he was perfectly ready to postpone the second reading until some day early next week but he hoped, they would get through the Ordinance without any unreasonable delay. It had been fully considered by the members of the Legislative Council present, with the exception of the Chief Justice and himself, as the Attorney General had pointed out. The point he laid before Her Majesty's Government at the suggestion of the Council was one of great importance. They were aware the late Attorney General, Mr. PHILLIPPO, and others expressed the opinion that it would be hardly possible to bring foreign ships under the survey as British ships were. Well, he told the Council he thought it very hard that in this Colony, or any other Colony, British shipowners should be at a disadvantage as compared with German or American or any other foreign shipowners. He therefore represented that to Sir MICHAEL HICKS-BEACH, and he was glad to say the Secretary of State, after consulting with the Board of Trade, had consented to the proposed alteration. He thought the British shipowners here were much indebted to Sir MICHAEL HICKS-BEACH, and Her Majesty's Government for the important decision arrived at.

The debate on the second reading was then adjourned.

His EXCELLENCY said he would like the Council to meet, if possible, on Tuesday.

CHINESE EMIGRATION AMENDMENT ORDINANCE.

This Bill, which merely makes certain technical amendments in the existing acts, was read a first time.

EXCISE ORDINANCE (OPIUM) 1879 AMENDMENT BILL.

This Bill was read a first time.

The ATTORNEY GENERAL explained that the object of the Bill was to make better provisions for the apprehension and punishment of offenders against the Opium Ordinance. In Section 13 of Ordinance 2 of 1858 a fine of \$250 was imposed for the first offence, and \$500 for a second offence, with simple imprisonment; it was now proposed to increase these penalties—as those persons who found it to their interest to break the Opium Ordinance seemed well able to pay—to \$500 for a first, and \$1,000 for a second offence, with imprisonment with or without hard labour for six months. A few ambiguous definitions were also cleared up; and as doubts had been expressed as to the powers of the excise officers to arrest without a warrant, it was provided that it would be sufficient reason for arrest if reasonable ground existed that any one possessed prepared opium that had not paid duty to the Opium Farmer.

DEPORTATION AND ILLEGAL FLOGGINGS.

His EXCELLENCY said.—After the meeting of the Executive Council yesterday evening, when we had gone through the Estimates for 1880 and approved of the Bills to be placed in the Order Book for to-day, the Clerk of Councils received a note from an Honourable member saying that he wished to make some observations on Deportation at this meeting. I accordingly added to the printed list, of Orders the following, “No. 7, the Honourable W. KESWICK’s observations on Deportation.”

Honourable W. KESWICK.—I am much obliged to your Excellency for affording me to-day the opportunity of making a few remarks. I was late in applying yesterday, but I thought I should receive the consideration you have kindly given. On the 29th May your Excellency entered very elaborately into a defence of your policy on deportation, and stated at considerable length particulars of the action which you had taken, asserting also that every man had been deported whose case was considered by the Executive Council as requiring deportation and whose sentence according to the Attorney General was legal. Your Excellency invited observations on the papers laid upon the table. I suggested it would be well to defer their consideration or remarks upon them until such time as they had been read. I have had an opportunity of going through those papers, and I approached them with a feeling of pleasure that an opportunity would be afforded of removing what your Excellency termed strange misconceptions with regard to the treatment of criminals. I had also the pleasure of considering that I would be going over the same ground that Mr. Lowcock had traversed so satisfactorily and who, according to your Excellency, explained that had he been in your place he would have acted precisely as you have done. The examination of these papers, however, proved disappointing to me. I did not find in them that in all cases—that cardinal statement of your Excellency—every man had been deported whose case had been considered by the Executive Council to require deportation. The documents were so voluminous that I had to take notes of them. I hope your Excellency will allow me to refer to them in that form. And it is important that as much documentary evidence of the facts which I lay before you should be given as possible. I am under the impression that these documents prove that dangerous criminals have been set free unconditionally instead of being deported under the laws specially provided for the purpose.—

His EXCELLENCY.—I beg the Honourable member’s pardon, but he seems to be reading his speech.

Honourable W. KESWICK said he was not going to read a prepared speech.

His EXCELLENCY.—I think we had better adhere as far as possible to the printed rules and regulations of the Legislative Council, and one rule clearly is that reading from a paper of that kind is opposed to the regulations. I wish to give the Honourable member every facility in the course he has now entered on, but he will remember from the minutes of the last meeting, confirmed to-day, that it was agreed that the Acting Attorney General, (Mr. RUSSELL,) was to look over these documents, and any papers that were required to be printed could be so printed. Well, that has not been done, and there is some inconvenience in this course being adopted as other members have not seen the papers; they have been for months in the possession of the Honourable gentleman, (Mr. KESWICK,) and as he gave notice only last evening. I did not call for them, to refresh my memory, till to-day,—but as far as I am personally concerned that is an inconvenience I raise no objection to. But it is as well for us not to do too much in breaking the rules of the Council.

Honourable W. KESWICK.—I will ask your Excellency if I shall be in order in referring to matters which it is impossible for me to remember with accuracy, such as dates, matters referred to in papers, and others on which it is important there should be no mistake.

His EXCELLENCY.—Certainly, Rule eleven says:—“No member shall be allowed to read a speech, but may obtain permission to introduce documentary matters.”

Honourable W. KESWICK.—Well, I find in these papers the first case referred to is No. 1,157, that of CHAN TIN LAM, in 1877. The first conviction appears to be on the 9th November, 1874, the second on the 9th July, 1875, and the third on the 20th May, 1876. Mr. MAY applied to have this prisoner deported. I understand from the minutes that considerable discussion took place—(hear, hear)—consideration I mean—consideration of the case took place and the Executive Council approved of the deportation. I think that subsequently it was supposed that the man had been whipped when he was under the age at which such a punishment ought to have been inflicted.

His EXCELLENCY.—One of the points was that he had received a larger number of strokes in a single whipping—twenty-four, the maximum number being twenty under the Ordinance for a juvenile offender than the Law allowed.

Honourable W. KESWICK.—However, a great deal of consideration appears to have been given to the subject, and the Attorney General at last made this minute. Before reading the minute I would ask your Excellency whether I would be in order in doing so.

His EXCELLENCY.—It is documentary matter. I can have no objection to your reading it.

Honourable W. KESWICK then read—

“I have perused these papers again and the additional papers forwarded to me. There can be no doubt that it is advisable that His Excellency the Governor and the Executive should interfere with the Judicial Department as little as possible. This has been laid down over and over again within my knowledge by the Colonial Office. Magistrates when acting ministerially are subject to the directions of the Government; when they are acting judicially they ought to be almost, if not quite, as independent of the Executive as the Judges of the Supreme Court themselves. An appeal lies from the Magistrate's decision to the Supreme Court, and any party feeling himself aggrieved may take advantage of such appeal. If a Magistrate knowingly inflicts an improper punishment he may, under certain circumstances, be made to pay damages at the suit of the party aggrieved; or a criminal information may be obtained against him. Ordinarily, therefore, the Executive ought not to interfere with decisions of the Magistrates when acting judicially. In any case of apparent hardship, or upon receiving a petition from or on behalf of any person convicted, His Excellency may call for a report from the Judge or Magistrate who tried the case in order that he may consider whether it is advisable or not to exercise the power entrusted to him of pardoning the offender. If His Excellency has any reason to believe that any Judge or Magistrate, acting wilfully, or wantonly, have deliberately exceeded his powers, His Excellency may call upon any such person for his defence before the Executive Council, and may suspend him from his office pending a reference to the Secretary of State for the Colonies.

“For mere errors in judgment or incorrect conclusions, which may be made or formed by any one, the law provides a remedy by appeal.

“In this case the question seems to me to have resolved itself into this. Did or did not the offender, in the opinion of the Court before whom he was brought, exceed the age of 16 years? If he did not in the honest opinion of the Magistrate exceed the age of 16 years, then the infliction of corporal punishment was lawful, whatever his real age may have been and whatever evidence may have been tendered at the time or discovered afterwards and whoever may be of opinion that the Magistrate was in error. If there is any evidence, however, to show that either of the Magistrates, knowing that the offender was above 16, wantonly inflicted the punishment of whipping, His Excellency would be quite justified in calling for a defence before the Executive Council. I cannot, however, conceive, from the papers before me, that any such conclusion could be possibly arrived at, having regard also to the great respect universally entertained for both the Magistrates, and the satisfaction they have given in the discharge of their duties apparently to all classes of the community, one of them at least for a lengthened period.

“I would therefore suggest to His Excellency that it would be desirable to let this matter drop. He might, I would suggest, issue a memo. to the Magistrates referring to the fact that he had had some doubts in some of the cases which had been brought before him, expressing his confidence that they would continue to take great pains to arrive at just conclusions, suggesting, with regard to some of the points raised, that it would be advisable, in cases where they had any difficulty, to apply for the opinion of the Law Officer of the Crown, and acknowledging the value generally placed on their services by the community in general,—

His EXCELLENCY.—Pray read on.

Honourable W. KESWICK.—reads—

Unless His Excellency is prepared to charge the Magistrates with criminal conduct in the matter, to do more, as, for instance, to censure the Magistrates, in any way for the manner in which they exercised a discretionary power (His Excellency will, I am sure, excuse me for writing freely) would be, in my opinion, to repeat the blunder made by LORD LYTTON in India when he censured and punished the Magistrate and to some extent censured also the Supreme Court for leniency in a case where a native died after having been struck by a European.

“GEORGE PHILIPPO.”

“12th June, 1877.”

“The question of the prisoner’s age on the 4th conviction appears, from the notes, to have been considered by the Magistrate at the time. If His Excellency objects to the power given to Magistrates under the Ordinance the proper course to be taken seems to me to take the necessary steps in order to get the Ordinance amended.”
“G. P.”

Well, this offender appears to have been a dangerous character, and he was liberated. The next case that I have on record is that of CH’AN ASAN, No. 1,230. I will not go into the details of this case, but will read your Excellency’s minute, which is in these words.—The Honourable member read the minute which was to the effect that His Excellency directed the man to be proceeded against with great reluctance, the Executive Council recommending it and the Attorney General having no doubt as to the legality of the sentence. Beneath that, on the 18th June, you will find “Let the prisoner be discharged.”

His EXCELLENCY.—Can you state what occurred in the meantime?

Honourable W. KESWICK.—I have not got the particulars, but I don’t think it was submitted again to the Executive Council.

His EXCELLENCY said he saw the words “Let the prisoner be discharged” were connected with an opinion of Mr. PHILLIPPO in which he expressed a doubt as to the legality of a part of the proceedings, and also of certain punishments inflicted on the prisoner.

Honourable W. KESWICK.—However, it appears he was set at liberty, clearly a dangerous character, without any security having been taken. The next case is that of LI APAK, No. 1,453. This is a case in which the deportation also appears to have been approved of by the Executive Council. Your Excellency remarks in a minute upon it. “The deportation is illegal, so the prisoner must be discharged.” The Attorney General, I observe in the margin, had approved, as the other members of the Executive Council had done, of the man’s deportation. I fail to see any explanation of why, notwithstanding that, the prisoner was set at liberty and nothing done to take security.

His EXCELLENCY.—Because the deportation sentence was illegal. Does the Honourable member contest that the sentence was clearly illegal?

Honourable W. KESWICK.—I will come presently to a case in which the Chief Justice kept the sessions open with a view to the discussion of a case, and the Chief Justice also on that occasion pointed the line of remedy which was open, and by which your Excellency could have proceeded against these prisoners, according to my view of the matter.

His EXCELLENCY.—The question here was, was the sentence legal or illegal? My minute says it was illegal. If the Honourable member refers again to the case I have no doubt he would say it was illegal.

Honourable W. KESWICK.—The next case is No. 1,925, 20th August, 1877, MOK AKWAI.

His EXCELLENCY.—Well, what about him?

Honourable W. KESWICK.—It is remarkable only, so far as I can see, from this memorandum of your Excellency’s, “Let no prosecution take place without my sanction.”

His EXCELLENCY.—Will you kindly read the next minute?

Honourable W. KESWICK.—I have nothing further.

His EXCELLENCY.—It is part of the same thing. It is, “Let the prosecution proceed.”

“(Signed,) J. P. H.

Honourable W. KESWICK.—I am sorry that, in this case, I did not turn over the leaf. I only saw the first part. It struck me as being remarkable. The next case I have is 2,845, which bears this remark by your Excellency, “As we have not ourselves complied with the deportation law. I am not disposed to prosecute TANG ALI for not complying with the deportation law.” This is another instance of a man being discharged without any security being taken.

His EXCELLENCY.—Well, I presume there was something illegal in the case.

Honourable W. KESWICK.—I don’t perceive anything.

His EXCELLENCY.—Yes, the deportation sentence itself was illegal.

Honourable W. KESWICK.—What I complain of is that nothing was done.

His EXCELLENCY.—What could be done?

Honourable W. KESWICK.—I think the matter might have been referred back to the Magistrates and security taken.

His EXCELLENCY.—But this is after that was done.

Honourable W. KESWICK.—The next case I have is 2,165, CHAN Kow, 14th September, 1877-9. I have not got the exact words which are on the paper. He was a returned deportee and was set at liberty on promising not to return.

His EXCELLENCY.—Yes, I got the man out of the Colony, though we could not enforce the former warrant as the Chief Justice said it was illegal.

Honourable W. KESWICK.—What occurred to me was no security was taken for his leaving the Colony.

His EXCELLENCY.—The man had been illegally banished, and we could not punish him for returning but we got him to leave the Colony.

Honourable W. KESWICK.—However, a difference of opinion may prevail with reference to these cases, but there is the case No. 1,474, which it is quite refreshing to read. It is that of LAN AFAT. He returned from banishment, and attention having been drawn to the technical error in the warrant, the Colonial Secretary wrote in these words. "The Governor, however, is of opinion you have good grounds for charging him with being a suspicious character and if the Magistrates recommend him for deportation His Excellency will be prepared to entertain the recommendation." That is the course, it occurred to me, it would have been desirable to have pursued at an earlier period. Having brought down the cases to a period when the right course appears to have been adopted, I will leave the subject, but before doing so I will ask your Excellency's permission to read a letter from Mr. LOWCOCK, to whom I referred earlier in my remarks as having gone over the ground, according to the statement made by your Excellency at the last meeting, when your Excellency said the course pursued, as shown by papers, had met with his approval.

Southampton, 22nd July, 1879.

The Honourable WILLIAM KESWICK, Hongkong.

MY DEAR KESWICK.—The last mail from Hongkong brought me the report of the meeting of the Legislative Council of the 29th May, and I have read with considerable surprise the remarks of the Governor when laying on the table the correspondence I moved for some months ago in reference to deportation. As these remarks must have certainly caused a general impression in Hongkong, that I was, after a thorough perusal of the papers alluded to by His Excellency, satisfied with the action of the Executive in reference to the cases of deportation referred to in my motion, I think it my duty to endeavour to correct such an erroneous impression, and no other means occur to me of so doing but that of writing to you on the subject to place you in possession of the facts, as you were good enough to second my motion, and had I really formed the opinions imputed to me I should have been greatly wanting in courtesy, had I not informed you of the fact prior to my leaving Hongkong. I must confess to some astonishment as the Governor's laying before the Council (what he has called) my private opinion on a subject which was to be considered publicly, but his having done so entirely removes the reluctance I should otherwise have felt in alluding to what took place at what I considered, and indeed was, quite a private interview.

As regards that interview, I am quite at a loss to conceive what took place at it, to have induced Mr. HENNESSY to arrive at the conclusions he appears, from the newspaper reports, to have formed. On officially enquiring why the promised papers had not been produced, I was, before I received a reply, courteously invited by the Governor to call at Government House to look through the documents, which I believe had been prepared for printing, which I had much pleasure in doing. In addition to the papers referring to deportation, His Excellency showed me a considerable amount of correspondence on the subjects and some despatches, or portions of them, from home; and it will therefore be readily understood, as we also had much conversation on the above and on other topics, that I had not either time, opportunity, or inclination to go through the papers referring to deportation in a manner that would justify my at once forming the opinions I am stated to have expressed; in fact I was merely able to go through them in a very casual manner. It would not have been courteous or convenient on such an occasion for me to have expressed any dissatisfaction, had the perusal of the papers induced me to wish to do so, but I certainly refrained from expressing any satisfaction, though I believe I did express the pleasure I felt at the opportunity afforded me of perusing them, and with reference to a despatch on another subject, I did also express much satisfaction at its contents.

I therefore, much as I regret having to do so, must deny having said anything either to convey the impression that I was satisfied with the deportation papers, or that would justify the Governor in stating that I was so satisfied; nor did I say, that had I been in the Governor's place I should have acted exactly as he had done. While I must further state that His Excellency neither I owed to my mind that he had acted according to law, nor did I give him any reason for thinking I considered he had done so. As to having laboured under any misconception, I am not aware of having done so, nor can I admit that any such misconception would have been prevented had I, as it was suggested I ought

to have done, frankly asked what was going on. I observe the Governor is reported to have made use of the expression "going behind his back" to obtain it, in place of asking him for the information I required. Should the report be correct, I fearlessly leave the Hongkong community to decide, if I went behind any one's back in my endeavour to elicit the truth, or if the means I adopted were not more calculated to obtain what was wanted, than the plan suggested, although I may not have been entirely successful.

As I have not had an opportunity of seeing the papers since they were printed, I need not further allude to them; indeed, any expression of opinion on them by me is now unnecessary, and my only desire in the foregoing has been to correct the impressions that the Hongkong public must have received from what was said in the Council as reported in the *China Mail*, and I shall therefore be glad if you will make any use of this you may think desirable to carry out the object I have had in view in addressing you.

I need scarcely add that, as but one day intervened between my interview with the Governor and my departure from Hongkong, it was impossible almost for me to avail myself of the offer to look at the papers again.

I may name, that I consider it due to myself to inform the authorities at the Colonial Office that I have found it necessary to contradict Mr. HENNESSY's statements as reported.

I am,

My dear KESWICK,

Your's faithfully,

H. LOWCOCK.

HIS EXCELLENCY THE GOVERNOR.—Gentlemen, I think you will all admit I have given to the Honourable member full opportunity of making his statement at his own time and according to his own manner.

It is the first I have heard of this letter of Mr. LOWCOCK. I will deal very briefly with it. We are now told there was no satisfactory interview with the Governor at Government House on the subject of deportation, but before Mr. Lowcock left the Colony he got this letter:—

HONGKONG, 28th April, 1879.

MY DEAR SIR,—I send you an official reply to your letter on the subject of deportation. I understand from the Governor that he had a satisfactory interview with you yesterday on this subject, and that in fact the latter part of my letter has been already acted on.

All the papers are, however, ready for your perusal again if you wish to see them.

I am, &c.,

W. H. MARSH.

The Honourable HENRY LOWCOCK.

My Honourable friend (Mr. MARSH) will recollect that I asked him, "Has Mr. LOWCOCK answered that letter?" And he said "no." And when the day came for Mr. LOWCOCK to leave the Colony, I repeated the question to my Honourable friend, the Colonial Secretary, and said, "Has Mr. LOWCOCK yet answered the letter I asked you to write to him stating we had a satisfactory interview on the subject of deportation?" And he answered "no." I think my Honourable friend will answer "yes" to this question. Was the letter actually sent to Mr. LOWCOCK?

The COLONIAL SECRETARY.—Yes, it was.

His EXCELLENCY.—Yet, though that occurred on the 28th April, 1879, my Honourable friend (Mr. KESWICK) can read at this Council table a letter of that kind against the Governor, who has not heard since then officially or un-officially from Mr. LOWCOCK. No acknowledgment either of the official letter or of the semi-official letter from that day to this! Is that the way Mr. LOWCOCK, as a man of business, ought to have acted? Would he have treated an ordinary commercial correspondent in that way? Is that the way he ought to have treated Mr. MARSH, and the Governor of the Colony? And now, after many months have elapsed, a letter from Mr. LOWCOCK is read denying that any satisfactory interview took place. Not making any comment upon it I pass to the real merits of the case.

Honourable W. KESWICK said Mr. LOWCOCK's letter was dated the 23rd July.

His EXCELLENCY.—Why did not the Honourable gentleman communicate it to me before? Mr. LOWCOCK received on the 28th April the letter from Mr. MARSH; he leaves the Colony without one whisper against the statement made in that letter, that he, Mr. LOWCOCK, had had a satisfactory interview on the subject of deportation with the Governor; he remains in England, and to-day for the first time I hear the allegation that he went to the Colonial Office—for I did not hear it from the Colonial Office—and he there was to tell somebody what he did not venture to tell Mr. MARSH. He might easily if it were true have written to Mr. MARSH saying, “It was not a satisfactory interview; it lasted perhaps a couple of hours, but that was not long enough to let me see all the papers.” He did not do so, and from April to July passes and then he writes that letter, and from July to November I am left in ignorance by the Honourable member (Mr. KESWICK) that such a document exists. Instead of commenting on such a document, I pass to the real merits of the question raised by the Honourable member.

The Honourable gentleman has called attention to the case of CHAN TIN LAM. That case has attracted the attention of Her Majesty’s Government. I hold in my hands papers presented to both Houses of Parliament by command of Her Majesty, in which there are two despatches relating to the case of CHAN TIN LAM. And now I tell the Honourable gentleman what it is he omitted, and what it is well the Council should know. To begin with, my allegation all along has been this, I deported whenever the Executive Council recommended me to do so, and when the sentences put before me as the justification of the deportation were lawful sentences. But I am not prepared to commit an illegality, and in the case of CHAN TIN LAM it was not merely the fact that he was a juvenile offender, that is, that my Honourable friend Mr. RUSSELL and the late Mr. MAY were of opinion he was a juvenile offender—he alleged he was over sixteen, but the Magistrates thought he was younger; that was not the mere fact in dispute, but I called the Attorney General’s attention three times to the fact that the flogging sentences were illegal as well as the actual sentence of deportation itself. As regards the deportation sentence, the Honourable member (Mr. KESWICK) had all the papers in his hands, and the last few words in my hand-writing he did not tell the Council, “Let copies of all these documents and minutes be made for transmission to the Secretary of State.” What was the opinion given upon the deportation sentence? That it was not according to Law. Did Lord CARNARVON disapprove of my conduct in not deporting the man? He did not. But that is not the only case. How is it that the case of CHAN TIN LAM comes before Parliament? This case brought against me.—

Honourable W. KESWICK.—Not against you.—The Honourable member was understood to explain that he had brought forward the matter, not as a case against His Excellency, but to point out an apparent discrepancy between the facts and statement that the advice of the Executive Council had been acted on.

His EXCELLENCY.—I never for a moment denied that I acted in opposition to the advice of the Council whenever the deportation sentence was illegal, and when some of the flogging sentences were also illegal. Now in the very despatch to the Secretary of State, of the 23rd June, 1877—which, if the Honourable member had come to me instead of bringing the matter forward in this way, I should have been happy to place in his hands and which after the course he has taken to-day I shall lay before the Council,—I describe a similar case and mention the Ordinances referring to it. I then proceed to give my view of the matter, and I mention that when I first drew Mr. PHILLIPPO’s attention to the illegality of the deportation sentence he called upon me and at that time did not take the view I took, and I deported the man, but subsequently, on further consideration, he admitted I was right, as a matter of law, and on the question being referred to Her Majesty’s Government the final decision is that the deportation sentence in all such cases was not in accordance with law and Lord CARNARVON approved of my having called attention to that illegality, although in the first instance Mr. PHILLIPPO had not recognised it. The actual number of such illegal deportation sentences was small. I called the attention of the Police Magistrates to the necessity of adhering strictly to the terms of the Ordinance in deportation cases. They acted on my instructions; and from that time the deportation sentences have been according to law. However, the point that struck me most in the case in the CHAN TIN LAM was not so much the fact that the deportation sentence was illegal, but that the man had been subjected to illegal flogging, and I specially called attention to one flogging inflicted by sentence of the Police Magistrate, which was in these words, “Four months’ hard labour and twenty-four strokes with the rattan privately on the breech.”

I wrote to Lord CARNARVON on the 23rd of June, 1877, sending him all the papers in CHAN TIN LAM’s case. I am not sorry that it should be brought forward publicly now. It was at one time the subject of much pretty gossip for two reasons. In the first place, after my despatch was sent to Lord CARNARVON some months elapsed, and then my private Secretary—who is in the room now—asked me if the answer had come in CHAN TIN LAM’s case, because, he said, a certain gentleman “has received a letter from a permanent official in the Colonial Office, who was formerly in Hongkong, and that gentleman says an answer is coming out in CHAN TIN LAM’s case in which Lord CARNARVON differs with the Governor as to whether the flogging was legal or not.” I said no despatch had come; nor did it come until a subsequent mail. Well the despatch came, and then I found Lord CARNARVON did

express the opinion that the sentence of the twenty-four strokes was lawful. It was my duty, whoever had given that advice to his Lordship, to point out that it was bad advice; that this man was flogged as a juvenile offender; as he was a pickpocket and had never been accused of crimes of violence he could not have been flogged except as a juvenile offender for larceny; and I re-affirmed, with regret that the sentence was illegal. In the papers now laid before Parliament by command of Her Majesty this despatch is printed. It is as follows :—

GOVERNMENT HOUSE,
HONGKONG, *October 17th, 1877.*

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch of the 28th August, 1877, respecting certain floggings that had been imposed on a prisoner named CHAN TIN LAM and a recommendation of the 1st Police Magistrate that he should be deported.

In my despatch of the 23rd of June I reported to your Lordship that on the whole I entertained such grave doubts as to the convictions and sentences in this case that I declined to add to the various imprisonments and floggings which CHAN TIN LAM had fully undergone the further punishment of deportation, and I pointed out to your Lordship, what was patent on the face of the depositions, that the sentence on the 16th of July, 1875, of 24 strokes was illegal, as the local law precludes a sentence by a Magistrate in such a case of more than twenty strokes. On this, however, your Lordship remarks—

“With regard to the punishment of 24 strokes awarded in the second conviction, I observe that the charge was stealing from the person and not simple larceny, and as under Ordinance 6 of 1862, which was then in force, the Magistrate had a general power of awarding 36 strokes, I cannot determine that there was any illegality in this case in the absence of any explanation from the Magistrates; and I do not find that you drew the attention of Mr. RUSSELL to this point or called upon him for any explanations.”

With great regret I venture, however, to re-affirm that the sentence was illegal. The Ordinance dealing with such cases was not, as your Lordship supposes, Ordinance No. 6 of 1862, but the latter Ordinance No. 9 of 1867.

On the receipt of your Lordship's despatch I made the following minute :—

“Refer the depositions in the case of CHAN TIN LAM to Mr. RUSSELL, drawing his attention to the second conviction for stealing from the person—16th July, 1875—when he was sentenced to four months' imprisonment with hard labour and to be flogged 24 strokes with a rattan on the breech, and enquire under what provision of our law that sentence was passed.”

The following is a copy of Mr. RUSSELL's memorandum in reply :—

“This case was reported on from this department on 2nd June last, and to those reports I beg to refer. It was then pointed out that, although on the face of the proceedings the prisoner's age as given by himself was 21 years, yet that only 7 months before he had given his age as 15 when he was previously convicted, as appears in evidence by the incorporation of case No. 6,726 of 1874.

“The provision of law under which I sentenced the prisoner was the then existing Section 6 of Ordinance 9 of 1867.

“My note is ‘4 months' hard labour and 24 strokes of rattan privately on the breech.’ By some oversight I neglected to state ‘in two instalments' of 12 each. This is a mistake which I much regret.

“This blunder might have been detected by the first clerk or the Superintendent of the gaol at the time, but their not noticing it is not so surprising considering that it escaped His Excellency and the Members of the Executive Council (as would appear from His Excellency's memorandum to us of the 22nd June) as well as Mr. MAY and myself on review in June.

“(Signed,) JAMES RUSSELL,
Police Magistrate.

“Magistracy, 15th October, 1877.”

According to the gaol records this illegal flogging of 24 strokes was administered on the 16th July, 1875. Mr. RUSSELL expresses much regret for the mistake he made. He thinks his blunder might have been detected by the first clerk or the Superintendent of the gaol; and he refers to the fact that it appeared for a time to have escaped my attention.

That it should, at first, have escaped my attention is not surprising, for, though I detected other illegalities in the proceedings, I had hardly time (not being then four weeks in the Colony) to make myself acquainted with section 6 of Ordinance 9 of 1867. But that cannot be said for the experienced officers to whom I referred the case. My first minute is transcribed in paragraph 7 of my despatch No. 44 of 23rd June, and your Lordship will see that it was perfectly general; that it expressed surprise at some of the sentences, and asked the Attorney General to report on each of the four convictions and sentences.

Here I will interpolate this much to the credit of the Magistrate who had committed this error. In 1875, he had, as visiting justice, detected an illegality which had gone on for years and pointed out in the Justices' book the nature of that illegality, adding that Mr. TOMLIN, to whom he spoke about the flogging of prisoners who were not felons, had even at his request, refused to alter the practice, and the Magistrate added:—"The Superintendent has incurred a grave responsibility, and it is my duty to call attention to it." The same gentleman, therefore, who on this occasion, by the oversight to which he refers, gave a man more punishment than he intended, that same gentleman is the man who, I am happy to say, detected an illegality that had gone on for years in another branch of the service.

The subsequent reference to the Magistrates was in these terms:—

"Refer to the Magistrates.

"(Signed,) J. P. H.

"30th May, 1877."

From what preceded that minute it was clear that, though the Magistrates were expected to report especially on the question of ordering a flogging when the age of the convicted person was stated in the proceedings themselves as above 16, they were also expected to report on the other circumstances bearing on the four sentences.

I cannot accept Mr. RUSSELL'S view that such a blunder as he admits having made in this case might have been detected by the gaol officials at the time. It was only last week that I had a conversation with Mr. RUSSELL as Coroner respecting an inquest he held on a prisoner named MOK A-KWAI who died in gaol of phthisis on the 28th of last month. He admitted (though no reference is made to it on the proceedings of the inquest) that the prisoner had been illegally flogged four times and otherwise illegally punished by the then Acting Superintendent. He appeared to be fully sensible of the fact that the gaol officials at that time were not over scrupulous in the treatment of Chinese prisoners.

On the question of CHAN TIN LAM'S age, in which I also think the Magistrate made a mistake, I shall do myself the honour of addressing your Lordship in another despatch.

In the despatch now under reply your Lordship says:—

"Neither the power of deportation, as the order of banishment is usually called, nor the sentence of flogging for crimes of violence, are penalties which in ordinary cases or for venial offence are in themselves desirable, but the circumstances of Hongkong are peculiar, &c."

I venture to point out that the sentence of five floggings on CHAN TIN LAM were not for crimes of violence. Flogging for crimes of violence are imposed by the Supreme Court. The Magistrates in this case never alleged that their sentence had anything to do with crimes of violence. The accused was an ordinary pickpocket who, according to the depositions, carefully avoided using any violence.

I take the liberty of asking your Lordship's particular attention to the consequence of the illegal flogging in such cases as this. The Magistrate now says that the first clerk or the Superintendent of the gaol might have detected the blunder; and there can be no doubt whatever but the gaol officials must have been aware that the number of strokes given was in excess of what the law allowed in such cases. No laws are better known in Hongkong than the flogging laws, so that the criminal himself and the other prisoners knew also that it was illegal.

I need not dwell on how far the knowledge of such a fact and of its painful consequences in the recent case of MOK A-KWAI must necessarily affect the discipline of the prison.

Unless I can receive your Lordship's support in putting a stop to these illegalities, I fear my labours in endeavouring to reform the discipline of the gaol and to diminish crime will be seriously increased."

I have &c.,

J. POPE HENNESSY,
Governor.

Then comes another despatch, also communicated by Sir MICHAEL HICKS-BEACH to Parliament.

MY LORD,—Adverting to my despatch of the 17th October, I have the honour to lay before your Lordship a copy of the Attorney General's opinion on the illegal flogging that had been inflicted on the prisoner CHAN TIN LAM.

Having, for the third time, referred the depositions in this case to the Attorney General, together with Mr. RUSSELL's memorandum, Mr. PHILIPPO at length recognises the fact that a mistake was made by the Magistrate, and that the prisoner received a greater number of strokes in a single flogging than the law allowed.

The Attorney General now says, "After Mr. RUSSELL's admission in this case, I have no doubt that the greatest care will be taken that no similar mistake should occur again in future."

I have no doubt the Attorney General is right in thinking that greater care will be taken by the Magistrates in future. Bearing in mind, however, the exceptional and severe code of laws in this Colony for the flogging, branding, and deportation of the Chinese, I shall certainly not relax my own efforts to prevent any illegal addition to the severity of that code.

I have &c.,

J. POPE HENNESSY,
Governor.

Now I am told, forsooth, that though this man has been illegally flogged, that though in the opinion of the Magistrates he was a juvenile offender and the deportation sentence was illegal, I should have acted on that sentence, or have devised some means, after the full term of imprisonment had been served, of punishing him, some means such as twisting or stretching or breaking the Law. All I can say is that no influence, here or elsewhere, could induce me to do so. As long as I have the honour to represent the QUEEN I shall not break the Law myself to punish the meanest of Her subjects, nor shall I allow others to do so within the Government committed to my care. I have very little doubt what will be the opinion of those who have already read these papers. They are laid, by command of Her Majesty, before both Houses of Parliament. I am ready to abide by the verdict of that High Court.

The Honourable member has called attention to another case, that of MOK A-KWAI. That, too, possesses many features deserving of the attention of this Council. The Honourable member thought the man had been let out, because I gave instructions on a certain day that no prisoner arrested by the Police for returning from deportation was to be prosecuted without my sanction. Why did I give these instructions? My Honourable and learned friend the Chief Justice knows well how it happened. He will remember what took place in a prosecution in reference to which he represented to me the inconvenience of the Executive being placed, as it were, in opposition to the Judicial Authorities, and he said:—"Before a man is brought before me to be prosecuted for returning from deportation, why not look into the matter and see whether the sentence is legal?" Well, I acted on that advice. But, I took the advice of others beside the Chief Justice. Here is an extract from the proceedings of the Executive Council on the subject.

"With reference to the Deportation Warrants, some of which were declared by a recent decision of the Supreme Court to be illegal, His Excellency remarks that in the cases of deported Chinese returning to the Colony, before sending round papers relating to them to Honourable members, on having them charged before the Magistrate, he first sent the papers marked "Immediate" to the Attorney General to ascertain at once whether such men had been legally deported or not. If the Attorney General decided that the deportation had not been according to law the prisoner was at once discharged.

"The majority of the Council agreed with His Excellency that that was the best and most expeditious course in such cases.

"The Governor would take this opportunity of again referring to the subject of branding which he had previously brought to the notice of the Council.

"His Excellency said he believed that Honourable members agreed with him that with the practice of photographing prisoners, and with the proved efficiency of the Chinese Police, and the appointment of Chinese Warders in the prison, the time had come when the practice of branding prisoners might be abandoned.

"Honourable members concurred with His Excellency in thinking that with the greatly extended facilities for detecting old offenders branding might be safely abandoned.

"The Council also concurs with His Excellency in his intention of expunging from the Consolidated Deportation Ordinance No. 8 of 1876 the provision in Clause XV which empowered a Magistrate at his discretion to order any person convicted of an act of mendicancy to be flogged to the extent of thirty-six strokes."

Therefore as far as that case of MOK A-KWAI stands, it is thus. I had a consultation with the Chief Justice. I acted upon his advice, not to allow the man to be prosecuted for returning from banishment, unless the original order of banishment had been legal. I subsequently referred the matter to the Executive Council, and the majority of the Council supported me in that course. But in that very case, the Honourable gentleman (Mr. KESWICK) by an oversight, did not look at the next page. He forgot to turn over the paper, and did not see my minute—"Let the man be prosecuted."

That is, I found the deportation in his case had been legally carried out, and accordingly I ordered his prosecution for returning from deportation. Does the Honourable member find fault with that? No. He admits he made a mistake in bringing forward the case of MOK A-KWAI. I certainly cannot complain that it has been brought forward at this Council table, seeing that it has been already placed before a higher Assembly by command of the QUEEN. MOK A-KWAI'S case will be found in the despatches printed for the information of Parliament. I did not select those despatches. They are a group of despatches—I am sorry to say only a few out of the many I have written since I came to this Colony—they have been selected by Her Majesty's Government, and some of them refer to the case of MOK A-KWAI; and, as the Honourable member has brought this case to the notice of the Council, I will state briefly what this case was. The last flogging the man got was of this nature. Sir ARTHUR KENNEDY'S warrant said:—"Let the said MOK A-KWAI be discharged from custody and prohibited from residing in the Colony for five years from the date hereof." That was on the 21st October, 1876. In spite, however, of that, the man was not discharged on the 21st October. He was kept in custody until the 30th, on which day he was flogged and deported. But, more than that, he was taken from the Hospital to be flogged, and his name is recorded in the sick list of that day. The Honourable gentleman (Mr. KESWICK) was a visiting justice at that time. And, here I may mention that I found two other prisoners had been illegally flogged in July, 1876, and that the visiting justice, in August, 1876, who saw the records, if he did his duty properly and looked at the books when he visited the prison, was the Honourable gentleman himself. Twice only in that year, in April and August, did he act as visiting justice. Did he go through the books and see if any illegal punishment had, in the interval, been inflicted? If he did, he saw the illegal punishments and took no notice of them. But I presume the answer is that he did not. And in the opinion of Mr. PHILLIPPO, who, I must say, always gave his opinion with great reluctance in cases of this kind, the floggings were illegal. From a return prepared for me by Captain DUCAT, there were, according to the Attorney General's opinion, no less than 828 illegal floggings, of one class of illegal floggings alone, in ten years in the Hongkong Gaol.

MOK A-KWAI was committed for trial for returning from deportation. He died before he could be brought to the Supreme Court. An inquest was held. The Colonial Surgeon swore he had been suffering from phthisis for years. The Jury found he died from phthisis. I called for the records of the gaol relating to him. I saw he had been flogged four times. The last one being in October 1876. The papers were sent to the Attorney General, who recorded his opinion that not one of the corporal punishments inflicted on MOK A-KWAI had been authorised by law. I reported all the facts of the case to the Secretary of State. I have endeavoured, and I believe successfully, in spite of some little local opposition to check such abuses. No one shall prevent me from doing so, as long as I represent Her Majesty, and enjoy the confidence, as I believe I do, of Her Majesty's Government.

It is due to Lord LYTTON, the Viceroy of India, whose name is put in a minute by Mr. PHILLIPPO, that I should say this:—that Mr. PHILLIPPO was not justified by the position he held here as my legal adviser—or, what is of more importance, by the plain facts of the case—he was not justified in making that official minute on the conduct of Lord LYTTON. He said if I censured in any way the Magistrates I should be guilty of the blunder committed by Lord LYTTON, who had censured a Magistrate who had lightly punished a European for killing a native. This has come out publicly to-day, as the Honourable member brought on the case relating to it, but it has long been known in the Colony. Nor in this case did I proceed to censure—which I might have done—Mr. PHILLIPPO; but I sent for him, and said: "I will say nothing about your addressing an admonition to the Governor of the Colony, but here is your opinion about Lord LYTTON; that is copied for you by a clerk, it is the talk of the whole Colony; you did not send it in a confidential manner, but in an Ordinary C.S.O., seen and read by every clerk in the Colonial Secretary's Office." Mr. PHILLIPPO, after some consideration, remarked that he was sorry he had given the minute to his clerk to be copied out, and he was also sorry he had sent the paper in an Ordinary C.S.O. and not in a confidential form. Though it was generally said by those who talked of his minute that Mr. PHILLIPPO deserved to be severely censured, I did not censure him. No censure was pronounced upon any one—except that extraordinary censure upon Lord LYTTON. And I may say this: whatever may be the private opinion of Mr. PHILLIPPO and my Honourable friend (Mr. KESWICK) they are entitled to hold it, but as this admonition is recorded in an official minute, I am bound to say Her Majesty's Government entertain a very different opinion of Lord LYTTON'S conduct in the FULLER'S case, from the opinion of Mr. PHILLIPPO. So far from thinking that the Viceroy had committed a blunder, Lord SALISBURY, the Secretary of State for Foreign Affairs, then Secretary of State for India, wrote to him saying the Government entirely approved of the course he had taken and the minutes he had made in the case, and the despatch concluded by saying Her Majesty's Government desired to express to him their hearty sym-

pathy in the line of conduct he was pursuing as evidenced by his action in that very case. And yet that is the case brought by Mr. PHILIPPO before me in an admonitory minute. And this identical minute is now, in November, 1879, paraded before the Council, as if the writer of such a minute was the sort of adviser a Colonial Governor should follow as an infallible guide.

I am happy to say I did find in Hongkong a safer guide in dealing with questions affecting the Administration of Justice, for I consult, not only my Executive Council, but I think it proper, to pay some regard to the views expressed by the Chief Justice. And I may say this, that I have never met any Chief Justice, in the Governments I have been administering whose public expressions of opinion—I say nothing now of suggestions received from him privately—I think deserving of more attention than those of Sir JOHN SMALE. And therefore in sending to the Secretary of State one of these very cases, I thought it my duty to call the attention of Lord CARNARVON to the observations of the Chief Justice with respect to Deportation. What did his Honour say? He said “This Deportation Ordinance was passed in a season of panic. It was an extraordinary Ordinance and must be construed with extraordinary caution.” Was I to neglect that advice, given from the Bench a few weeks after I arrived in the Colony? More than that, he pointed out—which really is a matter I am bound to consider for other reasons—the political consequences of deportations pursued, as the Honourable gentleman (Mr. KESWICK) no doubt would wish to have it pursued in all ordinary cases—its political consequences in China. His Honour said—“What about our treaties? If we take to deporting criminals are we acting in accordance with the treaties? The result may be that we shall give a ground to the Chinese Government to deport British merchants from China.” And the Chief Justice made other remarks, all of which I thought of importance, and all of which I ventured to commend to Her Majesty’s Government. Was I justified, after that, in dealing with deportation otherwise than as an exceptional matter? The difference, after all, between the Honourable gentleman and Mr. LOWCOCK and a few who agree with them and myself is only this: that I said that deportation should be regarded as an exceptional measure and should not be regarded as an ordinary mode of punishment; whereas I understand there are gentlemen in Hongkong who would wish to flog, brand and deport all Chinese prisoners. I prefer to deal with the Chinese prisoners according to law and in accordance with the advice of the Chief Justice, my own opinion, and the instructions of Her Majesty’s Government.

These despatches have been laid before Parliament. Other despatches on this subject are also in the possession of the Secretary of State. All the minutes in the cases to which the Honourable gentleman has referred have gone home to the Colonial Office long ago. What conclusions, so far, have Her Majesty’s Government arrived at? As late as the 9th July, 1879, Sir MICHAEL HICKS-BEACH says:—“I concur with you in thinking this form of punishment should be regarded as of an exceptional character and not to be employed in ordinary cases.”

But there is something more in this question than the mere fact that there have been illegal punishments, and an attempt, which has failed, and will continue to fail, to coerce a Governor into carrying out illegal sentences; something more than the advice of the Chief Justice or the resolutions of the Executive Council, and it is this, which I have never disguised in this Council, that on the manner of conducting deportation and dealing with prisoners and the remission of sentences will greatly depend the condition of your gaol and the suppression of crime. I have told Honourable gentlemen we have less cases of serious crime this year, and that the Inspectors report favourably as to the effect of the increased night duties of the Police Force on the prevention of crime. That I regard as the most important matter, but there is another point of special interest to the Chief Justice. I had not been many days in the Colony when I learned from him that during the Government of Sir HERCULES ROBINSON he knew, when he sentenced a prisoner, what was to be the duration of that sentence, but that since then (until my arrival) he was no longer certain as to the duration of the sentences he passed on criminals. The Chief Justice might give a desperate criminal nine years, and in the days of Sir HERCULES ROBINSON that man would have had to serve two-thirds of his time, but after Sir HERCULES ROBINSON left another system was introduced, without the knowledge or sanction of Her Majesty’s Government, whereby prisoners got a remission of their sentences after serving only one-half. Nor is that all. During the absence of my Honourable friend (Mr. TONNOCHY) it was not a question of half, but prisoners were being liberated who had served only one-third, and I hold in my hand papers on the subject, dated January, 1877. It is the first time the Chief Justice has seen them. The first application of this kind I got was in June, 1877, and that I directed to be at once referred to the Chief Justice for his opinion, and I find that the Chief Justice took, in his minute, the very point I had taken in a despatch to the Secretary of State when I reported the fact that there were 33 prisoners liberated on one day in January or February before my arrival. The Chief Justice had not been consulted about these cases, and the men were let out after serving one-third of their term of imprisonment.

Honourable W. KESWICK.—When was that?

His EXCELLENCY.—This was immediately before I arrived. In January, 1877, the recommendation was made to let all these people be deported. In February the warrants were made out. Here is one man, IP A-FOOK, for burglary and larceny, had been sentenced to three years’ penal servitude:

character in gaol, "very bad." And that man is liberated, deported, after one year and three months. And what was the history of that man? He had been convicted of larceny in 1874, for which he received six months. He was again convicted within a week of his release from prison, and what happened? Was he sent before the Chief Justice? Did he get a severe sentence? No. He was again sentenced to six months' hard labour. Well within two months of his release he commits burglary and larceny and then he gets three years. He was consistent, certainly, for his conduct in prison was "very bad." And yet he gets released amongst this lot of prisoners—released without the knowledge of the Chief Justice, and against the rules framed by Her Majesty's Government. These are men who almost immediately return to the Colony, and in my despatches will be found the cases of men who, having been branded and deported, having served one-third of their term, came back to us very speedily. It is not more than a week since the present Chief officer at Kowloon came to see me about the state of the criminal class on the borders of this Colony and Kowloon, and he then told me that a number of the men who were hanging about the village in Chinese Kowloon without any employment had brands upon them which he was told showed they had been in Hongkong prison. But he also told me that they were within a few minutes' reach of the Colony. They could make a raid into British Kowloon at any moment, and they could reach the town of Victoria in an hour. Well, I took means to ascertain whether any of these men were in the habit of getting across our frontier to a village where there are a number of stonecutters close to our boundary, and a few days ago I instructed Captain DEANE to apprehend as many of them as possible. But not for the purpose of deporting them again, but for the purpose of having them brought before the Chief Justice, who will probably imprison them. It was only the other day I sent a minute to the Chief Justice and Magistrates on this subject. In the case of a man recommended for deportation, the Acting Attorney General (Mr. RUSSELL) said:—"Banishment is the only thing you can do, but even that will do no good; the man is sure to return." I called attention to the fact that this man had at one time been sentenced to some years' penal servitude for committing burglary in this Colony, and after serving a short time he was let out in one of these batches. He is brought before the Police Magistrates again in May, 1878, and convicted of having housebreaking implements in his possession at night. And what happens then? He gets a few months' imprisonment, instead of being sent before the Chief Justice to be dealt with as severely as possible. All I have to say to the Honourable gentleman (Mr. KESWICK) is this. He may rely upon it that I have paid some attention to the question of prison discipline and the suppression of crime. It is one of the functions of my office. I have been sent here to govern this Colony. I have some experience in the Government of Chinese, and believe nothing would be worse, more disastrous, cause more insecurity to life and property, than to take the advice of the Honourable gentleman and his absent friend Mr. Lowcock. They are men of business, well qualified no doubt to conduct their own business, but in these matters, touching the administration of Law, I have to consult those whose lives have been devoted to the consideration of justice. Was I wrong, therefore, when in 1878, I took the responsibility—a grave responsibility—of instructing the Captain Superintendent of Police to make such a serious change in the night duties of the Police as to increase the night beats and patrols 33 per cent. Was I wrong when I appointed a Committee of the Legislative Council including the senior un-official member (Mr. RYRIE) to consider the question of crime and police and report to me? The Committee say, great evils arise from the system of conditional pardons, that it is better to make the men serve out their lawful sentences, and furthermore, the Secretary of State says deportation should not be employed in ordinary cases, but should be regarded as an exceptional punishment. That Committee examined the whole question, had the witnesses and documents before them, and they arrive at the unanimous conclusion that the practice of deportation was not unduly relaxed during my administration.

I don't know that I can give the Honourable gentleman any further explanations. I am not to blame if the attention of the British Parliament has been drawn, as it has, by these papers to what has taken place in Hongkong. I was not one of the visiting justices. I am not responsible for having passed by these irregularities. I detected some of them, and have endeavoured to check them. I frankly confess I prefer the prevention of crime and the reign of Law to the clumsy system of illegal floggings, brandings and deportings. I have every confidence I shall receive the support of the Council, and especially of His Honour the Chief Justice in my endeavour to have none but legal punishments inflicted in our prison: and I believe I shall have the support of every honest and intelligent man in the Community in the effort I am making to prevent crime by seeing that our Police Force is properly handled and is kept up to its necessary strength.—(Hear, hear.)

The ACTING ATTORNEY GENERAL.—With reference to the CHAN TIN LAM case, your Excellency, I may, perhaps, be permitted to make a few remarks of a personal nature as to the punishment inflicted. I was the unfortunate Magistrate who made the blunder, and I don't think any man could have done otherwise than say he had made a mistake. The Ordinance authorised twenty strokes. As a matter of fact, the man got twenty-one, but I do not found any excuse on the fact that he only received one stroke more than he legally might have received. I don't think any injustice has been done to me, but as this report has gone home to the Secretary of State I may say, with reference to the argument I used, that of course I used it as a defensive one. I was placed on my defence, and I put this forward

as a ground of extenuation. Your Excellency was looking very carefully through the whole thing, and this point escaped your observation, and the men who practically carry out the work, such as the chief gaoler and the clerk, are persons more likely to detect an error or omission than any one else. A Magistrate, with a large amount of business before him, makes a hasty order and trusts very much to his chief clerk, who makes out the formal warrants, and I put it forward that it was not so very odd it should have escaped me, as it escaped your Excellency. I am much obliged to your Excellency for having called attention to the fact that I had discovered—and for which I think I deserved some credit—that Mr. TOMLIN had been flogging with the cat, but it is right to mention that at the time he produced an Executive order for that being done, so that exonerated him to some extent, which I think I did not mention at the time. With reference to the CHAN TIN LAM case, I could only say I was sorry I had made such a mistake, but I said, and still say, any man in that position might make such a mistake.

His EXCELLENCY.—I did not express the slightest censure, nor do I know; but what I did feel was that as the man had been illegally flogged, and as the deportation sentence was illegal, I ought not to add five years' punishment to the punishments already inflicted. My Honourable friend (Mr. RUSSELL) in referring to the minute on the irregularities in the gaol, said he thought he had not mentioned that Mr. TOMLIN had produced an order, but I think, if he refers to his memorandum again he will find he says:—"It is true that he produced an order from the Governor to authorize the flogging with the cat for breach of gaol regulations"—though the Ordinance says the rattan, but Mr. RUSSELL also called attention to the fact that Mr. TOMLIN had the preceding day flogged a man who was not a felon, which is a clear illegality, and he goes on to say:—"I regret to say, when I pointed this out to Mr. TOMLIN, and told him it should cease, he said—"I will take the responsibility of continuing it." This I regard as a very serious responsibility on the part of the Superintendent, and I therefore think it my duty to record it and ask for the intervention of the Executive." I think great credit is due to my Honourable friend (Mr. RUSSELL) for having protested against such illegalities.

Honourable W. KESWICK.—It is a source of great satisfaction to me that I have brought forward this subject to-day. It has enabled your Excellency to make a statement which I am sure will be received with much pleasure. My object in bringing forward these documents was to correct any misapprehensions I might have as to the way in which the cases had been dealt with and the statement of your Excellency at the last meeting. Your Excellency appears to consider that my views with regard to many of the subjects in connection with punishment in Hongkong are of a character different from your own. I am happy to say that in most of them, though your Excellency is of a different opinion my views and support have been with you. It is not often I make remarks on subjects like this. When I do make them it is with the object of obtaining information and correcting misapprehensions. I am not aware I have said anything but what was reasonable to be concluded from the reading of the papers which were laid upon the table. With regard to deportation, I have the strongest possible feeling it should be used most carefully. I don't for one moment wish to differ from the remarks your Excellency has made, with somewhat of a personal feeling to myself. There is no doubt that many criminals are transported to the Kowloon shore and there plot plants to the injury of the Colony. In making the remarks I did in introducing this subject, I did so with no desire to cast censure, but with a view of showing I thought there was a discrepancy between the acts and the words used when we last met. Much that has been said has dispelled that opinion—(hear, hear)—and I think further the change of system in the Police is one altogether to be approved of; and if your Excellency thinks I prefer deportation and the punishment of crime to its prevention it is a great error. There is no more loyal supporter of law and order in the Colony than myself, though I myself say it, and I am sure no policy advocated by me will have the effect your Excellency suggested of depreciating property diminishing population, or increasing crime. On the contrary, I would have such sanitary improvements as are required carried out, and that splendid balance which your Excellency referred to—and which it is very satisfactory to know exists—I should spend, because far more than \$20,000 would be gained by having that money judiciously spent in improving the Colony, bringing water, and providing for other sanitary necessities. My policy, your Excellency, if I have one, is not that of interfering with the legitimate action of men, be they Chinese or Europeans, but I should like to see pursued a policy of firmness, of perfect disinterested punishment when punishment is due, that there should be no leniency shown to criminals when carrying out sentences; and when I alluded to some of the cases in which criminals have been cast adrift on the Colony I thought, as I think now, there might have been devised—or devised, perhaps, is not the correct word—but that laws might have been put in motion by which the men could be deported under a proper system—(Hear, hear.)

The CHIEF JUSTICE.—This debate has certainly terminated in a way on which, I think, I may congratulate this assembly. That questions should be raised is, I believe, the healthiest thing that can happen in any Colony or any state, when they are raised in the way in which the Honourable member (Mr. KESWICK) has now raised them. I did not catch a word which I think ought not to have been used in fair debate, and I must say, on the other hand, that I think His Excellency the Governor, though the subject certainly in some respects touched him pretty closely, has avoided any language stronger than the occasion should call for—(Hear, hear.) I will not myself go into any of

the questions that have been raised, except to say that I believe that with regard to the question of the legality of deportation, I am responsible; but it is my business, sitting where I do in that Court, to take care that, punish men how you will, they shall only be punished according to Law. And if I cannot punish them as I think they deserve, if I think the Law will not allow it, I have only to regret it, and say they must go unpunished. It is for this Council afterwards to say whether or not remedies shall be devised for any insufficiency of the Law, though I believe, on the whole, the Law pretty clearly provides for every wrong a remedy. I don't go into any of the questions, but I believe I am responsible for a good deal that has come out.—(Hear, hear.) In the decision that the Court took I was certainly annoyed to find then deportation in the way it had been carried out was most illegal, and when it came before me I did not hesitate to say so. I am perfectly satisfied with the way in which the matter is dealt with now. I don't say there are not exceptional cases, but I must say there is no exceptional case on which the Governor does not do me the honour to ask the opinion of the Court. But it is no part of the business of the Judge to give advice, though he may do so if asked. If a man is sent to prison the responsibility of keeping him there, or the responsibility of letting him out early or late rests with the Executive. The judiciary ought never to express an opinion upon the propriety or impropriety of any conduct of the Executive. This is not my opinion; I don't in these questions generally give my own; I generally rest my opinion on that of eminent men; and though I go to a Colony for it, a Colony is perhaps the best for the purpose, and in Melbourne that was said by one of the best judges I know. Ever since I read what he said I have felt it is not the place of the Judicial Department to pass an opinion upon the acts of the Executive. They have various reasons for what they do, as to which the judiciary ought not, after having passed sentence on a prisoner, to pass a sentence on the changed sentence which the Executive may pass. A Judge may be asked what reasons there are why mercy should not be shown, where there are reasons presented why mercy should be shown, and I am sure His Excellency will always find me ready to give advice to the Executive in such cases.

The Council was then adjourned *sine die*.

The following Despatches were referred to in the debate on Deportation and illegal Floggings.

Governor Hennessy to the Earl of Carnarvon.

[No. 44.]

GOVERNMENT HOUSE,
VICTORIA, HONGKONG, 23rd June, 1877.

MY LORD,—I have the honour to lay before Your Lordship the papers relating to a proposed case of deportation in which I have felt myself compelled to decline acting on the unanimous recommendation of my Executive Council.

2. The case arises under Ordinance No. 8 of 1858, entitled "An Ordinance for the Regulation of the Chinese People," and for other purposes. It begins with a recommendation by Mr. MAY, the 1st Police Magistrate, in which after reciting four convictions that had been obtained against a prisoner named CH'AN TIN-LAM, Mr. MAY says:—

"The prisoner being an incorrigible thief and considered a person dangerous to the peace and good order of the Colony and having failed to give the security required of him I therefore respectfully recommend him as a fit subject for deportation under the provisions of Ordinance No. 8 of 1858, Section XXI."

For Your Lordship's information I here annex the Section in question:

"Section XXI of Ordinance No. 8 of 1858 any stipendiary Magistrate or Justice of the Peace may cause any Chinese person to find reasonable security for his appearance in any Court for any purpose at any time within twelve months, and every adjuration to that effect shall be made in open Court and reported forthwith to His Excellency: and such Chinese not finding such security shall be deemed a person dangerous to the Peace of the Colony, within the meaning of Ordinance No. 9 of 1857."

This last mentioned Ordinance gives power to the Governor in Council to deport for five years any person not being a natural born or naturalized subject of Her Majesty.

4. In accordance with the practice I find prevailing here, this recommendation of the Magistrate under Ordinance No. 8 of 1858, Section XXI, is very properly accompanied, when sent around to the Members of Council and the Governor, by the depositions in the various cases alleged against the prisoner as the justification for the order of Deportation.

5. The Magistrates recommendation and the depositions came to me in the usual course on the 19th of May, each Member of Council having recorded upon the papers his concurrence with Mr. MAY's recommendation.

6. Looking to the heavy penalty of five year's banishment and to the still severer penalties involved in an unlawful return from Deportation (a not uncommon crime in Hongkong) I have felt it to be my duty not to sign Deportation orders hastily or as matters of course: but to carefully consider the depositions and the proceedings of the Magistrates in each case.

7. Having done this in the matter of CH'AN TIN-LAM, I made the following minute on the papers on the 22nd of May:—

“I signed the last Deportation Warrant with reluctance, as one of the sentences that had been carried into effect appeared to be illegal. In this case I am also somewhat surprised at some of the sentences that have been inflicted. Before signing the warrant I should therefore be glad to receive a brief report from the Attorney General on each of the four convictions and sentences which are now put before me as the justification of the course I am recommended to take.”

8. The cases to which I refer as being one in which I signed the warrant with reluctance, was where a sentence similar to the fourth on CH'AN TIN-LAM had been passed. I could not satisfy myself that it was according to Law and I therefore sent for the Attorney General and explained my difficulty to him. He had already recorded his concurrence in the sentence of Deportation; but he admitted there was something in the point I raised. At the same time he said he was bound officially to advise me that I should sign the order. He pointed out the inconvenience of a Governor interfering unduly with the discretion of Magistrates and he gave many weighty reasons why a Governor should avoid thinking for himself in matters of Law and Justice. Accordingly in spite of my own opinion, I acted on his advice, recording however the fact that I deported the prisoner in question with great reluctance.

9. In the case of CH'AN TIN-LAM, I discussed the details in Executive Council and also called for a written report from the Attorney General and this report is given on pages 33-40 of the papers I now enclose.

10. In his report the Attorney General makes the following admissions:—

“With regard to the 2nd conviction, I do not know that if I had been sitting as Magistrate I should have convicted.” This however he qualifies by saying very properly, that the Magistrate having heard the evidence had better means of judging. He adds that the prisoner acted in a most suspicious manner, and that he has very little moral doubt as to his guilt.

“With regard to the 3rd conviction” he says. “This conviction is I think so far as I am aware of the circumstances somewhat doubtful.” And respecting the fourth conviction and sentence he says: “The latter portion of the sentence would seem to be incorrect inasmuch as the Ordinance only empowers the finding of security for the appearance of the party charged in Court at any time within twelve months from the date of the adjudication.”

In spite of those admissions, the Attorney General concludes his report by expressing the opinion that he had satisfactorily disposed of any objections I may have entertained.

11. I had previously pointed out to him at a Meeting of the Executive Council that in addition to other defects in the proceedings, the prisoner had been flogged five times, the last three floggings being, in my opinion, open to grave doubt and I especially noticed the fact that the age of the prisoner when sentenced to be flogged was recorded on the depositions as being 21 in one case and 22 in another, whereas the power of flogging was only given to the Magistrates in cases where the Court was of opinion that the accused was under sixteen years of age. I therefore referred the papers to him again; and then at his suggestion sent them to the Magistrates, Messrs. MAY and RUSSELL, whose proceedings were in question.

12. I transmit for Your Lordship's information the reports and observations of the Magistrates. I gave them an opportunity of reading all the minutes that had been made; and as they now for the first time recorded their opinion that the prisoner was under sixteen in the year 1876, I asked the Registrar General, Mr. SMITH, who had seen the man in prison, to make an enquiry and report to me on the subject. I have also seen the prisoner myself and from my own observations as well as Mr. SMITH's enquiry, I entertain no doubt whatever, but that the last three floggings were given to him when he was over twenty years of age.

13. The two sentences under which these three floggings were given, are in the following words:—

“4 months' hard labour and 24 strokes of rattan privately on the breech.”

“(Signed,) J. RUSSELL.

“16th July, 1875.”

“To be imprisoned for 12 months with hard labour and to be twice flogged on the breech, 10 strokes each time. At expiration of imprisonment to find security 2 householders each \$25, to be forthcoming within 12 months, in default, case to be submitted to His Excellency the Governor with view to deportation.”

“(Signed,) C. MAY.
“(„) J. RUSSELL.

“20th May, 1876.”

14. It will be observed that the second sentence does not state the instrument with which the prisoner was to be flogged; whilst the first of these two sentences directs 24 strokes of rattan. As this sentence does not sub-divide the number of strokes, it would seem to be at variance with the local law which precludes a sentence by a Magistrate of more than twenty strokes.

15. On the whole, I entertained such grave doubts as to the convictions and sentences in this case, that I declined to add to the various imprisonments and floggings which the prisoner had fully undergone the further punishment of deportation.

16. Having so far reported on the enclosed papers and explained the course I felt compelled to take, I venture to ask Your Lordship's particular attention to two points of some importance. The first is the interpretation I have ventured to put on Ordinance No. 8 of 1858, Section XXI. In my opinion (and the Attorney General in his later opinion seems now disposed to take the same view) the adjudication to find security within twelve months should in each case be reported forthwith to the Governor and could have no legal prospective effect in contemplation of imprisonment. If I am right there have been hundreds of cases of this kind improperly dealt with by the Magistrates; for the second sentence I have quoted in a preceding paragraph (13) is the form of sentence pronounced week after week by Mr. MAY and Mr. RUSSELL, when they desire to add deportation to imprisonment.

17. The second point to which I ask Your Lordship's special attention is involved in an observation officially recorded by the Attorney General on the enclosed papers. In his further report dated 12th of June, Mr. PHILLIPPO, whilst laying down many sound principles in which I entirely agree as to the relations between a Governor and Stipendiary Magistrates, gives me an admonition, hardly called for, I think by my minutes and action in the case; he refers to what has been laid down “within his own knowledge by the Colonial Office”; and he winds up by a warning in the following words:—

“Unless His Excellency is prepared to charge the Magistrates with criminal conduct in the matter, to do more, as for instance to censure the Magistrates in any way for the manner in which they exercised a discretionary power, (His Excellency will I am sure excuse me for writing freely) would be in my opinion, to repeat the blunder, made by Lord LYTTON in India, when he censured and punished the Magistrate and to some extent censured also the Supreme Court for leniency in a case where a native died after having been struck by a European.”

“(Signed,) GEORGE PHILLIPPO,
Attorney General.

18. No doubt Lord LYTTON's action in the matter to which the Attorney General adverts has excited a great deal of attention in the East. As far as I have seen, the great majority of intelligent and impartial Europeans in the East heartily approve of Lord LYTTON's conduct; and by the natives throughout India and the Oriental Colonies it is regarded with loyal and affectionate gratitude.

* * * * *

I have, &c.,

(Signed,) J. POPE HENNESSY,
Governor.

Governor Hennessy, C.M.G., to the Right Honourable Sir Michael Hicks-Beach, Bart., M.P.

GOVERNMENT HOUSE,
HONGKONG, May 13th, 1879.

SIR,—I have the honour to lay before you a copy of the report* of the Medical Board I appointed under instructions from the Earl of CARNARVON to investigate the physical effect of the mode of flogging in the Hongkong Gaol, and the prevalence or otherwise of pulmonary disease in the prison. In the appendix to the report will be found a copy of the evidence taken by the Board, together with a copy of the Colonial Surgeon's observations on the report, a memorandum showing the air space in the associated cells where the Chinese prisoners are confined, a note giving the reason why the Chinese Government do not sanction flogging on the back, and some correspondence that had been laid before the Committee.

* This Report, with the evidence and enclosures, was laid before the Legislative Council and published in May, 1879.

2. The Government was fortunate in obtaining the very valuable services, as members of this Board, of Deputy Inspector General WELLS, of the Royal Navy, and of Dr. O'BRIEN, the leading physician in private practice in the Colony, two gentlemen whose great experience and professional skill command the confidence of the whole community.

3. Owing to the ill-health of Dr. WELLS for three months, and to the desirability of watching for a considerable period the physical condition of certain prisoners and the wounds that had been caused by floggings, the enquiry has been of necessity somewhat protracted. As the Government printers had other work on hand the printed copies of the report only reached me this month.

4. Unfortunately, on account of the imperfect statistics hitherto kept in the gaol, and for other reasons given by the Board, they seem to have had but little to guide them in the solution of the question whether flogging on the back, in the case of Chinese prisoners, has produced phthisis. They say:—

“Apart from the questions put by us to the Colonial Surgeon, and the examination of the four men who had been flogged on the back, with imperfect statistics, we have little to guide us in the solution of the main question ‘does flogging on the back produce phthisis?’”

5. As to the special report Lord CARNARVON desired to obtain respecting the health of YEUNG-A-MAU, who was flogged in November, 1876, and LEUNG-A-LOI, who was flogged for the third time in March, 1877, as the former had left the prison the Board were unable to see him, and as to the latter, they find that he is suffering from phthisis, but they are not prepared either to assert or to deny that the disease was induced or developed by the floggings he received. Their words are—

“We find that LEUNG-A-LOI is suffering from phthisis, but we are not prepared to assert, neither do we deny, the possibility that the disease in him was induced or developed by the floggings he received.”

6. In its relation no doubt to pulmonary disease, the Board make the following observation on the important question of the air space in the cells:—

“In regard to the air space, we find that in the cells where many prisoners are locked up together for the night, instead of at least from 1,000 to 1,200 cubic feet per man, the allowance is actually only from 482 to 775, and even bearing in mind the fact of only barred gates separating the cells from the corridors, we do not consider the air space and ventilation what it should be.”

The figures quoted by the Board from Dr. AYRES' evidence (as he subsequently explains in his minute of the 15th October, 1878), represented the average cubic space of all the cells in the gaol, including those for Europeans, who are placed in comparatively commodious cells; and from the enclosed return of the measurement made in May 1877 of the cells where the Chinese prisoners are confined in association, the air space for the Chinese (184 to 221 cubic feet at the end of 1876) is far less even than the average allowance the Board think insufficient. For instance, the prisoner LEUNG A-LOI, about the time that he was flogged, had been confined in a cell in which he had only 221 cubic feet of air space. As Dr. WELLS and Dr. O'BRIEN think that the average cell space of the whole prison, 482 to 775, is not what it should be, and that each prisoner should have at least from 1,000 to 1,200 cubic feet of air space in this climate, it is manifest that the pulmonary disease from which LEUNG A-LOI now suffers, and which led to the deaths last year of MOK A-KWAI and WONG A-KWAI, may not be entirely unconnected with the insufficient accommodation in the prison.

7. It is satisfactory to notice that the Board speak well of the dry earth system which was recently introduced, and of the way the prison discipline is now enforced.

8. Whilst recording their opinion that the evidence submitted to them respecting the effect in producing phthisis of flogging Chinese on the back was most inconclusive, they say the action of Dr. AYRES, the Colonial Surgeon, in bringing the matter under official notice, was “most commendable.” I may here answer an inquiry made by the Earl of CARNARVON in the despatch of January 1878.

“I should wish to be informed,” his Lordship says, “whether Dr. AYRES has ever, during his previous years of service, brought these facts to the notice of the Government, and if not, you will desire him to explain why he has not done so.”

A reference to one of the enclosures in Governor Sir ARTHUR KENNEDY's despatch of the 28th February, 1877, shows that Dr. AYRES brought this matter under official notice a few years ago. In his evidence before the Gaol Commission, which was transmitted in Sir ARTHUR KENNEDY's despatch, Dr. AYRES, on the 17th January, 1876, said:—

“I think a cane is better than a cat, and flogging on the breech. It is much more severe, and less dangerous than when administered on the back. The men often complain of pains in the chest and difficulty of breathing after being flogged on the back.”

This evidence was not noticed by the Gaol Commissioners in their Report, but, of course, for that Dr. AYRES is in no degree responsible.

9. That the rattan in use in the Hongkong Gaol is a severer instrument than the cat appears to be also the opinion of Dr. WELLS and Dr. O'BRIEN; and, indeed, on the ground that it is too heavy a weapon and cuts too deep into the muscular tissues, they recommend a return, not to the knotted cat, but to a cat without any knots whatever. Of the rattan of the Hongkong Gaol they say:—

“It is generally forty-seven inches in length, but there is no regulation as to length. The average circumference is two inches. * * * * * We consider the ‘rattan’ too heavy a weapon, and its effects are very likely to go deep into the cellular and muscular tissues, probably producing loss of substance by sloughing, and thus for a long time delaying the healing of the wounds.”

10. These gentlemen support their opinion as to the great severity with which the floggings with the rattan have been conducted by referring to some cases that came under their observation, one in which a prisoner flogged with the rattan on the 11th of May, 1878, was found, on the 3rd of June, to be suffering from “a secondary abscess that had formed over the left hip joint.” Another case they describe in which the wounds were not completely healed in six months:—

“A man who had been punished with 36 strokes of the rattan on the breech on the 1st March, 1878, was examined on the 14th May. The wounds were not healed; there must have been sloughing from the evident loss of substance. On the examination on the 3rd of June, the wounds were not then healed though the ulcerated surface was on a level with the surrounding parts and looked healthy. Dr. O'BRIEN saw this man early in September; the wounds then were not completely healed.”

They refer to the case of another prisoner “who was flogged about a month ago, in whom the left buttock healed rapidly but the right sloughed and a large ulcer remains, which will take some time to heal.”

11. Having themselves been witnesses of those serious results, it is not surprising that Dr. WELLS and Dr. O'BRIEN should recommend that so severe a weapon should be abandoned. In lieu of this heavy instrument they recommend a cat “without any knots.” The “cat” hitherto used in Hongkong gaol had “nine tails” with knots worked on each “tail.” They recommend in the case of prisoners under eighteen years of age that the flogging should be on the breech, but with a cat with only six tails; and in the case of prisoners under thirteen years of age that a birch be used. In the case of all other prisoners sentenced to be flogged they recommend that the flogging should be on the back, but with important modifications from the former system, namely, that there should be a thick canvas covering to protect the loins and a thick canvas collar to prevent injury to the neck. By means of these canvas protections they say the blows will fall only “on the muscles covering the shoulder blades and the intermediate spinal space.”

12. Of the recommendation of the Medical Board I should be prepared (if flogging on the back were to be re-introduced) to support the substitution of a cat without any knots whatever for the more severe and injurious instrument hitherto used. I should support their recommendation with respect to prisoners under eighteen years of age being flogged only on the breech with a cat without knots or with a birch. But I cannot approve, even with the well intended protections they suggest, of flogging any orientals on “the shoulder blades and the intermediate spinal space.” Therefore, as flogging on the breech or the upper part of the thighs alone should be allowed, it will obviously be necessary to use a rattan and not to permit the use of even the modified cat recommended by the Committee.

13. As pointed out by the Colonial Surgeon in his minute upon the report of the prisoners sentenced by the Supreme Court since 1873 to flogging on the back the Medical Board had only seen two: and as to the medical records in the gaol of the other cases of men flogged, Dr. AYRES says it had never been the custom before his time to make such records. Of the Chinese that he had himself seen flogged since his arrival in Hongkong in 1873, he reiterates the statement he originally made, “I am sure of my diagnosis, as far as the congestion of the lungs is concerned.”

14. Of the two cases of MOK A-KWAI and LEUNG A-LOI, the Colonial Surgeon says in the same minute:—

“MOK A-KWAI released from the gaol in a dying condition, and LEUNG A-LOI still in gaol suffering from phthisis were both when they entered healthy powerful muscular men, presenting no indications whatever of hereditary disease. * * * * *

“To what then can the disease they were attacked with be attributed? I cannot myself regard it otherwise than as caused by the punishment they had received; both of them were horribly marked, their backs having sloughed from the extensive bruising.”

15. Whilst there is no doubt whatever that the facts before the Medical Board as to floggings with the rattan two inches in circumference were sufficiently numerous and conclusive to warrant them in recommending the abandonment of that too heavy and severe weapon, and the substitution of the lighter instrument of a cat without knots, it is equally clear that the evidence they were able to obtain

in the gaol as to the physical injury caused to the Chinese by flogging on the back was extremely meagre. On the other hand, they do not appear to have thought it necessary to follow up an interesting piece of evidence I caused to be laid before them, that is an extract from the records of the Emperor FAI-TSUNG (A.D. 627-650) and an extract from the records of the Han dynasty to the effect that there was a risk of causing death by flogging on the back, and that therefore throughout the whole of China floggings should be administered only on the buttocks. More than a thousand years have passed since the Chinese Government abandoned, on this account, the system of flogging on the back; and, of the numerous Chinese doctors now residing in Hongkong, I have ascertained that, without exception, they all believe the practice of the Chinese Government to be founded, in this matter, on sound principles, and that to flog a Chinaman on the shoulder blades and the intermediate spinal space would involve a risk of injury to the internal organs.

16. The Committee take no notice of one point that was laid before them in the correspondence, namely, Dr. AYRES' second objection to flogging on the back, that it causes permanent scars which after liberation from prison would be seen whenever the man who had been flogged worked, as all coolies do here in summer, stripped to the waist, whereas if the flogging had been inflicted on the breech this lifelong exposure of a degrading punishment would not be continued after the man had left gaol. On this point Mr. Justice SNOWDEN, in a letter that was before the committee, writes "It seems Dr. AYRES was speaking of the shame felt by men who after leaving prison might be obliged to expose their backs bearing indelible gaol marks. If such is the nature of Dr. AYRES' objection I quite agree with him that it would be a reason for abolishing flogging on the back." Mr. Justice SNOWDEN adds "I quite agree with Dr. AYRES that flogging should be administered on the breech and not on the back."

17. The enclosures in my despatches Nos. 4 and 5, of 19th January, 1879, will have shown you that the Chinese community of Hongkong, including the chief owners of property, concur on this subject with the views expressed by Dr. AYRES and Mr. Justice SNOWDEN.

I have, &c.,

(Signed,) J. POPE HENNESSY,
Governor.

VOTES AND PROCEEDINGS OF THE LEGISLATIVE COUNCIL OF HONGKONG.

No. 3 of 1879.

THURSDAY, 29TH MAY, 1879.

PRESENT:

His Excellency Governor J. POPE HENNESSY, C.M.G.
The Honourable the Chief Justice (Sir JOHN SMALE).
The Honourable the Colonial Secretary (WILLIAM HENRY MARSH).
The Honourable the Acting Attorney General (JAMES RUSSELL).
The Honourable the Acting Colonial Treasurer (MALCOLM STRUAN TONNOCHY).
The Honourable PHINEAS RYRIE.
The Honourable WILLIAM KESWICK.
The Honourable JOHN MACNEILE PRICE.
The Honourable HUGH BOLD GIBB.

The Minutes of the two previous Meetings of Council are read and confirmed.

Before proceeding to the orders of the day, His Excellency adverts with deep regret to the loss which the Colony had sustained since the last Meeting of Council in the death of the Honourable CHARLES MAY, late Acting Colonial Treasurer and Senior Police Magistrate. His Excellency expresses his warm sense of the qualities which made Mr. MAY valuable to him as a public officer and as a private friend.

His Excellency announces that he had provisionally appointed Mr. M. S. TONNOCHY to succeed the late Mr. MAY as Acting Colonial Treasurer.