

THE DEVELOPMENT OF THE SECRETARYSHIP TO THE
GOVERNMENT AT THE CAPE OF GOOD HOPE
UNDER JOHN MONTAGU,
1843 - 1852

by

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P R E F A C E

The development of the Cape Colony during the 'forties and early 'fifties of the last century is, indeed, a fascinating study. And as one aspect of it, a critical analysis of the public career of John Montagu, while he was Colonial Secretary at the Cape, is of particular interest. For, by tracing the influence of his office in relation to the changing political, social and economic structures of the colony, it is hoped that some contribution will be made to the knowledge of the period. Thus, the present thesis is, in part, an examination of the duties and responsibilities of the Colonial Office; but more particularly, it is an examination of how Montagu, who virtually dominated the Cape scene for almost a decade, interpreted these duties and responsibilities. By concentrating, then, on his role in the civil administration and political management of colonial affairs, other aspects are revealed. The authority of the Colonial Office, which had through the years become a sort of government 'archives', was developed to such an extent, that every memorandum issued by it, seemed to set the tone for government policy. More. The very fact that Montagu was, time and again, left in charge of civil affairs at the Cape, while it reveals the dominant native problem and the vital question of defence, accounts also for the paternalism in government.

The most important primary sources for this study, have been the British Parliamentary Papers on Cape Affairs, the Cape of Good Hope Blue Books, Government House Records, and the relevant Minutes of the Executive and Legislative Councils. The annual Almanacs of the Cape proved to be invaluable: they contain a wealth of information on the institutions of government, central and local, as well as the most indispensable returns for all the many services at the Cape.

Despite every effort to locate some of the Montagu family private papers, I have met with no success. It would seem that all the material that might have been available, has been either mislaid or destroyed. Research workers in History are continually confronted by this problem. It suggests the need for some positive effort, on the part of our universities, to encourage the owners of valuable private documents to make these available for safe-keeping.

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ABBREVIATIONS

The following abbreviations have been used:

1. Newspapers

Br. Settler for British Settler
CFT for Cape Frontier Times
CTM for Cape Town Mail
EHH for Eastern Province Herald
P.E. Daily Tel. for Port Elizabeth Daily Telegraph
EPN for Eastern Province News
GRC for Graaff-Reinet Courant
GRH for Graaff-Reinet Herald
GTJ for Graham's Town Journal
Adv. and Mail for The South African Advertiser and Mail.
ZA for Zuid-Afrikaan

2. Other Sources

GH for Government House Records
GG for Government Gazettes
EHR for English Historical Review
SAJE for South African Journal of Economics
CMBE for Cambridge of the British Empire
EC for Minutes of the Executive Council
LC for Minutes of the Legislative Council
Pottinger-Young Correspondence for Correspondence between the Rt. Hon. Sir Henry Pottinger, His Hon. Sir H.E.F. Young and others, respecting a separation of the Eastern and Western Provinces, and the establishment of a distinct and Separate Government in the Eastern Province. Cape Town. 1847.
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CHAPTER I

The development of the Cape Colonial Office from 1790 to the appointment of John Montagu as Colonial Secretary in 1842.

After 1832 in Britain, parliamentary reform gave a freer vent to the new ideas expounded by the Radicals, and the Free Traders; it brought in its wake administrative and civil service reorgan^sation to a degree hitherto unparalleled. And though it is true that, apart from Exeter Hall, whose influence after 1835 is exaggerated there was not much public interest in the colonies till the 1870's, a great deal of interest did exist among small but effective Radical groups. While Durham and Bright, for example, worked out their ideas from different standpoints the overall effect was to set the stage for the gradual harmonising of Imperial and Colonial interests.

A study of the government in South Africa is particularly interesting: in the first place, there were Dutch, as well as English roots in ~~Cape~~^{the} administration which existed at the Cape; this was a factor which played a decisive rôle in the development of administrative techniques. Secondly, the colonial public though perhaps not so politically alert as their contemporaries in Britain, was at least kept well informed of the theories of the time. The press- notably the Graham's Town Journal, The Cape Town Mail, the zuid Afrikaan and Sam Sly's Journal, was fascinated by the principles of the English theorists; the Durham Report, for example, was quoted in detail, and vigorous correspondence in the press, as well as public meetings reflected the formative influence of general ideas on the formulation of local, even trivial comment and complaint.

The frontier wars at the Cape, involving as they did the vital questions of defence and native policy, demanded

from the point of view of the Home Government, a closer supervision of affairs in Southern Africa and not merely in the Cape. Here in brief, was a special situation reflected, for instance, in the creation of the office of High Commissioner in 1847. The object of this thesis is, then, to try and show, *inter alia*, how the new ideas and tendencies affected the Cape and how special conditions at the Cape in their turn put its own inflection upon them.

There is good reason for choosing the period of the 'forties when Montagu presided over the Cape Colonial Office, to illustrate these developments. His previous experience in the Colonial Service, had taught him at least the fundamental principles with which to approach the problems of the Cape at a crucial stage in its history. In the second place, he was the chief among those who gave a new structure of administration to a new and rapidly changing colony: with his colleagues he built up a degree of coordination and a corporate spirit which was to make of the Executive Council, both before and after 1854, a body with a unique political coherence, and having behind it a lucid administrative structure.

The history of the Colonial Office at the Cape is both involved and picturesque, and it is necessary to trace back the main lines of development in order to obtain a clear view of Montagu's heritage. The Secretary to the Council of Policy under the Dutch administration was, to a large extent, the precursor of the Colonial Secretary in the time of British rule: yet it must be realised that the latter post had developed to a rather more responsible level. In a petition to the Council of Policy, dated 16 February 1790, Cornelis van Aarsen, the Council's secretary, remarked that he had embarked

on his work "met een onwrikbaar besluit om de hem noch ontbreekende kennis in de zaken van de Gouvernement door een onafgebrooken arbeid te verwerven".¹ Under the Batavian Republic the duties of his office were extended, and besides taking down minutes, and furnishing information, it was laid down that "hij zal verantwoordelijk zijn voor de prompte expeditie, exacte registratures, en goede orde van de Secretarie, en voor de bewaaring en regelmaatige plaatsing van alle Boeken en stukken daaraan behoorende"²

After the second British occupation of the Cape, the Colonial Secretary was not specifically charged with secretarial work: his office began to assume a departmental status. The Secretary to the Government was, from the very time of the creation of his office, the medium between the colonial government, the public, and the public offices generally. No wonder then that the men appointed to this office were usually commissioned because of their intimate knowledge of affairs, both governmental and public. On the 26 January 1806 Sir David Baird wrote to Viscount Castlereagh, informing him of the appointment to the Colonial Office of Captain J. Smyth of the Royal Engineers, because his "local information and experience have also been usefully devoted to the public service in the execution of the duties of Acting Colonial Secretary Immediately after the capitulation of this settlement I nominated Captain Smyth to the office of Secretary to this Government, from a conviction of his being well qualified to discharge the confidential and important functions of that appointment."³

1. VENTER P. J. Thesis on Cape Administration, 1806-1910 (no title page) n.a. Dec. 1949. Microfilm 36. Cory Library. Rhodes University.

2. Ibid

3. Ibid p. 9

Under the first British administration, the Governor's powers were unlimited, save by expediency. He reported directly to the Secretary of State, and in the commission of several governors, they were informed that all the power of the government, civil and military, were vested solely in his person - or in his deputy, should he be away at any time. All officials were directly responsible to him, and while he could delegate powers to subordinate officers, the responsibilities incurred in administration devolved on him personally.¹ During Crown Colony rule from 1806-1825, the governor still held supreme power, and the colonial secretary was specifically charged by him with the execution of his instructions. This meant that the colonial secretary came more and more closely in contact with the whole of the administration, a situation which necessitated his being fully acquainted with the intricacies of government machinery. Mr Andrew, who was appointed "Secretary and Register of the records of and in this His Majesty's Settlement of the Cape of Good Hope",² on 22 May 1807, was issued with the following instructions which prescribed his sphere of operations, but which nevertheless virtually placed him at the head of the administration of the Colony:

"Nevertheless you are to cause an exact account to be kept of all fees which now are, or may hereafter, be made payable in your office of Secretary and Register, and to take care that the amount thereof shall be paid quarterly into the hands of His Majesty's Receiver-General, and likewise that your accounts be duly audited according to the established regulation of this colony; and in order to enable you to execute more efficiently the several duties required of you in the said office of Secretary and Register, I do hereby authorise and empower you to nominate and appoint such deputy or deputies, Assistant or Assistants, within the different districts of the said settlement of the Cape of Good Hope, as I shall approve, together with such salary or salaries respectively as I shall think proper to appoint."³

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1. Ibid p.1
 2. Ibid. p.9
 3. Ibid. p.14

In addition to this, all appointments were made by him, subject to the governor's approval, and all correspondence had to be addressed to him. An official advertisement dated 22 November 1806, had laid it down¹ that

"all letters and memorials upon colonial or civil business to be sent as usual to the colonial secretary's office".

A reminder was issued² on 30 December 1824:

"His Excellency the Governor, being desirous to establish a fixed and invariable rule for the guidance of the different departments of the government, is pleased to direct that in future all applications, letters or reports, which may relate to public business, or to any general business, shall be made invariably through the Colonial Secretary."

Attention was drawn to this again by another Government

Notice of 1 January 1838.

After 1812, the Secretary to the Government had a greater volume of official correspondence to handle; prior to that date the Home Government had been rather lax³ in conducting the official communications with the various colonies, but after the advent of men in the Colonial department like Lord Bathurst and Goulburn the officials in England made a point of laying down certain principles of colonial administration, that were to play an important part in the new attempts to relate colonial development to Imperial policy.⁴

Circumstances made the position of the Secretary at times most difficult. Theoretically his office carried no authority with it other than that entrusted to it by the Governor. As early as 1817, Lord Charles Somerset, when he was about to visit the interior, pointed out how necessary it was for the Governor to be able to delegate

1. Ibid. p.15

2. Ibid

3. MANNING. H.T. British Colonial ^{Government} Govt. after the American Revolution (1782-1820) Oxford 1933. p. 488 sqq.

4. of the establishment of the Board of Colonial Audit, 1814. MANNING op cit p. 383

his power to some one - presumably the Colonial Secretary as the senior official - when his absence was absolutely imperative.¹

"The frontier of the colony," said Somerset, "will ever afford the most important points to which the attention of the Governor here must be called, and there are many things to be ascertained which, I am inclined to think can only be so by personal investigation."

In 1822, W. Wilberforce, Controller of Customs at the Cape bore witness to the scope and extent of the Colonial Secretary's office, in the following terms:

"The duty of the Secretary, and in his absence, the deputy secretary, is to refer to the Governor the multifarious memorials and occurrences each day, with a precis of every one, and to receive his decisions thereon, causing them to be put in force. A general correspondence of the offices at the Cape, with the magistrates and with all parts of the Colony, is carried on by the secretaries. All deeds of mortgage are prepared in their office, excepting those to the Loan Bank and Orphan Chamber; as are also transfers of landed property, all of which are passed before commissioners to the Court of Justice, and entered in the public registers of the office. Grants of land are prepared and issued; the financial arrangements of the government are conducted and the proclamations and regulations of government emanate hence. The state of the currency, the register of strangers, the details of vessels arriving and sailing, and all statistical returns of population and of produce, are objects of the duties of the secretaries. The attendance of the secretaries is daily; the entire business of the colony going through their office, which acts as² the mainspring of the machine, forcing all into motion"

The report of the Commissioners of Enquiry upon the administration of the Government of the Cape of Good Hope³ dated 6 September 1826, further accentuated the tremendous responsibility carried by the office of the Colonial Secretary. They remarked that the administration of the executive government was almost exclusively conducted in the office of the Secretary to the Government, where also

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1. THEAL G. McC. "Records of the Cape Colony" London 1901 vol IX p. 252. See also MANNING op cit p. 405.
 2. CAMBRIDGE HISTORY OF THE BRITISH EMPIRE Vol. VIII. Cambridge 1936. pp. 198-9.
 3. P.P. 1st May 1827 xxi (282) p.1. sqq. J. T. Bigge, W. M. G. Colebrooke, W. Blair, to Earl of Bathurst, 6.9.1826.

were attested all the public acts of the government. The office of the Secretary to the Government had been converted into a sort of Government Archives, which lodged not only public business and government transactions, but also the official correspondence carried on with the Secretary of State for Colonies and the Governor of the Colony, plus the correspondence between the Landdrosts of the various districts and the respective government departments. The course of official communication between the Governor and the inhabitants had varied under different administrations but by far the largest portion was conducted in the shape of written memorials transmitted directly, or more often than not, through the office of the Colonial Secretary, to the Governor. The president and members of the Court of Justice, and the Landdrosts of the districts had at first claimed the right of addressing themselves directly to the Burgher Senate, but in 1824 an order was issued¹ which necessitated transmission of documents through the office of the Colonial Secretary.

They went on to point out that the business expected of the Secretary, was inconsistent with the authority normally entrusted to him.

"From a combination of the foregoing circumstances, and from the want of any acknowledged advisors of the Governor, there has been frequently attributed to the Colonial Secretaries a degree of influence unaccompanied by responsibilities, that seems to have divided the minds of the Dutch inhabitants, and even some of the sources of colonial patronage; and the designation of Colonial Secretary may have further tended to give a ministerial character to the chief secretary in his relation to the Governor, which has not been consistent with the responsibility devolving on the latter".

It would seem then that the personal relations between the governor and the Colonial Secretary would decide the degree of influence that the latter could have on the decisions of the former. Before the constitution of 1834 replaced the Council of Advice of 1825, there was virtually

1. *supra* p. 65

no check on government control; the Colonial Secretary possessed no positive rights to submit his opinion on any matter that the governor might choose to adopt, or to enter his protest against it: the functions of his office were strictly executive, with no other responsibilities attached to them than that which arose from the express terms of his commission. Yet the rank that was attributed to him in the colony, the comprehensive nature of the work that he conducted, and his perpetual and confidential communications with the Governor, tended to give him an influence in the colony "equal, and at times superior to that of the Governor himself"¹

The experiment of the Council of Advice was not a great success. Only a few subjects of a legislative nature, and those only of trifling interest had been submitted by them to the Governor.² Even a matter like Ordinance 50 of 1828 was framed by Mr Justice Bruton, one of the puisne judges, on the information gathered by Stockenström, in his capacity as Commissioner-General, and submitted to the former on the 3rd April, 1828. The Council of Advice did little more than approve of the Government's action.³ By Letters Patent dated 23 October, 1833⁴ two separate councils were constituted: an Executive Council of officials and a Legislative Council which comprised an official and an unofficial element. The Governor,

1. P.P. 1827 xxi (282) op cit p.1. passim.

2. Ibid ppl-7 passim

3. URIE Miss J. M. A critical study of the evidence of Andries Stockenström before the Aborigines Committee in 1835, viewed in the light of his statements and policies before 1835. M.A. (Rhodes University) 1953. p. 283. See also STOCKENSTRÖM Sir A. "Autobiography" edited by C.W.Hutton Cape Town 1887. Vol I pp286-291.

4. CHBE Vol VIII op cit pp 360-2.

though he was ex officio chairman of both councils, was no longer an autocrat in executive matters. The chief officials viz. the Colonial Secretary - the permanent head of the administration¹ - the Treasurer-General, the Attorney-General, the collector of customs² always assisted the Governor, and began to act more and more like an organised committee with executive purpose especially in the forties when, through the agency of Montagu, co-ordination and definition had become the order of the day. As a member of the Executive Council, the Secretary to the Government was established in office by the Letters Patent appointing the Governor, in which the duties of both these officials were defined in general.³ Broadly speaking, the Secretary of State's authority was now being exercised through the Governor who had the advice of both councils.⁴ Under the Letters Patent, the existence of the councils was ratified and their composition was specified in the Governor's Instructions.⁵ Although the relations between the Governor and the Legislative Council were at all times very intimate, the Council proved a failure and became increasingly unpopular with both the Eastern and the Western sections of the colonial community. Both

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1. FIDDES, Sir George V: The Dominions and the Colonial Offices. London 1926. p. 50
 2. Only after the additional instructions of 1840.
 3. cf P.P. 27/6/51, xxxvii² (457)
 4. FIDDES op cit pp 45 sqq
 5. See eg Letters Patent dated 15.12.1847 and Instructions dated 22.12.1847 issued to Sir Harry Smith, which stipulated that the Legislative Council should consist of not less than 10 and not more than 12 members: Officials were the Senior Military Officer, the Colonial Secretary, the Treasurer-General, the Attorney-General, the Auditor-General, the Collector of Customs. Unofficial members: J.B.Ebden, H.Ross, H.Cloete, P.V. vd Bijl, W. Cock, J.Atherstone. Further it was stated that the official members took precedence over the unofficial element in the Legislative Council, while both sections took precedence in the order in which the names appear above. P.P. 27 June 1851, xxxvii (457)

sections realised especially in the forties, the sterility of the Legislative Council: this realisation had already been brought forcibly to their notice when in 1839 Mr Ebdon was bluntly informed by Sir George Napier to save his breath - all the important decisions were arrived at elsewhere.¹ The result was that the role of the Executive Council and therefore of the Secretary to the Government became ever more important.

Having briefly sketched the history of the Colonial Office at the Cape, the analogy² which is often drawn between the Colonial Secretaryship and the Secretary of State for Colonies in Britain can now be examined.

"The Dominions and the Colonial Offices," says Fiddes, "may fairly claim to comprise the greatest institution the world has ever known they are directly interested in the conduct of affairs in about fifty different administrations"³

Looked at in their respective administrative settings, the Cape and Imperial Colonial Offices do display remarkable degrees of similarity - for just as the Secretary of State was the channel of communication between the Home Government and the Colonies, so the Secretary to Government at the Cape had become the key-figure in the administration. But because the Cape office was a creation of the London one, there was in fact a great deal of difference. Confusion arises for instance from attempts to draw an exact parallel between the relationship of the Secretary of State for Colonies with the British cabinet, and that of the Secretary to Government at the Cape with the Executive Council. Their functions were similar, but

1. THEAL, G. MCC. History of South Africa since 1795. Vol II. London. 1908. p. 239. See also CHBE op cit Vol VIII p. 367.

2. See VENTER op cit Ch III passim.

3. FIDDES op cit p. 3.

their constitutional position and status was quite different. The Secretary of State for the Colonies was a member of a cabinet whose political life depended in practice on the maintenance, not merely of the confidence of the Crown, but more vitally, on the support of a party or parties in parliament. In part he relied on the ideas and information of the permanent officials of the Colonial Office: in part on the ideas and policy of his colleagues in the cabinet, for what they would or would not sponsor often depended on the political exigencies of the moment, though it was not of course the practice to submit minor business to the cabinet meeting. There was no rule that the cabinet minister responsible for a department should have either administrative experience or special knowledge of his department, especially in the case of what was regarded the lesser offices. More. Because cabinet procedures, by whatever name they were called¹ not only had behind them a long history of practical experiment, but were, in the nineteenth century, developing rapidly against the texture of economic, social and political revolution in Britain, generalisations must be made with caution. Cabinet government worked because, while it eluded definition, it was guided by conventions grounded on experience of social as well as political and administrative life. It was dynamic because it was flexible and depended on no formal "Instrument of Government."

The Executive Council at the Cape over which the Colonial Secretary in Cape Town presided must be seen as a Committee. It was directly charged with the formulation and conduct of executive business, and its members

1. PLUMB J.H.: The Organization of the Cabinet in the Reign of Queen Anne. Royal Historical Society Transaction. Fifth series. Vol VII. 1957, pp 137-157. Also. JENNINGS. W.I.: Cabinet Government. Cambridge 1937. Chapters IV, IX passim.

were the working heads of administrative departments. As a committee it was responsible not to a constituted parliament, but to the Governor who could accept or reject its advice, since he alone was responsible to the Home Government for policy decisions. As a committee, the Executive Council had strong corporate feeling, a defined scope of action, and kept full minutes of its sessions of which copies were periodically sent to Britain. No cabinet minutes, as distinct from reports to the Crown, were kept by the British Cabinet until the first world war.¹ In Britain the Prime Minister did not usually report cross currents of opinion to the Crown, but only the general consensus; he was not required to submit his report for cabinet scrutiny; all cabinet discussions were considered highly confidential.² These differences in procedure underlie the fundamental difference between the position of the Colonial Secretary at the Cape and his counterpart in London. The latter was a member of an executive formally appointed by the Crown, it is true, but responsible to parliament. The former was a civil servant in status and function.

Moreover the Secretary of State was not a permanent appointee; he went in and out of office, with the changes in the fortunes and finesses of party politics. Between 1801 and 1854 twenty-two different men occupied the position of Secretary for War and Colonies.³ Buller is perhaps a bit harsh in his statement that

"each was brought into that office from business of a perfectly different nature, and probably with hardly any experience in colonial affairs"⁴

1. CARTER B.E. The Office of Prime Minister. London 1956. Chapters V, VI, VII, passim. Also JENNINGS op cit, Chapter IX passim.

2. See PLUMB and JENNINGS op cit.

3. MILLS. A. Colonial Constitutions. London 1856 p 15.

4. WRONG E.M. "Charles Buller and Responsible Government" Oxford 1926 p. 145.

but the impermanence of the colonial secretaryship did mean that in effect the business of that department fell to the permanent staff. The Parliamentary Under-Secretary also occupied a somewhat difficult and anomalous position.

"He feels not unfrequently," said Lord Buxton "that he is neither fish nor flesh nor fowl nor good red herring. His use and wont, his authority and responsibility, his enjoyment of and interest in his post, depend in a very large degree upon his chief." 1

Yet even the chiefs themselves were very infrequently absolutely familiar with the nature of the business expected of them. Sir James Stephen who was permanent under-secretary from 1836 to 1847 wrote in January 1846

"I never served but one man (Mr Huskisson) who extorted the confession that his was a dominant understanding; nor but one (Lord John Russell) who compelled us to feel his was a dominant soul. The rest were throwings-up of the Tide of Life; common place men in high station - mimes, or at best dramatists: I should say actors".2

Thus it was that much of the business of the Colonial Office fell to the permanent staff. In an eloquent attack on Sir James Stephen, "Mr Mothercountry", Sir Charles Buller, vindictively, but not altogether inaccurately noted that the real work was dispatched,

"in some back room - whether in the attic, or in what story we know not - you will find all the Mothercountry which really exercises supremacy, and really maintains connection with the vast and widely scattered colonies of Britain He is probably a person who owes his present position entirely to his own merits and long exertions. He has worked his way through a long and laborious career of official exertions."

And because each secretary of State in turn comes to rely more and more on this Mr Mothercountry his power

"goes on increasing from secretary to secretary and from month to month of each secretary's tenure of office; and the more difficult the government of the colonies becomes, the more entirely it falls into the hands of the only men in the public service who really know anything about colonial affairs." 3

1. HALL H.L. The Colonial Office. London 1937, p 51.

2. HALL op cit p. 53

3. WRONG op cit pp 145-150

The Imperial Colonial Office was thus dependant on its officialdom. At the Cape, as can be deduced from the brief analysis of the history of the office, this was not quite the case. The Secretary to Government was a Civil Servant who was appointed because of his intimate knowledge of the administrative business which would fall within the scope of his department. It is important, then, to examine the position with regard to the tenure of Colonial offices at the time when Montagu took over the Colonial Office at the Cape. Fortunately for the Colonial Service the dispensation of patronage in the higher official ranks had begun to fall off in the late 'thirties and 'forties. The principle of ^{no} promotion, except on sufficient proof of merit, was almost an established rule, so much so in the 'fifties that it caused a battle of words between Sir George Grey and Bulwer Lytton in 1858. ~~↳~~ Towards the end of 1858, there was a vacancy on the Cape executive; Grey recommended the appointment of Richard Southey. Lytton, however, appointed Cole, a relative of Lord Derby's. Grey maintained that the Cape Governor should have the prerogative to advance the man whom he regards most capable, whereas Lytton claimed the superiority of the Imperial Colonial Office. Grey eventually won the battle, in as much as it was established that in future the Cape Governor should have first say.¹ At the Cape it is true, that the right to patronage of the Governor was recognised even by the Colonial Office²; so that the advancement and recognition of the lesser members of the civil service came to rest largely in his hands.

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1. Information from Mr A. K. FRYER who is currently doing research on the Colonial Executive, 1854-61.
 2. MANNING op cit p. 419 sqq. See also GREY Earl: The Colonial policy of Lord John Russell's Administration. London. 1853 p. 38 sqq.

At the Cape, complaints against the favouritism which prevailed in Government appointments, all added to a general, though by no means specific antagonism towards the Executive Council. When however the various appointments are analysed the ~~charges~~^{charges} cannot be substantiated. All the evidence seems to point to one conclusion: that appointments were made on the basis of qualification, that a long intensive apprenticeship in one or more government departments together with a great deal of specialisation, were regarded indispensable background to the assumption to the responsibilities of the higher offices in the administration. A good example here is the appointment of John Montagu to the Colonial Office at the end of 1842, instead of the then acting Secretary to the Government, Mr John Moore Craig. His predecessor, Lieutenant-Colonel Bell, Secretary to the Government left for England in 1841, and upon receiving military promotion there, did not return to the Cape. When he left the Cape, Craig, the Governor's private secretary, was directed to act as Secretary to the Government. Sir George Napier requested the Secretary of State to appoint Mr Craig permanently to that position, but as he (Craig) was a near connection of the Governor's by marriage, Lord Stanley did not think it advisable to do so, and offered the position to Montagu, previously Secretary to the Government in van Dieman's Land. What is true for John Montagu, can be quoted equally well in the cases of Mr Harry Rivers and Mr William Porter. In 1836, Mr William Henry Harvey, an eminent botanist, had succeeded Mr Joachim Willem Stoll as Treasurer-General. In 1841 Mr Harvey was obliged to retire, due to his suffering from "an aberration of the mind", and he was succeeded by Mr Harry Rivers, previously Civil Commissioner and Resident Magistrate of Swellendam. So too, experience, a thorough knowledge of his particular branch of work, a keen political

insight and a remarkable capacity for hard work, were instrumental in the appointment to the Attorney-Generalship in 1839 of Mr William Porter. The position is, then, quite clear. It seems that analogies between the Imperial and Cape Colonial Offices, as offices, are valid up to a point; but it seems more correct to see the Cape Colonial Secretary as the counterpart of the permanent Under-Secretary in the Department of Colonies in London; if the Colonial Secretary at the Cape lacked the political stature of his British counterpart in London, he nevertheless had other advantages. The frequent absence of the Governor on the frontier, left him in de facto control, while the ramification of his office made him the keystone of the arch of government. Certainly Sir James Stephen regarded Montagu as the real Governor of the Cape during the administration of Sir Perigrene Maitland.¹ Part of Montagu's influence as Colonial Secretary then, depended on the nature of his office, and local circumstances at the Cape. Equally part, indeed much of his influence depended on the personal qualities and the experience he brought to bear on the problems which confronted him in the Cape.

Burke's Peerage² neither substantiates nor refutes the claim made by Montagu's biographer,³ Norman baron Drogo de Monteacuto.⁴ What is clear is that for generations

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1. BELL K. N. and MORDELL W.P. Select Documents on British Colonial Policy, 1830-1860. Oxford 1928. p. 108
 2. Burke's Peerage, Baronetage and Knightage. Edited by L.G.Pine. London 1953. p. 1385 sqq.
 3. NEWMAN W.A. Biographical memoir of John Montagu. Cape Town 1855. p. 2 sqq on Montagu's family history.
 4. It is interesting to notice that as late as 1935 a member of the Montagu family takes the name Drogo - this could of course be explained as fondness for legend.

the family had played its part, however minor, in affairs of state.¹ There was a tradition of public service as well as social status brought by family connections.

In 1814 at the age of seventeen, John Montagu was appointed to a corps in the 52nd Regiment, and was present at the battle of Waterloo in 1815. After this he was elevated "to a lieutenancy by purchase"² and after having "purchased his company"³ in the 64th foot in 1822, he seemed prepared for a military career. But in 1823, just after his marriage to Jessy, daughter of Major-General Edward Worsley he proceeded to van Dieman's Land with his uncle, Sir George Arthur⁴ where he occupied the position of private secretary till 1827. In 1826 he had become clerk of the Executive and Legislative Councils and in 1829 he was called to England on military duty. Upon his departure, the Lieutenant-Governor spoke in terms of high approbation of his "zeal, intelligence, and discretion in conducting the business of the Councils"⁵. In 1830 he left the army and was reappointed to the clerkship of the Councils, while in 1832 he took charge, temporarily, of the Colonial Treasury. When the Colonial Secretaryship became vacant in 1834, Montagu was nominated to fill the post until a permanent appointment could be made. On the advice of Sir George Arthur he was permanently appointed to that office in the same year, and held it until 1842.

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1. See Appendix A : Lineage of the Montagu family.
 2. NEWMAN op cit p. 11.
 3. Ibid p.11.
 4. MORRELL W.P. British Colonial Policy in the age of Peel and Russell. Oxford 1930. p. 388.
 5. Ibid p. 14.

Sir George Arthur who was succeeded by Sir John Franklin in 1836, reported the following on Mr Montagu:

"From the Colonial Secretary you will derive all that assistance which can be expected from an experience in colonial matters of thirteen years duration, from thorough habits of business and from assiduous application to office duties, combined with an integrity of character that can be relied upon." ¹

He proceeded to England on leave in 1839, the colonists sending him a memorial praying for his speedy return to the colonial office which "he had so long conducted with advantage to the colony and honour to himself"². After his return in 1841 the remainder of his term of office was dominated by two factors. The first was his effort to establish the Probation System of Convict Discipline, in place of the Assignment System which had been abolished by the Home Government. The experiment was both expensive and important, and Montagu brought all his talents to play in an attempt to effect the change. His efforts were just beginning to show the first fruits of success - a result which confirmed him in his belief of the judiciousness of his scheme and therefore partly explains his convict programme at the Cape - when he became involved in a scandalous suit against the Governor. The result of this was his peremptory dismissal from office by Sir John Franklin, and, incidentally, his financial ruin.

In a despatch to Sir John Franklin, dated the 13 September 1842³, Lord Stanley completely exonerated Montagu from the charges proferred against him and at the end of that year offered Montagu the vacancy in the Colonial Office at the Cape, which the latter gladly accepted. (Franklin had accused Montagu of assuming influence and authority in the administration far exceeding the authority properly belonging to his office; that he had maintained his

1. Ibid p. 15.

2. Ibid p. 17.

3. Quoted in GTJ 28.3.1844.

influence by means either despicable or objectionable; that he had written offensive articles in the newspapers against the Governor; that Montagu had appealed to the people against the Governor's sentence of suspension. Stanley exonerated Montagu on all these counts, pointing out that some circumstances placed undue authority in the hands of the Colonial Secretary, but that no evidence had been led to show that he had acquired this power by unworthy acts or dishonest means. Far from Montagu's ever appealing to the public against the Governor's sentence of suspension, the public in fact petitioned the government without his knowledge, and Montagu, upon his departure even refused to take away with him the most lavish and expensive gifts¹. Franklin was severely rapped over the knuckles for his "hasty actions").

When he left van Dieman's Land, Montagu received many addresses, all praising him for "that zeal, efficiency, honour and independence which you have ever exhibited in the public service". Public bodies, government officials and private men, all acknowledged his unstinted devotion to public affairs, the fidelity with which he executed the duties of his own office, his most efficient control of the Treasury for a short period; but especially as Colonial Secretary did he prove his worth as a public officer. His thorough knowledge of every branch of the public service, the patient attention to the claims of the settlers and "the plain, open, intelligible and effective manner in which you have brought forward and conducted all measures of the government" in the Councils.²

1. Newman op cit p. 21.

2. The above commendations are drawn mainly from NEWMAN op cit pp. 19-25.

On the 25th April 1843 a Government Notice¹ appeared, which announced that on the 28th September 1842

"Her Majesty has been pleased, by Warrant under the Royal Sign Manual to appoint John Montagu Esquire, to be the Secretary to the Government of this Colony".

On Thursday 4 May 1843 he took the oath and his seat as a member of the Legislative Council.² As Secretary to the Government, he thereby assumed an office with tentacles stretching backwards and forwards into practically the whole machinery of administration.

Perhaps it was because he saw the necessity of defining the functions of his own office, that Montagu saw also the need for placing, under their proper departments, those offices which did not strictly fall within the scope of the Colonial Office. In the 1840's the Executive Council was destined to guide and to advise; but before it could do so this body itself had to be guided. It had to be developed into an organic executive with functional departmental heads who were experts in the true sense of the word. Executive control in the 1830's had been embryonic; someone was needed to effect the change over at a time when the practicalities of the new system had to replace the obsequies of the old. This task should obviously have fallen to the men at the head of the administration; so that one would have expected that the Governors at the Cape during the 1830's and 1840's would have translated their obvious duty into political practice. But this of course was quite impossible - for the late thirties and the forties saw a change in the post of Governor no less than four times, and since a good long period of residence at the Cape was required of anyone who should attempt this important task, the Cape was

1. See GTJ, 11.5.1843

2. Ibid. 18.5.1843.

extremely fortunate in having for an unbroken period of ten years the services of John Montagu, as Secretary to the Government. He never claimed that he was primus inter pares among the other executive officials: he was in fact second only to the Governor, or, after 1852, to the Lieutenant-Governor when he presided in the West, and he realised that the Cape Colonial Office itself had a functional primacy over the other departments. The long series of instructions to Colonial Governors from the Imperial Colonial Office shows the emergence of something like a colonial Civil Service, and shows also the constant utilisation in one sphere, of experience gained in another. This is adequately portrayed in the transfer of Montagu from van Dieman's Land to the Cape¹, and also in the transfer of officials from one post to another at the Cape.² What then, was the position of officials holding office from the Crown? In terms of the instructions issued to Sir George Napier in 1838, the unofficial members of the Legislative Council, who had hitherto been nominated for life, were now informed that their tenure of office would in future be only during pleasure³. It probably made the officers of Government wonder about their own positions. The matter was cleared up in a despatch, directed in the first instance to Poulett Thomson, the Governor-General of Canada. In this despatch⁴ devised in the first place as the compromise answer to a local crisis in Canada where

1. Supra p. 18

2. See e.g. BEAGLEHOLE J.C. "The Royal Instructions to Colonial Governors, 1783-1854: A study in British Colonial Policy. In Bulletin of the Institute of Historical Research, Vol 8, No 21, 1930 pp 184-187.

3. KILPIN R. "The Romance of a Colonial Parliament" London 1930 p. 58

4. KENNEDY W.P.M. Documents of the Canadian Constitution, 1759-1915 Toronto, O.U.P., 1918. p 524. Lord John Russell to Poulett Thomson, 16.10.1839.

there had been representative government since 1792, Lord John Russell pointed out that the Governor and his subordinates are appointed during Royal pleasure, but that the Governor's commission is revoked "whenever the interests of the public service are supposed to require such a change in the administration of local affairs."

With respect to the other public officers, Russell announced that

"You will understand, and will cause it to be made generally known, that hereafter the tenure of colonial offices held during Her Majesty's pleasure, will not be regarded as equivalent to a tenure during good behaviour; but that not only will such officers be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure, but that a change in the person of the Governor will be considered as a sufficient reason for any alteration which his successor may deem it expedient to make in the list of public functionaries, subject of course to the future confirmation of the Sovereign These remarks are intended to apply rather to the heads of departments than to persons serving as clerks or in similar capacities under them "

It is true that, in the Cape Montagu survived many changes of Governor: in practice the rule was a dead letter at the Cape. But the interest lies in seeing how a matter, designed for Canada, reacted on quite a different position in the Cape where there was no tradition of Representative government. If the Executive officers at the Cape were not responsible to a popular chamber, they were at least responsive to the colonists' demand for good government. In the instructions to Sir Harry Smith¹ the injunctions of the above circular were repeated; by that time, the despatch of 1839 had been circulated to the colonial dependencies², and in his memorandum on representative government, in 1848, Montagu, even anticipated the effect

1. P.P. 27 June 1851, xxxvii (457)

2. Cambridge Historical Journal Vol II No 3, 1928, p. 249.

it would have on public functionaries under a system of representative government.

"It is clear," he said, "that every public functionary receives his appointment directly from the Crown, and holds office only during its pleasure, irrespective of any expression on the part of the House of Assembly as to its confidence in the officers, or otherwise. Still the Assembly constitutionally will become the great inquest of the Colony, and as such no measure affecting the public interests can be placed beyond the reach of its inquiry. It will, therefore, be entitled to call every officer to account for the discharge of his public duties, and to address the Crown for his removal should it decide that there are just grounds for such a course. Here, I think, its duty stops, and no advise of the Crown can safely disregard such a petition from the representatives of the people when good cause has been shown." ¹

In his co-ordinated efforts to define the scope and powers of every department, we discern both a desire to make the administration more efficient, and a knowledge of the necessity for such a move if the public officials were to entrench themselves in their positions. It suffices at the moment to direct attention to his financial reforms which gave the Receiver-General and the Collector of Customs the basis for new departmental endeavour; to the fantastic energy with which he embarked on a programme of road construction, the improvement and extension of public works, all of which led to such departmental definition that the Department of the Civil Engineer was separated from that of the Surveyor-General in 1848;² to the inauguration of a convict system, working so badly at the time of his arrival that he lost no time over making practical suggestions for its reform; these eventually resulted in a complete redirection of convict labour, changed the prison system at the Cape, and made the inauguration of the Board of Prison Commissioners in 1848 a practical necessity.³ This, together with

1. P.P. 5 February 1850, *xxxviii* (1137) p 20. Montagu's memorandum, dated 10.4.1848. My italics.

2. VENTER op cit p. 160.

3. Ibid pp 221-5.

his positive suggestions and able guidance in a campaign of judicial reform, gave form and ability to the office of the Attorney-General. Such indeed was the degree of administrative control through distinct departments by the end of the decade, that executive officers stood out, not merely as administrators, but were recognised as the source of vitality and the leaders of public opinion.¹

The process of definition in executive posts would not have been complete without a concomitant reorganization of the Colonial Civil Service at the Cape. In this connection practical results were obtained at the Cape some years before the Trevelyan - Northcote inquiries into the state of the Imperial Treasury had started the train of civil service reform in Britain.² Trevelyan's first report, dated 21 May 1849, announced principles which were being introduced into the Cape administrative system by Montagu, as early as the end of 1843: Trevelyan told Gladstone in 1854 that his aim was "to make the Treasury really a supervising office possessed of a firm hold of all branches of business which it had to deal with (so as to) introduce a powerful principle of unity into the Public service (which) would give a beneficial stimulus to exertion in every other department."³ Montagu, as head of the Colonial Office at the Cape, had from the beginning begun to organise his own department on similar lines.

While lesser appointments at the Cape were subject to confirmation or rejection in England, it was the Governor who selected all Dutch officials, and many of the English ones. According to Manning, the Dutch,

1. *Infra* ch. §V

2. Vide COHEN E.D. : The Growth of the British Civil Service 1780-1939. London 1941. *passim*. Also HUGHES E: Sir Charles Trevelyan and Civil Service Reform, 1853-5. In English Historical Review Vol 64, London 1949. pp 53-88, 206-234 *Passim*.

3. HUGHES *op cit* p 55.

because of the remaining few resorts to patronage, were undoubtedly discriminated against, except in judicial posts,

"so that even after the better standards for the colonial service everywhere, were accepted by the Colonial Office in England, it was still very hard for men with no backing or connection, to establish themselves on an equal footing (in the lesser posts) with the younger sons or even the distant cousins of the British aristocracy." ¹

But of this no trace can be found in appointments at the Cape. The Governor was undoubtedly advised by his Executive Council, and one can hardly credit men like Montagu and Porter, participating in a practice, the eradication of which had become the hallmark of their policy of departmental reform. As in the British Colonial Office, so at the Cape, the practice of carefully weighing the applications and testimonials of candidates was observed while attempts to influence selection through members of government were generally regarded as indicating that the applicant himself did not consider his qualifications sufficiently good to justify his appointment on his own merits.² By the end of the 1840's the Civil Service examination system, which antedated any national system of examinations in Britain, was inaugurated, and the capabilities of candidates for office, were scrupulously reviewed. A Government Notice issued in January 1850, stated that upon nomination by the Governor, of anyone for clerkship, the person nominated was to be examined by a Board, consisting of two or three heads of departments. The object of this examination was "to ascertain that he possesses the requisite degree of education for the satisfactory execution of the official duties which will be entrusted to him." The person would be examined in "the common rules of arithmetic ... vulgar and decimal fractions", would be required to make abstracts from official documents to test his intelligence, and

1. MANNING op cit p. 417

2. FIDDES op cit p. 59

required to "show that he is able to write and compose directly." Besides this he would be examined in one or more modern languages, Latin or Greek, History, Geography, and Science. The results went to the Governor, who appointed him on probation for a year, during which time written reports were expected from his head of department periodically. Promotions "are to be made on the grounds of superior fitness, seniority being only considered when the other claims are equal."¹

Appointments, other than on principles of merit, were becoming increasingly rare at the Cape. In 1847 Montagu was hauled over the coals by an Eastern Province colonist for displaying partisanship in the appointment of the Harbour Master for Port Elizabeth.² Harbour Masters were under the immediate control of the Governor of the Colony, but since they had to correspond direct with the Colonial Secretary, their administration was virtually subjected to the guidance of that office. The letter accused Montagu of not appointing Mr Gubb to the vacant post occasioned by the death of Mr Dunsterville in 1845, since he (Montagu) had "expressed himself as to leave no doubt as to a favourable issue". This evidently was the reply Montagu had sent to Colonel Hare who had forwarded Gubb's application. But as no evidence can be traced to support this particular accusation, one is forced to agree with the rest of the letter which points out the course then pursued by the Colonial Secretary. Mr Gubb was evidently only one of a number of gentlemen who responded to the call for applications published in those colonial newspapers

1. G.G. No 2304, 24.1.1850. It is interesting to notice that it was not till 1854 in Britain that the question of Civil Service examinations was alluded to.
HUGHES op cit p. 63.

2. Anonymous letter to Editor, E.P.H. 6.11.1847.

which had a contract for the publication of Government correspondence.¹ Among the applications received was one from Mr Jamison, an officer in the Royal Navy, whose qualifications must have exceeded those of Mr Gubb. Jamison was accordingly appointed², and Montagu wrote to the Resident Magistrate of Port Elizabeth authorising Mr Gubb to act as Harbour Master during Mr Jamison's absence, and also should Mr Jamison perhaps not be allowed to retire from the navy, Montagu intimated that Mr Gubb, who was probably the next applicant in line for appointment, would be recommended to fill the vacant position.

The model of procedure adopted here was in keeping with the rules later officially laid down for promotions to the civil service: everything pointed to the new practice of advertising positions in the colonial administration. It was seldom that an office of public importance would be filled by off-hand government nominations. The practice of having government officials filling offices of gain, was soon put to an end, for by a Government Notice dated 17 August 1843³ and signed by John Montagu, it was definitely laid down "that no public servant of any government department shall, after above date, be allowed to practice as an agent, or transact any private business".⁴

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1. Note, e.g. The Grahamstown Journal, The Commercial Advertiser, The Cape Town Mail. In the case of local appointments, the Civil Commissioner usually called for the applications, and then sent them, in the case of the Eastern Province, to the Lieutenant-Governor, in all cases eventually to the Colonial Secretary for executive decision.
 2. Government Notice, 23.10.1845, G.G. 2079, dd. 24.10.45.
 3. See G.T.J. 31.8.1843, See also G.G. 1965, 18.8.1843.
 4. This did not apply to people in semi-official positions, doing work by contract e.g. postal conveyors.

In addition to ensuring that public servants would now be able to devote more time to their public business, it also tended to reduce the number of those who had hitherto taken public office merely because it gave them more immediate openings for the transaction of private business.

In his report of 1849,¹ Trevelyan had pointed out that the greatest defect of the present administration lay in the over-reliance on the faculties and time of the person at the head of an office.² This was most certainly true in the case of the Cape Colonial Office: if one can point to men like T. C. Brooksbank, the great expert at the Treasury, or Edwin Crafer, another industrious public servant, both of whom broke down under the strain of official business, then one should realise, too, that the Cape produced its own victims; John Montagu worked himself to death for the public good at the early age of 56, while his son, as Under-Secretary in Rawson's administration, also broke down in 1859. Through the years the Colonial Office had been built up into a great circumlocution cum executive department, so much so that in the 1840's, many colonists referred to the Colonial Office as the government, and many more lay their grievances of whatever nature, at the doors of this department. In reply to the report of the Central Road Board, dated July 1847, an anonymous correspondent³ upholding the case put forward by Port Elizabeth and the Lieutenant-Governor Sir Henry Young against the Board for discrimination, implied very strongly that the Colonial Office, with Montagu at its head, had taken too firm a hold on public business; he went further to suggest that Montagu had in

1. Supra p. 24.

2. HUGHES op cit p. 56

3. EPH 28.8.1847.

fact taken over the reins during Waitland's administration - it was now the business of every colonist to prevent his placing Sir Henry Pottinger in the same dilemma.

The volume of work expected from the Colonial Office was fantastic. Writing to the Secretary of State on 15th November, 1843, Napier drew attention to the inadequacy of staff for the Colonial Office.

"The numerical inefficiency in the establishment of the Colonial Office," he said "was often alluded to by the late acting Secretary, although, for obvious reasons the point was not pressed by him; but as Mr Montagu after more than six months experience of the duties devolving upon the executive force of his department finds that notwithstanding more than ordinary endeavours, the current business is falling in arrear without the least probability of bringing up the accumulation of former years and that several important inquiries into the finances of this Government are thereby delayed, I have felt myself called upon to comply with his requisition, and to authorise the employment, until your Lordship's pleasure shall be known, of two additional clerks" 1

Enclosed in this despatch were letters from Colonial Office clerks to Montagu, all pointing out the inadequacy of the present position. W. Smith, Chief Clerk wrote to Montagu on 30th September, 1843 and remarked that "the executive force of this office is, and has long been, wholly unequal to the labour required from it," while J. A. le Seuer, First Clerk, observed that

"I am under the unpleasant necessity of again submitting to you the impossibility of carrying on the details connected with the correspondence of this office without further clerical assistance as the work is considerably falling into arrear" 2

In submitting these letters to the Governor, Montagu added that the Port Natal and frontier correspondence had augmented to an immense extent, while the general business of the Government and the districts had also increased.

"In every branch of my office I am short handed, and I am daily obliged to postpone something or other from not having sufficient assistance" I hope the Governor

1. Government House Records (hereafter G.H.) 23/14 p. 593.
Napier to Secretary of State, No 215, 15.11.1843.

2. G.H. 28/23.

will point out the invaluable assistance of one efficient clerk and a copying clerk and with their aid I will endeavour to keep the current business from falling into arrear I can assure His Excellency that I only desire to make my office efficient in clerks at the least possible expense" 1

Montagu had decided to offer the higher clerkship to a Mr Overbeek who was on a retired allowance, having formerly held the appointment of Accountant in the late Discount Bank. The position was offered to him at a salary of £200 per annum, a sum far exceeding his pension. Overbeek made every objection he could to the arrangement and seemed determined not to accept it. Equally determined to effect a colonial saving by not employing another person, since Overbeek was available, Montagu made various overtures to the latter, finally reminding him of a letter from the Lords of the Treasury to Lord Stanley² in which it was stated that persons on the retired list should be called upon to re-enter the public service, as opportunity may offer for their employment, in offices with salaries equal to those they may respectively have held, and that if they should decline to accept the offer, they should no longer be considered as entitled to receive their temporary allowance. This was not so much the autocrat Montagu to the fore, as the head of the Colonial Department, feeling the need for competent assistance, and determined to obtain efficiency with as little expense as possible to the Colonial Government. At the bottom of the above memorandum from Montagu there is a pencilled note presumably from the Governor to his private secretary:

"I concur in the above memorandum - and let Mr Overbeek understand that the Secretary of State's instructions will be carried into effect if he still declines the office" 3

1. Ibid. Montagu to Napier 4.10.1843.

2. G.H. 1/20. Lords of the Treasury to Stanley, 18.3.1834.

3. G.H. 28/23

While the Governor was on the frontier in 1847, and 1848 the business of Mr Montagu's department was increased so much that a larger staff for the Colonial Office became an absolute necessity, and the Governor wrote accordingly to the Secretary of State for Colonies:

"Adverting to my dispatch of the 1st March last in which I had the honour to present that the recent and great addition of territory (i.e. Juansberg, Ely, Auckland, and Woburn), population, and I may safely add revenue of the colony, would entail a great increase of correspondence on the Colonial Office, and that the whole correspondence of the Eastern Districts, in all its details, has now merged into the Colonial Office, I have now the honour to submit that the additional assistance in the establishment of clerks is evidently imperative. The previous duties performed by the clerks of this office were to the full extent of human exertion and capability, it is, therefore, evident, that increased labour requires increase of hands. I regard the duties of the Colonial Office to have increased 25 per cent., the letters during the month of March last having exceeded 1100 in number. The energetic and immediate despatch of business which, under the able superintendence of Mr Montagu, has hitherto characterised his office, requires able and energetic men as subordinates." ¹

During the Kaffir War of 1850-51, the Governor was continually away from the seat of government and Mr Montagu was left virtually in charge to pilot the new constitutional ordinances through the Legislative Council.

Mr Montagu had been commissioned by the Governor to fill the four vacancies in the Legislative Council by appointments and to proceed with the business,² and on the 2nd February 1852, the Secretary of State wrote back

"the recent correspondence from the Cape has shown me that there is a necessity for the residence of an officer at Cape Town with authority to carry on the civil Government under the general direction of the Governor while the latter is on the frontier. This authority the Colonial Secretary does not possess, since he is only empowered, properly speaking, to make known the orders of the Governor to those whom they may concern, and not to take it on himself to act without those orders" ³

1. NEWBMAN op cit p. 322

2. TUFAL G. McC. "History of South Africa since 1795" Vol III (London 1908) p. 122.

3. P.P.³² 1852 xxxiii (1428) ^{P. 257} ~~3.2.1852~~. Grey to Cathcart, No. 2.2.1852 p. ~~257~~.

At this time the Colonial Office in Britain was considering the appointment of a Lieutenant-Governor who would take command of the Government whenever the Governor proceeded to the frontier.¹

Montagu was upright and conscientious, but his imperious disposition and autocratic manner did not breed a great love in the heart of the colonists.² Yet this did not sway him from his course: once he saw the goal before him his determination spurred him on. Though perhaps never sincerely loved, he was many times admired. In 1847, an anonymous correspondent to the Eastern Province Herald³ noted the arrival of Montagu by the "Phoenix" to inspect the Cradock Pass road. It was a pity he said, that Montagu's multifarious duties prohibited his visiting the Eastern Province more often:

"Give us a Mr Montagu," he said, "for he is a very good impersonation of that separate and distinct government which we now agitate for We must have a separate and distinct imperium in imperio; A Montagu, in fact, to designate things by a new and very significant appellation."

The above author confused the real motive behind Montagu's efforts at reorganisation, as much as did the editor of the Eastern Province Herald in 1849⁴. The latter launched a venomous attack against Montagu's suicidal "centralisation" and quoted in support of his invective, instances which, when viewed against the background of the

1. But this was not the first time that the Colonial Secretary had been commissioned to take over the Government: for in 1835 Lieutenant-Colonel Bell was empowered by Sir Benjamin D'Urban to carry on the administration with the advice of the Executive, under the title of Provisional Government, while the Governor was on the frontier. FRANK G. McQ. "History of South Africa 1834-54" London 1893 p. 13.

2. See e.g. his pronouncements in the Legislative Council on the occasion of the presentation of the Kaga Petitions (infra p. 190); his speech on the occasion of the withdrawal of the Stamp Act (infra p. 76)

3. EPH 28.8.1847

4. EPH 24.3.1849.

trends in Imperial reorganisation, and Montagu's own work at the Cape, must conclusively prove, not "centralisation", but co-ordination: he quoted "the host of subordinates" who were merely "the auxiliaries of no properly constituted principal ... creatures or tools without proper self-reliance". But in the very next breath, though he might not have known it, he was voicing Montagu's own opinions: "He^{who} would seek to uphold the present centralising administration at the Cape, is the greatest enemy the country has ever seen." This was what Montagu meant by the co-ordination of departmental administration: this was what he had done by 1849¹. He wished as much as did the editor of the Eastern Province Herald, for the office of the Secretary to Government to be "clearly defined". He realised, even more so than did the editor, that centralisation might lead to "confusion and impromptitude". He realised too that no progress could be made in the country until co-ordination and definition had been achieved. But unlike the editor he saw the course to be followed dictated, not by the uncompromising triumph of local self-government, but by strict definition in the higher nervous system of the colony.

An elucidation of the course proposed by him and executed with his unstinted co-operation, is the subject of the succeeding chapters. He was a man who for a period of ten years virtually dominated the Cape scene with his forceful personality, his terse pronouncements and, even more important, his devotion to public service.

1. *Infra* Chapter iii

CHAPTER II

Montagu the Financier

Financial efficiency was one of the hall-marks of the great administration of Sir Robert Peel. It is then perhaps as much a reflection of new trends in British policy at the time, as of the financial disorganisation at the Cape, that Stanley (Secretary for War and Colonies, September 1841 to December 1845) should emphasise, in his instructions to Montagu at the end of 1842¹, the need for reorganising the Cape finances. These, as Stanley pointed out, were in a most unsatisfactory state. The public debt was high; administrative control of the collection and expenditure of revenue was quite inadequate. Experience in van Dieman's Land² had shown Montagu the importance of public finance in relation to administrative and economic development. He saw that his plans for the Cape, whether the need for the improvement of communications, or public works, would turn on administrative and fiscal reconstruction. Montagu was to undertake what was, in fact, the first attempt to devise an overall reconstruction which would relate administrative techniques to the needs of the expanding colony. True, from time to time since the second British occupation in 1806, regulations had been published, but they followed no coherent plan and were not systematically adopted and revised. In 1806 and 1809, for example, the Receiver-General and Government Auditor had received their instructions³ but a uniform list of regulations for the period 1806 to 1843 is conspicuous by its absence. The tendency was to handle

1. NEWMAN op cit p. 29

2. Supra p. 175qq Ch I.

3. VENTER op cit pp 228-237

situations as they arose, to treat problems in isolation, and to invent ad hoc rules on what came near to being a parochial basis.¹

The task which Montagu had to accomplish may thus be said to have fallen under three main heads: the regulation of government revenue and expenditure; the redemption of the colonial debt, by the application of certain colonial funds to that purpose, as well as by establishing a regular system for the cancelling of the dangerous circulation of promissory notes; lastly, an attempt to impose this system even on the local bodies at the Cape, so as to arrive at a system of finance, sound enough to allow extension of schemes of public works, road building, and immigration.

Before proceeding with his scheme for the redemption of the Colonial debt, Montagu called for returns from the various districts, of their respective arrears in taxes. In a circular letter, dated 15 June 1843² information had to be furnished on the amount of arrear taxes due on 1 October 1841, the amount received from that date to 31 May 1843, and the amount still due on 1 June 1843.³ On the 31st July 1843, Montagu laid the returns from the various districts on the table of the Legislative Council⁴

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1. Cf. the following extract from Additional Instructions for Landdrosts and Heemraaden of the Country districts, 20.9.1815: "Agreeably to the instructions the Landdrost or Treasurer; .. the monies of the Districts must be kept in a chest with three different locks. This is a very useful regulation and is of the greatest importance for satisfying the public that the district's money cannot be made use of for private purposes".
THEAL G. McC: Records of the Cape Colony, Vol XXV p. 6
An examination of Theal's Records established the conviction that there was serious financial disorganisation at the Cape, and suggests the need for intensive research on the period 1806-1843
 2. LEGISLATIVE COUNCIL MINUTES 1837-45. p. 380. 21.6.43.
 3. The returns were to be specified under a number of headings: House Tax, Water Tax, Private Waterleading, Personal Assessment, Tax on Servants, Tax on Horses, Tax on Carriages, Income Tax. CTM., 8.7.1843.
 4. L.C. op cit p. 389.

these showed that with the exception of the districts of Albany and Uitenhage, the Colonial Treasury was creditor to all the others.¹ This was a burden the Colony could not afford to carry, and Montagu, realising that the efficient running of the administrative machine depended, fundamentally on the control of public finance, set out to revise the system in conformity with the trends of financial reorganisation in Britain since 1832. There the abolition of the old Exchequer office in 1834² made it imperative for departments collecting revenue, thereafter to pay it directly into the Bank, where an account was opened for the Comptroller General: issues to paymasters were now only made under the supervision of this officer, and by authority of Treasury warrants. The effective appropriation audit, introduced into the navy in 1832, was extended to the army and ordnance Votes in 1842 during the Prime Ministership of Sir Robert Peel.³ The process of strict supervision over the civil supply was completed when, in 1849 Civil Establishments were, for the first time, laid as a whole before the Commons.⁴ It is then again in accordance with current trends in British Policy, as much as a genuine desire to attempt a reorganisation of the inadequate financial arrangements at the Cape; that prompted the issue of the following Government Notice on the 24th July 1843:

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1. The inhabitants of Cape Town owed no less than £15,146. 6. 11³/₄d CTM 8.7.1843 op cit - the Cape district £1,726. 12. 7. George £1,037. 18. 0, Stellenbosch £931. 16. 10³/₄d. In fact, all in all, the Colonial Treasury was owed over £20,000. Figures from CTM 5.8.1843.
 2. KEIR D.L. Constitutional History of Modern Britain, 1485-1937. London 1938. p. 417.
 3. Ibid p. 418. Sir Robert Peel, Prime Minister 1834-35, 1841-46.
 4. Ibid

"It having been represented to His Excellency the Governor, that in many instances the Regulations of the Government, promulgated from time to time, respecting the collection and expenditure of the Public Revenue of the Colony have been disregarded and deviated from, His Excellency has caused them to be revised, condensed and embodied into the following regulations, and has directed them to be published for the information and guidance of the officers of the Government, and other persons interested therein. His Excellency, in requiring the particular attention of the Public Officers to this code of Regulations, has directed it to be notified that it will not be in his power to relieve an officer from any surcharge made against him for non-compliance with any of the requisitions herein contained, excepting under the most satisfactory explanation." ¹

This was, signed by Montagu in his capacity as Colonial Secretary, but his importance in this connection goes further than a mere signature: for, in a despatch to the Secretary of State, dated 27th November 1843, Napier, stated that "these new rules and regulations were prepared by the Secretary to Government" ²

The "Regulations for the Collection and Expenditure of Colonial Revenue",³ display some very interesting features: they were obviously designed to provide that strict uniformity within the Finance Department of the Colony which had hitherto not been observed.⁴ The officers charged with the collection of the Public Revenue in Cape Town were now to pay their collections, "daily if possible", but in any event definitely at the end of each week, into the hands of the Treasurer, and the

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1. Van der Sandt de Villiers, D.J. Cape of Good Hope Almanac and Annual Register for 1845. p. 87.
 2. G.H. 23/14 p. 160
 3. Cape Almanac op cit p. 88. See also G.G. No 1962, 28.7.1843.
 4. While it is true, for example that Somerset who had in 1815 complained that the District accounts were not kept "with the perspicuity so essential to all financial transactions" had instructed all officials to keep regular accounts of receipts and expenditure, the Commission of Enquiry, ~~who~~^{which} visited the Cape in 1823 reported in 1826, that the system was still "very inadequate."
THEAL op cit Records, Vol XXV p. 5, Vol XXVII pp 178 and 493 sqq.

sub-collectors in the districts - i.e. the Field Cornets - to their respective Civil Commissioners. Monthly statements were to be submitted to the Colonial Auditor for examination and audit. To avoid any delay, it was laid down that "the Civil Commissioners will transmit their General Cash Accounts by the first post after the termination of the month, properly made up and endorsed according to the established form". The statements were to be signed in Cape Town by the head of the Department in which the Revenue was collected, and in the districts by the sub-collectors, and were to be affirmed by the following declaration:

"I, , do solemnly and sincerely declare that this is a true and faithful account of all the sums received by me as between and , and that I have paid over the whole amount to the Colonial Treasury (or Civil Commissioner as the case may be) on the respective days, and in the proportions of coin specified therein, and I make this solemn declaration consciously believing the same to be true."

As far as the Expenditure of Public Monies was concerned, it was laid down that "all heads of departments will make out their Salary Abstracts, according to the usual form, every month in duplicate, and forward the same on the last day of the month direct to the Auditor for his examination and audit". Other returns were called for quarterly, and after the examination by the Auditor,

"all heads of departments will be responsible for any overpayment, or unauthorised or excessive charges and the amount will be surcharged against them".

The regulations went further than this to ensure that scrupulous attention to accuracy and honesty which Montagu had intended.

"The treasurer will not issue the salary due to an officer against whom a surcharge has been made, until he has paid into his hands the amount of the surcharge ... Whenever any salary, or other payment, due to any individual, is claimed on his behalf by another person, a sufficient assignment or authority, in writing must be produced, the Accountant being held responsible for any payment made without such proper authority".

In future no extra expenditure was to be incurred than that for which provision had been made in the estimates. Authority to incur further expenditure could be obtained only on written application to the Governor: if such were granted, the Colonial Auditor had to be informed of this immediately. In cases where there was uncertainty of the authority for the monies to be spent on a particular project, authority to proceed with the project had to be obtained, in writing, from the Governor "conveyed through the usual channel viz. the Secretary to Government". No expense whatever was allowed to be incurred upon verbal authority; "and whenever any head of department or other officer of the government may receive from the Governor a verbal assent to the commencement of any work or repairs, or to the expenditure, in any way, of the public money, such assent is merely to be considered as an approval of such officer making an official application to him, through the regular channel, for authority, in writing, to incur such expenditure". In fact, should anyone commit his department to any expense without written authority, the amount would be surcharged against him personally; not even the appropriation ordinance passed by the Legislative Council might in future be assumed sufficient authority for incurring expenditure.

On the 23rd November 1843, a further Notice was issued from the Colonial Office, stating that the Regulations of the 24th July had been found "in some respects insufficient"; additional instructions had been drawn up "for the information and guidance of the officers of this government"¹ The Colonial Accountant was now immediately responsible for the validity of the statements of the Collectors of Revenue. All public officers were put on their guard against any personal slackness, by a clause which called for absolute conformity with the letter of the law:

1. Cape Almanac op cit. p. 91

"In case it shall be made to appear, at any time that the public have sustained a loss by reason of a public officer being satisfied with security for a government debt evidently insufficient, by his neglecting or omitting to take proper and timely steps to recover the debts from the sureties when it could not be obtained from the debtor, or omitting, in the event of either of them becoming insolvent, to file the claims of the government, so as to enable it to participate in the dividends from the estate, or by his neglecting or omitting to adopt every proper, as well as legal, measure to obtain the public money he is appointed to receive: in short, whenever it can be proved that the loss has arisen from the neglect, continued carelessness, want of proper precaution, or wilful fault of a public servant, he will be surcharged with the amount and his conduct will be reported to the Secretary of State." 1

As to expenditure, it was felt that a more strict system of supervision was required; consequently it was laid down that "unless a satisfactory explanation can be afforded for delay, no final payment made by an accountant will in future be admitted which is not included in his accounts for the month in which such payment was actually made by him". In future claims against any government department would only be attended to if due notice was given, at the right time of the month. More - any such claim would be examined in detail, so that no payment should be made where there was not absolute proof of the authenticity of the claim. Nor was this allowed to become a dead letter. For example when Sir Robert Stanford sought compensation for the losses he had incurred while supplying the government with provisions, during the Anti-Convict Agitation, the Executive Council examined the case over a period extending from 18th February 1850, to 15th February 1851, and many witnesses were examined before payment was eventually made.² The responsibility of the Government Accountant was once again stressed, the officers subordinate to him being reminded that just as he would not be relieved

1. Cape Almanac op cit p. 91

2. EXECUTIVE COUNCIL MINUTES vol 2.

of any part of his responsibility, so it was expected that he in turn, would at all times, hold them responsible for the prompt execution of their duties.

Here then, was a code of financial regulations, clear cut and comprehensive. But in a growing country, controls must move parallel to development. Hence in 1848, the earlier regulations were repeated, and expanded in the Cape Almanac for 1849. Issued from the Colonial Office on 23rd September 1848 ¹ the new instructions elaborated much of what had been implicit in the Regulations of 1843; yet the importance clearly lies in the fact that there was now a general extension of what had been attempted five years earlier in the higher offices of the administration.² The Central and Divisional Road Boards³, another invention of the indomitable Secretary to Government, display in the regular despatch of their financial transactions⁴ a model of efficiency which emanated directly from obedience to the injunctions contained in these several comprehensive regulations. The regulations extended further afield into almost every sphere of administrative business at the Cape. During the Kafir war which commenced at the end of 1850, it was found expedient to extend their implications to the Commissariat regulations. On the 21st January 1851⁵ the Secretary of State was informed that Montagu^{had} embodied the new regulations in a Circular to the Civil Commissioners. In this Circular letter, dated 4th January 1851,⁶ Montagu explained to the Civil Commissioners

1. Cape Almanac for 1849, p. 91

2. For extracts from these instructions, to show the close parallel between them and those of 1843, see Appendix I to this chapter.

3. See Chapter IV.

4. See Appendix to Chapter IV

5. P.P. 1851 xxxviii (1334) p. 83 Sir Harry Smith to Earl Grey, No. 5. January 21 1851.

6. Ibid p. 84

"What mode is to be adopted for defraying the expense in the event of your being called upon by the Commander-in-Chief to co-operate in raising any corps..." The regulations that were to be observed in this connection, reflect the spirit of those of 1843 and 1848. Application for authority to incur any expenditure was to be made either to the "Ordnance Department" or to the "Commissariat Department", according to the nature of the commitment. The vouchers for the expense payable by each of these departments had to be kept distinct; and the three items enumerated as payable by the Commissariat were to be kept, each one in a distinct voucher. "All transactions in provisions or forage must be in rations, as shown in form No. 1; transport as per certificate, form No. 2; and purchases of any different nature, should such occur, as per form No. 3" These vouchers were to be despatched, each to the department to which it belonged, and as a counter-check, the Civil Commissioners were to despatch a fourth form, which reflected that certain goods were ordered and received. ¹ In a circular from the Colonial Office, dated 7th January 1851 ², Montagu observed that some further provision had to be made so that the War Office could be kept informed; another three forms were necessary to ensure that all interested parties would at all times be able to check the expenditure incurred during the Kaffir War. ³ In his despatch to the Secretary of State referred to above, Sir Harry Smith pointed out that these extra checks would have increased the work of the office of Secretary to Government too much; yet since a single officer was definitely needed to whom the various

1. For details of these forms, See Appendix II to this Chapter.

2. P.P. 1851 xxxviii (1334) op cit p. 86.

3. See Appendix III to this Chapter.

Civil Commissioners could make their reports, Mr Harry Rivers had been appointed Paymaster-General.¹ In the Instructions issued to Mr Rivers on 9th January 1851, in this capacity, Montagu pointed out² that the Paymaster-General would be directly responsible to the Secretary-at-War, and further stated that, concerning the regulations laid down for the Civil Commissioners, "you will regard as equally applicable to yourself as Paymaster-General". The principles had been laid down for a system of financial control which moved in harmony, both with Montagu's schemes for an extensive programme of public works, and with the other measures adopted to ensure the economic stability of the Colony.

Side by side with his efforts to remedy the chaotic collection and expenditure of colonial Revenue, went Montagu's attempt to redeem the colonial debt. On the 22nd November 1843, Napier wrote to the Secretary of State³ on the subject of the paper debt of the Cape Colony and noted that "I have much satisfaction in announcing to your Lordship that I have at length been enabled to withdraw the guarantee of Her Majesty's Government, under which the promissory notes of this Government circulated in this Colony and were exchanged by the Commissariat department for bills on the Lord Commissioners of Her Majesty's Treasury." He explained that he had made arrangements for the liquidation of the debt: "In furtherance of this object, I directed the Secretary to Government to prepare a full report upon the paper currency, and upon the ways and means of discharging it." On the 30th May 1843, Montagu had laid upon the table of the Legislative Council a statement of the Revenue and Expenditure of the

1. Ibid p.88 Government Notice, dated 7.1.1851.

2. P.P. 1851 op cit p. 88

3. Despatch No 219, 22.11.43. NEWMAN op cit p. 474.

~~Revenue and Expenditure of the Cape Colony for 1842~~¹. It was after that that the inquiry was made into the Revenue and Expenditure of the Cape.² On the 7th November Montagu read a memorandum to his colleagues in the Executive Council.³ This document, dated the 27th October,⁴ is a most comprehensive analysis of the state of the Cape's finances at the time, and Montagu's recommendations for the redemption of the Colonial debt and for augmenting the Colonial Revenue, display great foresight and a complete understanding of the very complex problem.

Having "perused with great attention the whole of the voluminous correspondence on this subject", Montagu went straight to the facts of the case and built up from these a plan which proved so workable that within two and a half years the whole debt was liquidated.⁵ The immediate object to be achieved, was the calling in and redemption of the outstanding Government notes, which, on the 1st January 1843, stood at £141,086. This amount had been reduced, by the end of October, to £71,086, as funds from the Long Loan Fund, the Storm Fund and the General Revenue had been employed to this end. The liability had accumulated as follows: the creation of the paper-currency in rix-dollars in 1782, and the subsequent additions by both the British and Dutch governments, caused a problem when the rix-dollars began to be exchanged for British promissory notes. Several other factors contributed: one of these was the issue of sterling notes from time to time by the Colonial Government to convert their portion of the old paper money, which

¹⁸³⁷⁻⁴⁵
1. L.C., p. 367 30.5.1843

2. See above p. 35

3. E.C. 1. pp. 359-363 7.11.1843

4. Ibid. See also NEWMAN op cit pp. 32-48.

5. NEWMAN op cit p.30

amounted to £202,698, and of which sum a very large amount still remained in circulation. The Lombard Bank administered a great portion of this under the denomination of the Long Loan Fund. Further to this, the creation of the Storm Fund in 1823 added another commitment; Lord Charles Somerset chose to lend £15,000 of this money to the Agricultural Fund; other monies from this fund were expended inter alia for relief work in 1835¹ and on miscellaneous public works. Through the agency of the Discount Bank, and the application of other colonial funds to debt redemption, just over £41,000 could be counted as assets by May 1843. Arrangements with the Master of the Supreme Court re the Guardian Fund further decreased the amount of paper money to be redeemed by debentures to the sum of £71,086 adverted to above.²

This £71,086, however, did not comprise the whole debt, for there were further amounts advanced to the Cape by Her Majesty's Government from time to time, which totalled nearly £90,000. The question was, what means were to be employed to liquidate this large sum. Montagu pointed out that in the first instance, there was still £20,000 in arrear taxes outstanding³, and over £20,000 in land rents; there also remained the Guardian's Fund, from which certain sums could be appropriated to help diminish the remaining deficit. Upon an analysis of the finances

1. See P.P. 12.7.37, xliii (503) p. 340. Memorandum on the subject by Colonial Secretary, Colonel Bell, 5.4.36.

2. NEWMAN op cit pp. 32-36. See also ARNDT. E.H.D. "Banking and Currency Development in South Africa (1652-1927)" Cape Town and Johannesburg 1928. Part I Chapters II and III, Part II Chapters I and II. Also SCHUMANN. C.G.W. "Structural Changes and Business Cycles in South Africa (1806-1936)" London 1938. Chapters II, III and IV Passim. Also FRANKEL. S.H. "Capital Investment in South Africa" London, New York, Toronto, 1938. Chapter II passim.

3. Vide supra p. 36

of the Orphan Chamber, Montagu had come to the conclusion that nearly £9,000 could be applied in the manner he contemplated. The moneys of the Guardian Fund, having remained unclaimed for a period of forty years, lapsed to the Crown, and were then payable to the Colonial Treasury.¹ Moreover, the balance of the Private Fund of the Orphan Chamber had been appropriated to the Public Revenue, as was authorised by an Order of the King-in-Council of 24th November 1828. Montagu advised that the fund itself be closed, and the monies^y be accordingly appropriated.

The fourth source was the Prize Negro Fund: since no claims on it had been received from indentured slaves, Montagu advised that its assets of £2,400 be carried over to the Treasury. Then, finally there were the advances made at different times by the Government, on account of other governments or individuals, which, although unpaid at that time, were repayable to the Colonial Treasury. Adding this sum of just over £2,000 to the other heads enumerated above, Montagu found that almost £53,000 of the debt could be liquidated, leaving a balance of approximately £37,000. He saw a way out of this as well: according to the Land rent returns, £14,000 could be redeemed annually, but for the present object the redemption of about £40,000 would be more than sufficient. Any surpluses in the future, could very well be applied to "public works, to immigration, or to any other system of productive investment which would tend to decrease the government expenditure or which would have the effect of decreasing expenditure in commerce, trade, manufactures or labour, or of increasing the consumption of colonial produce or dutiable imported articles."³

1. NEWMAN op cit p. 40

2. E.C. II, 2.¶.44.

3. NEWMAN op cit p. 45

The second problem was how to raise funds sufficient to cover the cancellation of the outstanding notes. The sum required was £71,086, and the effectiveness of Montagu's solution is only matched by its simplicity: he proposed the issue of debentures to the Master of the Supreme Court for the sum of £15,000, in amounts of £100, bearing interest at 5 per cent per annum, payable half yearly, and redeemable by the government at any time on demand. The balance of £56,086 required in debentures "should be obtained in the manner directed by the Secretary of State." Montagu had advised the Treasurer-General to instruct the Civil Commissioners not to re-issue any of the old paper notes, but to transmit them to him. By this means the Government would soon be in possession of the whole of the obsolete issue. If a temporary re-issue was necessary, then Montagu advised that the notes so issued, should be withdrawn from circulation immediately the debt was discharged.¹ This was not all Montagu had in mind for the finances of the Colony: in the concluding paragraphs of his memorandum, he expressed his opinion that the revenue was susceptible of improvement, and the expenditure of entrenchment. He added further that as soon as the estimates for 1845 were under consideration, he would advert to this again.

Montagu's memorandum was received with enthusiasm by the Executive Council, even though there was disagreement on certain matters.² The Council concurred in his report so far as the funds, pointed out to be available to the government for the liquidation of the debt, were concerned, and it recommended the adoption of his suggestions. The Treasurer-General agreed with him that their first efforts should be directed towards trying to raise the

1. See also CTM 15.7.43.

2. E.C. I op cit pp. 359-363.

specie, or to exchange the government notes for debentures at par at five per cent interest. If this was not possible, it was proposed to raise the interest to six per cent. If this expedient failed, then, but only as a last resort, the new government bills, sent from England for this purpose, were to be issued. The Attorney-General and the Collector of Customs¹ disagreed, maintaining that the Governor should be allowed to issue the new notes and debentures simultaneously. The Governor, however, accepted Montagu's advice and announced his intention of adopting conformable measures. On the next day the Governor read a minute to the Legislative Council², confirming formally the measures advocated by Montagu; thereupon Montagu moved, and Ebdon seconded a resolution which approved of the application of the arrear taxes and arrear land rents towards the redemption of the government paper currency. Napier explained to the Secretary of State that, in urging the schemes proposed by Montagu on the Executive Council, he had informed the members of his opinion that "the measures proposed by Mr Montagu (were) better adapted to the present circumstances" than any earlier resolution to which they may have come.³ Lord Stanley replied on the 11th March 1844⁴ expressing his pleasure at the efforts of the Cape authorities to recover the outstanding debts; he requested "that you will take care that the proceedings for those purposes are effectually followed up...." As a mark of personal commendation, he added: "I have already had the satisfaction of bearing testimony to the zeal and

1. President and Vice-President, respectively of the Colonial Savings Bank. Cape Almanac op cit 1845 p.201

2. L.C.¹⁸³⁷⁻⁴⁵p. 425 8.11.43.

3. NEWMAN op cit p. 474.

4. Lord Stanley to Sir P. Maitland No. 37, 11.3.1844. NEWMAN op cit p. 478. See also E.C. II, 12.8.1844.

ability with which Mr Montagu had applied himself to the duties of his office, but I cannot conclude this despatch without a further acknowledgement of the very able and efficient manner in which he laid before your predecessor his views in regard to the extinction of the paper debt of the Colony, and his proposals for carrying the measure into effect." ¹

By the end of the first year of his term of office at the Cape, Montagu had already inspired such confidence that commendations appeared in nearly all the Colonial newspapers. A letter to the editor of the Graham's Town Journal at the end of November, perhaps anticipated the prosperity which was to follow, but nevertheless bears witness to the new optimism which prevailed.

"This Colony has at last overcome her difficulties," said the anonymous correspondent ² "and gives promise of a brilliant and prosperous course. We must readily accord to the Secretary, Mr Montagu, considerable credit, not merely for ability, but, what is still better, activity - putting the shoulder to the wheel, and impelling the cumbrous machine forward with a speed hitherto unknown. This shows the great advantage of aptitude to office, a consideration quite overlooked before in the selection of public officers here. This paltry debt, about which so much despondency has been felt, is now disposed of, and opens up a bright prospect for the future. With so careful a steward as Mr Montagu there can be no doubt the resources will be well husbanded."

This was a time for action, and it stands to his credit that Montagu immediately took up the challenge; before the year was out he began to rectify the anomalous position which obtained in many of the regulations at the Cape.

The Port Dues were first assailed. On the 23rd December, the Governor sounded the Executive Council on the possibility of bringing a draft Ordinance for the abolition of the Port Dues before the Legislative Council. Montagu was chosen to guide the Ordinance through the Legislative Council, and he assumed the responsibility with

1. Ibid.

2. GTJ 30.11.1843

fortitude. He outlined his argument to his colleagues by informing them that the Revenue derived from the Port Dues in Table Bay and Simon's Bay amounted to about £2,000 per annum,¹ of which £1,200 was received on double Dues, i.e. four and a half pence per ton paid by vessels putting in for the purpose of trade; £800 from Single Dues, i.e. two and a quarter pence per ton paid by vessels putting in for water and refreshments. Vessels paying single dues, he pointed out, were permitted to trade to the extent of five tons, and this, he maintained, was open to corruption: it was so undefined that there were frequent differences and disputes between the collecting officers and the Masters of vessels. A great jealousy further existed between the shipping interests, since vessels paying single dues took advantage of the five tons regulation, while vessels paying double dues were sometimes charged when, even though they were over five tons, they had only put in for refreshments.

Montagu explained that after a full enquiry by the Collector of Customs, the Port Captain and himself, they had agreed on the expediency of equalising the rates of the dues. Those officers concurred in the opinion that to raise the single dues to the amount of the double dues, would be detrimental to the Customs revenue as well as to the general interests of the Colony, since many vessels would be discouraged from touching at Cape ports. It would seem better, then, to recommend that the double duties be lowered, and that no vessel be charged more than the single dues, an alteration which would reduce the dues by about £800 per annum; it would then be necessary to charge port dues to vessels frequenting Port Elizabeth, where no dues were at the time payable, in order that the trade of that place might be put upon the same footing with that of Table Bay and Simon's Bay.

1. E.C. I p. 380 sqq, 23.12.1843

Taking into account the variations in existing practices, and the peculiar geographical position of the Cape, Montagu proposed however, not the modification of the existing port dues, but their total abolition as a means to encourage ships to use the Cape ports. This the Governor accepted, expanding Montagu's argument that the increase in shipping and, consequently, the increase in the custom dues, would more than offset the loss occasioned by abolishing the port dues. This, in its turn, was carefully examined by the Council, which was satisfied that the change would be advantageous. It was, therefore, unanimously resolved that they should "advise the Governor to lay the Ordinance before the Legislative Council as drafted" ¹.

The Ordinance was laid before the Legislative Council on the 27th December; it was read a first time and ordered to be published and read a second time on the 22nd January 1844². On that date, Mr Hamilton Ross handed in a petition from the Chairman and members of the Commercial Exchange, and "certain merchants, shipowners and other inhabitants of Cape Town", asking for a modification of the published draft. A more extreme demand was made by Mr Ebden who moved ³ - and lost - a resolution that a uniform charge of two pence per ton be levied on vessels, whether British or foreign, arriving in the ports of the Colony.⁴ His main line of argument was that to abolish a £2,000 source of revenue at a time when the colonial revenue was insufficient for the execution of roads and other public works, would necessarily mean the imposition of fresh burdens on the people; and that the Port Dues could very well be used

1. Ibid.

2. L.C. ¹⁸³⁷⁻⁴⁵ p. 436 27.12.1843

3. This is Mr John Bardwell Ebden M.L.C. of Cape Town, not Mr James Ebden, Advocate of Port Elizabeth. Vide GTJ 15.4.51, EPH 10.4.47.

4. L.C. ¹⁸³⁷⁻⁴⁵ p. 442 22.1.1844

to improve the Ports and Harbours of the Colony. Montagu, of course, had other plans which would solve the problems alluded to by Ebden. His Road Tax Bills¹ and other suggestions for the improvement of the public works at the Cape were in the forefront of his mind at the time when he engineered the abolition of the Port Dues.

The bill was finally passed on the 30th January.² Perhaps the best tribute to the wisdom of this measure was paid by Sir Harry Smith when in 1848 he informed the Secretary of State that the Legislative Council had voted an extra £23,000 towards the estimates for that year.³ For he touched on the healthy state of the Cape finances and the increase of trade and commerce which had been promoted by the opening of new ports and harbours in the Colony; this he said was "of course, annually adding to the amount of the customs' collections". Smith wrote further that the revenue was "still further increased by the encouragement held out to shipping to resort to the Cape by that judicious measure, the abolition of the Port Dues in 1844 which, without exaggerating its importance, may safely be reckoned equivalent to an increase of our exports to the amount of a third of a million sterling annually, so large has been the quantity of produce purchased, and of expense incurred for other

1. Infra Chapter IV

2. L.C.¹⁸³⁷⁻⁴⁵ p. 452 30.1.1844

3. P.P. 3 May 1849 xxxvi (1056) pp 5-8. Sir Harry Smith to Earl Grey, No 51. 23.3.1848.

objects, by the additional shipping calling at Table Bay and the other harbours of the Colony."¹

During 1844, the Legislative Council considered some of the suggestions made by Montagu in his memorandum on the Colonial debt. On the 25th June, Montagu laid on the table of the Council, a statement showing the amount owed by the Cape to the British Treasury on account of the Storm Fund, if that were required to be repaid in accordance with the exact conditions under which the loan was made, and a statement showing the amount the Governor had proposed in correspondence with the Imperial Government, to repay to the British Treasury in liquidation of the Storm Fund debt. He outlined the amount of outstanding claims against the Treasury of the Colony at the date of the last cancellation of the government paper money, and the probable means of liquidating them. The Legislative Council resolved itself into committee to consider the estimates, and after the Secretary to Government had laid on the table a return of the average amount of specie in each of the commissariat chests, and the average rate of premium for Treasury Bills from the 30th November last to the present² date, the Council concurred in the recommendations made by him in his earlier memorandum.² Mr Ebdon, Mr van Breda and Mr Henry Cloete objected to Montagu's proposal relative to the liquidation of the Storm Fund debt: they were of the opinion that the sum namely £35,097. 10. 7 was originally advanced in 1822 to relieve the distressed state of the Colony at the time of severe storms, and floods. Viewing the character and nature of the relief thus afforded, and the great exertions

1. See Appendix ^{this chapter} IV ~~to~~ for tables compiled from data obtained from the Cape Almanac, 1845, 1846, 1849, 1853.

2. L.C. ¹⁸³⁷⁻⁴⁵ p. 552 25.6.1844

made by the colony to liquidate the paper money debt on which no claim for interest was ever made by the Home Government for the advances made by them on that account, they expressed their hopes that His Excellency the Governor would make representations to Her Majesty's Government, of the particular circumstances under which this relief was afforded, and that the Home Government might then be pleased to forego all claims for interest on this loan. Montagu pointed out the impracticability of this procedure, and urged on the Council the necessity of devoting all its means to the speedy settlement of the claims outstanding, rather than waste time in, what he was convinced, would be fruitless overtures; the Council agreed.¹

On the 22nd September, the Governor laid on the table of the Executive Council, a memorandum from the Secretary to Government, proposing that the sum of £10,000, deposited in the Discount Bank under the Order of the King-in Council of 1828, which was to remain there as a security against any considerable loss which the Orphan Chamber might sustain in the administration of estates entrusted to its management, should be transferred to the Colonial Treasury for the general purposes of the Colony, on the understanding that the colonial government would undertake to guarantee the payment of any losses which might occur to the guardian fund in future.² The Treasurer-General, in supporting this resolution, stated that the Discount Bank had been abolished, and that the £10,000 had, on that occasion been placed on separate accounts in the Colonial Treasury. The Executive Council thereupon recommended the adoption of Montagu's plan.

In his attempts to remedy the state of the Cape's finances, Montagu was confronted with the opposition of

1. L.C. p. 550 *ibid.*

2. E.C. II, 22.9.1844

active and organised public criticism. Opposition came from two distinct sources: in the first place he was continually held up for censure by the Cape Town Municipality, a strong corporate body, which accused Montagu of allying with the merchants of Cape Town;¹ the second source of opposition was the Colonial public in general, and Montagu was periodically attacked in the press. The Cape Town Municipality crossed his path over the following question: the right to tax government property in Cape Town, the financial organization and management of the Cape Town Police, and the Market Relief Bill which was brought before the Legislative Council in 1846 and 1847. The Colonial public launched its attack against Montagu over the question of the Stamp Act which he introduced into the Legislative Council at the end of 1844.

On the 20th March 1843, the Governor laid on the table of the Legislative Council a copy of a despatch from the Secretary of State;² Stanley desired the withdrawal of Ordinance No. 4 of 1842 which declared certain immovable property belonging to the Colonial Government exempt from Municipal taxation: in this way, the provisions of Ordinance No 9 of 1836³ would be applicable, in toto to the government property declared exempt in 1842, and further, pecuniary aid to the Municipality of Cape Town might then be prescribed. At a subsequent meeting of the Council on the 29th May 1843, Montagu gave notice of his intention to introduce, at the next meeting, a motion upon the business adverted to in the previous meeting.⁴ On the next day he moved the following resolution:⁵

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1. Infra Ch. V passim
 2. No. 164, 18.10.1842.
 3. ~~See~~ ^{For} the creation of Municipal Boards in the Colony.
 4. L.C. ¹⁸³⁷⁻⁴⁵ P. 366, 29.5.1843
 5. L.C. ¹⁸³⁷⁻⁴⁵ P. 367, 30.5.1843

First, that "it is the opinion of the Legislative Council that a mutual revision is necessary of the respective liabilities of the Colonial Government and the Municipality of Cape Town, respecting the obligations of the Government to the Municipality of Cape Town for services rendered by the latter, and the demand of the Municipality for the imposition of rates on Government property." The second resolution advised that, to be just to both sides, a joint enquiry and report by the Colonial government and Municipality of Cape Town should be made, on the question of the liability of general to local revenue, for services by the Municipality to the Government. He argued that the assessments should not be higher on crown than on other property, and the pecuniary aid of the Government to the Municipality should be limited to the amount which should, on that principle, be determined upon. The Legislative Council then suggested that, pending the report, certain items, then included in the estimates for 1844, and otherwise payable equally by the Government and the Municipality, should be omitted. It was to be understood that when the amount of the rates payable by the Government to the Municipality should have been determined, the necessary vote for the appropriation from the Colonial Revenue of that amount for services rendered, would be passed by the Council. The items referred to included new police establishments, forty five sets of uniform and forage for police horses, involving a total sum of £3,848. 18. 0.

In his third resolution Montagu suggested that, notwithstanding the system which would be introduced to provide for the expenses of the public establishments referred to, their control and management in every other respect should continue to be vested, precisely as at the time, in the Government and the Municipality, and that no other alteration should be made in regard to them, except by the competent authority. At the next meeting of the Council,

the resolutions were unanimously approved of¹, and Montagu requested the Governor to appoint a Committee of the Council working in concert with the Municipality of Cape Town, to carry out the objects proposed in the resolutions, the Governor appointed the Auditor-General as Chairman; and the Attorney-General, Mr Hamilton Ross, and Mr Henry Cloete as members of the Committee. Montagu declined the Chairmanship, or a place on the Committee, as he felt that he had been in the Colony too short a time.² There was hardly any outburst of protest against this measure, and on the 13th June 1843, the Auditor-General presented the report of the Committee, which was adopted. Montagu then moved that the items totalling £3,848. 18. 0 be retained and form part of the estimates for 1844; this measure was later taken up by the critics of Montagu's other schemes, without justice referred to as the first conscious attempt to undermine the individuality of a body like the Cape Town Municipality.

When, on the 21st June 1843, Montagu drew the attention of the Legislative Council to the anomalies which then existed in the financial management of the Cape Town Police Establishment, he unwittingly exposed the Council to renewed conflict with the Cape Town Municipality. On that day he moved that the Municipality of Cape Town contribute a sum of £1,924. 9. 0 to the Colonial Treasury for the police of Cape Town.³ The Cape Town Municipality considered this an unfair imposition on them, and the matter was brought to a head in 1850 after years of squabbling. On the 6th May of that year, the Governor laid on the table of the Executive Council, a letter from the Municipality on the subject of the claims made upon

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1. ¹⁸³⁷⁻⁴⁵ L.C.A.P. 372 6.6.1843
 2. C.T.M. 24.6.1843
 3. ¹⁸³⁷⁻⁴⁵ L.C.A.P. 381 21.6.1843

them by the Government for the payment of the Cape Town police force, together with a statement, in reply, from the Secretary to Government, proposing the adjustment of these claims.¹

The Commissioners contended, first, that they were entitled to a reduction of the amount demanded from them in the Government's claim which included expenses for the stationery and repairs for the Station House; in this connection they argued, they were not liable because the items were not included in the estimates under the head of "New Police Force". Secondly, they maintained that the passing of the Market Relief Bill² had reduced the Municipal Revenue, and that they were therefore entitled to assess the immovable properties of the Colonial Government, for house and water rates. Montagu's reply was pertinent and forceful: he pointed out that the two parties had come to an understanding on the apportionment of police expenditure and quoted in his support an extract from a speech delivered by the Attorney-General in 1847 when this subject was discussed before the Legislative Council. The Attorney-General had explained to the Council that when the Municipality and the Government agreed that the former would defray one-half of the whole charge of the new police force, which was to replace the old night watch, the items which were to form that whole charge, were not defined; having further expanded his reasons for doubting whether stationery and public buildings could be shown to have been contemplated at that stage, the Council, in deference to these doubts, concurred in advising the Governor, to allow the deductions, amounting to £403. 5. 10. which had been included in their account as overcharges, that is, items not included in the estimates, under the head of the New Police.

1. E.C. II 6.6.1850

2. Infra p. 59599

On the second charge put forward by the Municipality, all agreed with Montagu that the propositions were inadmissible and, as such, could not be entertained by the Government, since the Municipality had failed to establish any connection between the Market Relief Bill, and the agreement of 1840, as renewed in 1843¹; even if such connection could be shown, the fact that the Market Relief Bill only annulled a compulsory Municipal clause, introduced as a bye-law, twenty-one months after the arrangement of 1840 was settled, and left everything else exactly in the position in which it was on the establishment of the Municipality, was conclusive against the grounds assigned by the Commissioners in support of their demand. He finally advised the Council that no other deductions, other than the overcharge for stationery and repairs to the Station House, should be allowed. The Commissioners were to be informed of this decision as an act of generosity on the part of the government, as the government was quite sure that legally it was in the right.

While the first stages of the fight between Montagu and the Cape Town Municipality over the question of the Cape Town Police excited tempers in the Town House, Montagu added fuel to the fire: his Market Relief Bill, eventually brought down upon him the wrath of a group of influential Cape Town citizens who, through their influence over public opinion in the West, moulded a solid opposition against both the person and the office of the Secretary to Government.

Although he was in the Chair of the Legislative Council at the time, Montagu introduced the Bill in his private capacity on the 24th April 1846.² It was officially

1. For details of these arrangements, see the discussion on the Market Relief Bill which is found on pp 59-64 of this chapter.

2. L.C. 1845-52 p. 83 24.4.1846

entitled "A Bill for relieving farmers and others from the necessity of passing their produce through the public market in Cape Town." The Bill, as he explained, was to repeal the 133rd section of the Market Regulations which imposed a fine of ten pounds on every person selling or bartering any article brought into Cape Town from the country, without first having it registered and publicly offered for sale by the Market Officers. It was proposed instead, and as part compensation, that the Municipality be paid for the use of its streets - six pence for every wheel belonging to every wagon, cart or other vehicle at present obliged to pass the market - threepence for every sheep, goat or lamb, sixpence for every pig or calf, a shilling for every horse or head of cattle. The Bill was read a first time that day, but was not brought up for its second reading until the 11th September 1847.¹

In the Legislative Council on the 26th October, Montagu reviewed the whole history of the Markets in the Colony, and examined the petitions for and against the proposed measure. There were 310 signatures against the Bill, and 1173 in favour of it. He observed that it was interesting to notice that all the signatures against came from leading farmers of "intelligence and property who reside within the reach of the Cape Town market," that in the country the people cannot congregate, as they do in Cape Town, and that therefore, every country signature was "thirty times more valuable than a Cape Town one."² Practically the whole number of the Mail on November 6th was devoted to Montagu's speech in moving the second reading.

Montagu pointed out that in 1808 the Burgher Senate had been instructed to establish a market in Cape Town, with regulations to protect the farmers from combinations and loss

1845-52

1. L.C. P. 242 11.9.1847

2. C.T.M. 6.11.1847

in the sale of their produce, and the consumers from undue exactions by the farmers. In fixing the market dues, care had to be taken that they should not amount, in any one year, to a larger sum than was necessary to defray the expenses of the market establishment. These regulations were re-iterated in 1812; in 1827, upon the abolition of the Burgher Senate, town trustees were appointed; but they departed from the above principles, and every year paid a large sum into the general revenue. This was expended for purposes not at all connected with markets. It was true that there was no law to authorise the compulsory bringing of farmers' produce to the markets, but this was in fact the practice during the administration of the trustees.

On the 1st October 1840, the market and town affairs of Cape Town were handed over to the Municipality. Ordinance No. 1 of 1840 authorised, inter alia, that regulations were to be framed for establishing and conducting the market of Cape Town; in the regulations thus constructed, dated 5th January 1841, the 133rd section laid down the compulsion, which it was intended to revoke by the Ordinance before the Council. More - Montagu's Ordinance was designed to repeal compulsory clauses of similar tendency in nineteen out of the twenty-three drafts of regulations which existed in other market towns or municipalities.

Montagu based his case on a plea for consistency as the fundamental basis of a sound economy: he pointed out that Ordinance 1 of 1840 nowhere stipulated the authority under which clause 133 was framed. The 18th section of the ordinance, which authorised the municipality, inter alia, to make, repair and clean streets, did not even mention markets, and further, in the 19th clause, it was specifically stated that the 18th clause (above), "provided always that nothing contained in such regulations shall be repugnant to or inconsistent with the true intent and meaning of this ordinance." Further clauses stipulated that all public works

alluded to in the 18th section might be accomplished by the municipality, provided they were paid for by a rate or tax on immovable property.

In section 58 it was laid down that the municipality might establish and maintain a market for the sale of produce, might establish buildings for the market, which must be paid for out of the rates on immovable property. The Municipality was further authorised "also to frame and make such regulations and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets." Therefore, he maintained, any amount received under this head, in excess of keeping order and cleanliness, was illegal.

Another aspect which had to be considered, he said, were the practices to which farmers were subjected in the Cape Town market. They had to compete unfairly with the "smouse" or middlemen, who combined together, and had effected a kind of monopoly in the purchase of produce, injurious equally to the producer and to the consumer. In addition to this, the farmers' wagons were often delayed by having to wait their turn, either for registry, for payment of dues, or finally for the sale of their produce, which might by that time have been kept out of the market, not for hours, but in many cases for days, so that by the time it was put up for sale, the demand for it had gone. The whole situation is quite revealing: between 1844 and 1846 - due probably to the construction of the hard road and the abolition of port dues - the value of produce passing through the Cape Town market increased from £202,000 to approximately £316,000, an increase of over 50%. In 1846 £123,993 worth of produce was taxed in the Cape Town market. ¹

1. C.T.N. 6.11.1847.

Montagu drove home his objection to the existing system in the following words: "I deny the right of the Municipality to any higher amount of revenue than is required to ensure order and cleanliness within the market ... If the market was properly managed and compulsion abolished, moderate dues would produce all the revenue which ought, in justice to be derived from it."

The Cape Town Municipality, in petitioning against the Bill, alleged that "the market dues are moderate, fair and reasonable, as contributing towards the expense of keeping the streets of Cape Town in repair, principally cut up by wagons bringing produce to Cape Town from the country ..."¹ Montagu did not doubt the truth of this statement: what he objected to, was the fact that this was done, and that the municipality had no legal right to employ the funds derived from the market, in this manner. On three occasions viz the 26th, 27th and 28th October Edson petitioned that the Municipality be heard. On the last occasion, the Council unanimously approved of his request, but the Municipality wrote back on the same day, declining the offer of an audience. In their letter to the Council, on the 28th October, the Municipality did no more than to "reiterate their solemn and formal protest against the proposed interference by the Draft Ordinance ... with the rights and privileges acquired by the Municipality of Cape Town, under, by virtue, and during the continuance of Ordinance No. 1 of 1840."

The Cape Town Municipality found support for their campaign in the press. The Cape Town newspapers teemed with letters to the editor, most of them anonymous. The best examples of the kind of protest perhaps is the following

1. Ibid

2. L.C. p. 254 29.10.1847

letter which appeared in the Zuid-Afrikaan under the pseudonym "A Plebeian" - it shows the Cape Town Municipality seeking to support its financial rights by broad allegations of arbitrary rule:

"The real issue between the Council and the Municipality is THE RIGHT OF THE COUNCIL TO CONTROL, WHENEVER IT SEES FIT, THE ACTS OF THE MUNICIPALITY (!) This principle, once conceded, it would be better to abolish municipal institutions throughout the Colony I speak of the Council, but it would be more correct to speak of the Hon. Secretary to Government, for, as at present constituted, (the Governor was away on the frontier), he is virtually the Council. If anyone doubts this, let him attend the debates, when any favourite scheme of the active but restless Secretary is introduced. The official members outnumber the unofficial. Among the former there are but two men of ability, the Secretary to Government and the Attorney-General, of the latter, the less said the better. The officials, the Attorney-General tells us, must either vote with the Government or resign; and this fact is so well understood by them, that it seems to save them the trouble of thinking at all of the matter, for during the debate on the Markets Improvement Bill, involving the most important principles yet brought before the Council, two of the Official members were said to be asleep." ¹

fit?

When Sir Harry Smith landed in Cape Town on the 1st December, the Commissioners of the Cape Town Municipality, transmitted to him a letter they had written to his predecessor, in which they represented "in language of considerable warmth, their objections to the conduct of Mr Montagu ... in certain matters connected with that Ordinance ², but more particularly to a letter he had addressed to that body on the 25th November." ³

Montagu's letter ⁴ to the Municipality was ~~made~~ a clear *exposition* of the whole case. He pointed out that under the existing Market Regulations, all the aspects relating to the market, the buildings generally, and

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1. Zuid Afrikaan, 18.11.1847
 2. i.e. Market Relief Bill.
 3. Smith to Secretary of State, No. 33, 11.3.1848, G.H. 23/18 p. 79
 4. G.H. 28/41.

"all the matters and things concerning the sale of colonial produce are under the superintendence of the Market Master ". On the 11th November, the Cape Town Municipality, knowing the Market Master to be indispensable passed a resolution, designed to forestall the practical effects of the Market Relief Ordinance.¹ Inter alia, they dismissed the Market Master. Montagu observed that the contemplated reduction of the market establishment "must have the most injurious tendency upon that important institution...", for by law the Market Master, and he only, was allowed to sell by public auction; on such sales the ad valorem auction due of four per cent was not chargeable, and he was not obliged to take out an auctioneer's licence. "To reduce that functionary," he observed, "and effect such sales by any other person, would place a direct burden of many thousands of pounds per annum upon the produce brought for sale in the Cape Town market." Further, he failed to see that the reduction could be justified on the grounds that the Market Relief measure would decrease revenue, "seeing that the present market revenue is ten-fold the amount of the expenditure incurred for the Market Establishment."

He ended his communication to the Commissioners on a somewhat menacing note: "In case any unnecessary alarm shall be created in the minds of the agriculturists or others, in respect to future management of the market, in consequence of the reduction in its establishment resolved on by the commissioners, the Government will consider it their duty

1. The resolution read: "That notice be given to the Market Master, the attendant at the sales, auctioneers, and the town overseer, that in consequence of the interference of the Colonial Legislature, it is necessary that the Municipal Establishments be reduced, and that therefore their services will be dispensed with, from and after the 31st December next." Ibid.

to take whatever steps circumstances may render necessary, to insure the market being upheld in its present efficient state." Probably because of this, on the 1st December the Municipality wrote back to Montagu, stating that the "dignity of their office" would not permit their carrying on any further correspondence with him, and that they would address their complaints direct to the Governor. Their letter to the Governor, dated the 1st December, contained a violent attack on Montagu himself, and his alleged motives for his proposing the controversial measure.

Montagu answered the allegations one by one, in a memorandum addressed to the Governor, dated the 3rd December.¹ In the first place, the Commissioners complained that all the acts of the Municipality were being "wilfully misconstrued and misrepresented, their offices despised and the honest dealings of their constituents held up to universal scorn and hatred" Montagu emphatically denied this rather vague accusation, and proceeded to comment directly on the next. He was accused of having deliberately, both in his individual as well as official capacity, employed undesirable means to push through this measure. Montagu replied that in many instances his desires were diametrically opposed to the charges laid against him, that his sentiments were well-known to be in favour of extending Municipal rights and privileges. "But," he remarked, "it has always been my desire to relieve agricultural produce brought to Cape Town for sale, from compulsory, arbitrary unjust, and, as I believe, illegal Cape Town Municipal Market Regulations, which prevent the producers from disposing of their articles in whatever manner may appear to them to be the best for their own interests"

1. C.H. 23/41.

In the third place, the Municipality argued that many of Montagu's statements, in favour of the measure, were "without foundation and contrary to fact." Montagu, therefore, drew the attention of the Governor to his speech, quoted at length in the Cape Town Mail, which had been based mainly on official documents obtained from the municipality.¹ The Commissioners went further, complaining that "Mr Montagu's connection, moreover, with the contemplated markets beyond the limits of the Municipality, which is notorious, requires little discernment to appreciate the tendency of that document." Montagu denied any personal connection with any market of the Colony, remarking that he did not possess a house or any immovable property, that in fact, he had "no pecuniary or any other interests in any market established, or that may hereafter be established in the Colony."

Finally, the Commissioners argued that they were "struggling against a fearful enemy, to defend that which is dear to them, the only class of representative bodies in this colony." Montagu, concluding that the enemy referred to was himself, challenged the production of the smallest article of proof to substantiate the charge laid against him. "But I have assisted to the very best of my ability, to demolish an undefensible bye-law, or Market Regulation, trenching upon the rights of the producer, but which has no connection whatever in the acquired rights and privileges of any municipality." He pointed out that when the petition against the measure was presented to the Legislative Council, no more than 284 signatures (of which 64 were those of Municipal functionaries) could be obtained. There were 2,209 people qualified to vote for Municipal elections in Cape Town "all of whom are doubtless

1. 1. My italics.

quite as anxious as the Commissioners to preserve their rights and privileges, and would have united with the Commissioners for that purpose, could the Market Relief Bill have been properly construed into an attempt to interfere with, or straddle, them The struggle of the Cape Town Commissioners, was directed to the pocket, and not to the principles they had set up as a stalking horse."

After a very strong letter from the Governor, in which he observed that "the trouble with the Cape Colony is that there is too much of an apparent desire to incriminate others in self-defence,"¹ the Secretary to the Cape Town Municipality withdrew their letter, the measure was passed, no further outbursts occurred to accompany its becoming law; but the fuel had been added to the fire of discontent, which flared up again at the beginning of the 'fifties, when the Constitutional Ordinances found an uneasy passage through the Legislative Council. Old grievances found new formulae.

Within limits, the opposition of the Cape Town Municipality can be described as local opposition. Opposition to some of his financial measures was more widespread and crystallised over the question of revenue stamps.

Montagu was the prime mover behind attempts to systematise the imposition and collection of stamp duties in the colony. The move reflects though the mind of an orderly administrator, not that of a would be tyrant, for Stamp Duties were not an innovation. The events which preceded the introduction of the measure into the Legislative Council, help to clarify the situation. In the Legislative Council, on the 22nd June 1844, Montagu mentioned that a Board of Officers, consisting of the Attorney-General, the Auditor-General, the Master of the Supreme Court and

1. Ibid G.H. 28/41.

the Secretary to Government had inquired into the possible modification of existing Stamp duties, which, notwithstanding the currency changes of the previous decades, were still assessed in rix-dollars. The Board of Officers, acting as an ad hoc committee, decided that a moderate increase might be made in some cases, a reduction in others by converting the whole from the rix-dollar to the British currency. Some stamps might be abolished altogether, namely those on Butcher's Licences, on Retail Shop Licences. Others such as the duty of s15 on Marriage Licences were considered to be excessive. They advocated the substitution of a charge on advertisements for the duty on newspapers, and, after a thorough survey of the existing position, concluded that revision of the stamp duties, might bring in a revenue of approximately £3,000 per annum.

The Government was not alone in this desire to review the question. Members of the public drew attention through the press to the same necessity. A letter to the Cape Town Mail, ~~which~~, while it praised Montagu for the services he had already rendered to the Colony in the reorganisation of the finances, pointed out that more was needed to be done:

"The public are rejoiced to observe the activity which is apparent on the endeavours of our new Colonial Secretary to free the Colony from the incubus of existing abuses. Witness the new Post Office regulations 1 his able proposals for the employment of the Convict Labour 2 But there still remain abuses which call loudly for redress (and should) come under the notice of the new secretary, who, we are persuaded, will countenance no half measures in the way of reform First and foremost, I would notice the Stamp Office. What is the amount of its revenue? Might not this be materially increased and the establishment thus made more available for the purposes of Government?" 3

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1. Vide infra Chapter III
 2. Vide infra Chapter IV
 3. C.T.M. 23.10.1843

The Governor laid the report of the Board appointed to report upon the Deeds Registry and Stamp Offices, upon the table of the Executive Council, on the 16th December 1844.¹ They had submitted an amended Stamp tariff, better suited to augment the revenue and "more adapted to the present circumstances of the colony, than the tariff now in use." To give effect to their recommendations, Maitland laid upon the table a Bill "for regulating the duties upon stamps"; this, the Executive Council advised to be taken to the Legislative Council at its first meeting.

Montagu introduced the measure in the Legislative Council on the same day, and announced that all the stamps were to be converted to the British currency; some legal stamps were to be abolished, while some new ones were to be introduced; all Bills and promissory notes would in future have to bear a stamp, as also would insurance policies and receipts for premium; all joint stock companies consisting of more than six members, would have to provide for stamps on their deeds of co-partnership; Land rent receipts were to have the stamps converted from Dutch to British currency; Marriage Licences were to be reduced from g15 to g5; Butcher's Licences were to be abolished; there were to be no stamps on newspapers and almanacs, but a charge of one shilling on every advertisement; the Stamps on public Houses, ale and beer licences were to go, but would come under a separate ordinance later; finally, a stamp of g1 would be imposed on all Stamp Officers, who would in future be shopkeepers or other private men, so that the public officers could be relieved of this responsibility. During the course of the debate, Mr Hamilton Ross remarked "I am afraid you will find very strong objections made to many of these stamps," to which Montagu replied, "Our object in

1. E.C. II, 16.12.1844

promising many of these stamps, is to keep up the revenue, and gradually to relieve the landed interest of the transfer duty."¹ This was the first reference to the transfer duty, and it was rather vague.

At the next meeting of the Legislative Council, on the 23rd December,² Messrs Cloete and Ross recommended the reduction of the Transfer Duty only if the government could afford it: they maintained that as long as any of the assessed taxes were still in existence, it would be better to keep this one. They expressed themselves "against the whole assessed taxes, and especially those which are about to be laid on, which are totally incapable of yielding a revenue equal to the expectations of the gentleman who has framed and brought them forward" Montagu, in reply remarked that "We do not require for the purposes of government, any additional revenue by taxation; but if you require a reduction of the revenue, we must reduce the expenditure in proportion". The government, he said, did not consider the Transfer Duty desirable, and wished to reduce it as soon as an increase in stamps, corresponding to the decrease of the transfer duty, could be depended upon. "I think it better to wait for the result of that experiment," he advised, "and I can assure the Council that this Government has no desire to increase the Revenue to enable it to augment its patronage, or to expend it upon useless salaries. Our only object is to relieve the interest most needing it from pressure, and to expend the revenue in such a manner as to render the greatest amount of good in our power to the Colony generally." The Bill was read a first time that day, and Montagu moved that the second reading be taken on the 27th January next.³

1. C.F.T. 2.1.1845

2. C.F.S. 28.12.1844

3. L.C. 1837-45 p. 586 23.12.1844

"upon which His Excellency and his advisors may have stumbled in their ignorance of the commonest principles of political economy and thorough unacquaintance with colonial customs, society and character."

The campaign against the Stamp Act was vigorously continued: a public meeting was held in Graham's Town on the 4th January 1845, at which it was claimed that the Stamp Act was "reprobated by the united voice of a whole population, and its promulgation as law would be universally regarded as a great and grievous public calamity."² At the same meeting the fear was expressed that the Stamp Act would entail additional burdens and inconveniences on the public, would embarrass the business transaction and might lead to litigation. A Municipal meeting was held in Cape Town on the 6th January, at which Mr D.D. Buchanan expressed the opinion that the only grounds on which the government could tax the people, were the following: the defence of the country, the maintenance of order, and the promotion of happiness. "What is the real object of this draft?" he asked. "Is it to build up any dilapidated structure of Charles Henry Somerset, or is it to fill the official coffers of John Montagu?" Buchanan's resolutions, which were carried unanimously and with great acclamation, maintained that the Stamp Act was not designed to revise the existing position, but merely to increase the revenue: that the present state of the colonial finances showed no need for increased taxation: that to say that the Transfer Dues would be reduced, was a bad pretext and finally that the measure was unnecessary, and therefore unconstitutional.³ In its vigorous campaign against the measure, the Cape Town Mail devoted almost nine-tenths of its space to reports on public meetings.

1. G.F.T. 16.1.1845

2. G.F.T. 9.1.1845

3. G.F.M. 11.1.1845

On the same day, a public meeting in Cape Town, passed similar resolutions, of which the following, proposed by Advocate Brand, a Commissioner of the Municipality of Cape Town, and in 1850, member of the Legislative Council, is the most important:

"That this meeting contemplates with unmitigated surprise, the proposed Stamp Ordinance as a means of revenue, the more particularly as official statements have gone forth that in consequence of the payments of arrears in taxes, together with the loans made by the government, and of the several reforms and retrenchments in its expenditure, the colony was in possession of a surplus revenue, after providing for outstanding claims. This meeting is therefore, warranted in justice to the inhabitants at large, in steadfastly opposing, by legal and constitutional means, the passing of the proposed ordinance in all its stages."¹

This seemed to co-ordinate the opposition to this measure:

Ebden was requested to present all the resolutions to the Legislative Council, and the unofficial members were asked to support the contentions contained in them.² Ebden agreed to do this, and Advocate Cloete, to whom the Albany petitions were sent, stated his willingness to present them to the council, and support the requests contained therein.³

On the 20th January, a number of commercial men and public figures waited on the Governor for audience. They requested that the Ordinance be not proceeded with, since it was so obviously against the wishes of the majority of the colonists. The Governor replied that since the government had proposed the measure, he would let it take its proper course in the Council. While ^{the} government, he said, was not disposed to force the measure on the colonists, the measure could equally not be withdrawn in deference to popular clamour; he promised that due attention would be given to all representations against the proposed ordinance, stating that he would not press this, or any ordinance of

1. Ibid.

2. C.F.T. 23.1.1845

3. Ibid.

taxation similarly circumstanced, on the people against their united will. "Only let it be clear," he said, "that the people disapprove of the proposed measure, and it shall be abandoned."¹

On Monday the 27th January, the Council Chamber was filled with members of the public. Ebdon presented 32 petitions against the Stamp Act, and Mr Henry Cloete told the Council he thought the petitions represented fully the views of the landed proprietors.² Montagu then took the floor, and sketched the history of the Stamp Ordinance, its importance and implications. He explained that in June 1844 the Board of Officers had been created, and that upon the submission of their report, he had estimated an increase of between £3,000 and £4,000 per annum if the new stamp regulations were put into force. He repeated that whatever increase should be made in this connection, a proportionate decrease would be made in the Transfer Duties. The government, he explained, felt that too large a proportion of the revenue came from the landed interests, and that it was about time that the monied interests came into line.

1. C.F.S. 30.1.1845

2. The petitions were submitted on behalf of the following bodies: Municipality of Cape Town, Municipality of Stellenbosch, of Uitenhage, of Grahamstown; inhabitants of Fort Beaufort, of Port Elizabeth, of Swellendam, of Cape Town, of Grahamstown, of Graaff-Reinet, of Paarl; the shareholders of: The Cape of Good Hope Bank, of the South African Bank, of the Equitable Assurance Company; the shareholders and directors of the Colonial Bank; the Cape of Good Hope Trust and Assurance Company; the Cape of Good Hope Marine Assurance Company; Members of the Commercial Exchange; the South African Association for the Administration and Settlement of Estates; the Eastern Province Bank; the Brokers of Grahamstown and Albany; the Eastern Province Fire and Life Assurance Company; the Managers of the Widows' Fund; the Board of Executors; the Protecteur Fire and Life Assurance Company; the South African Fire and Life Assurance Company; the Cape Town Gas Light Company; the Paarl Post Wagon Company; the Paarl Spirit Distillery Company; the Whaling Company; the Shipping Company.
C.F.S. 13.2.1845

"The end of the government, therefore, was to do justice by a more equal and impartial adjustment in the collection of the revenue." explaining that the Executive Council had unanimously advised the Governor to adopt the proposed measure, he observed that the government did not uncompromisingly wish to increase or decrease the revenue, but to provide only for the ordinary demands of the public service, namely public works and the general improvement of the colony. A glance at the list of public bodies which sent in petitions against the measure, explains the pungency of his next remark: "The real truth is, the contention upon this stamp Bill, however ingeniously it has been contrived to give it a different appearance, is not between the government and the community, but between the monied and the landed interests." The petitions before the Legislative Council, he said, showed that the subject was not understood: many landed proprietors were opposed to the measure because of the misapprehensions spread around.¹

With respect to the public companies, he pointed out that the Bill was not intended to have a retrospective effect: he calculated that the proposed tax would not at all interfere with their prosperity, or prevent the formation of any new company in the Cape Colony. Statements about the increases of revenue to be obtained had all been exaggerated: every stamp used, would be connected with the affairs of a public department and could certainly not impede business - in fact the whole principle of the stamp duties now proposed was directly in line with the policy of Her Majesty's Government.

1. He showed, for example that the duties payable under the item "Accounts of the Administration of Estates by Executors", would in fact be less under the new than under the old tariff.

One can ^{but} guess at the communications which Montagu must have had with the Governor before this meeting. He had stated his case in favour of the Stamp Ordinance quite clearly and bluntly - but he had to bow to the decision of his superior. Observing that His Excellency had promised the deputation that "you had no intention to press them (i.e. the Stamp Ordinances) against the general popular judgement", Montagu then moved "in obedience to Your Excellency's commands, that the Bills, to regulate the duties upon Stamps and Advertisements upon Newspapers be entirely withdrawn." The motion was passed.

The results of this are interesting: the "victory" scored by the colonists, hit back at Montagu, and started a train of negative thinking, which led to the increase of his unpopularity at the Cape. The concensus of opinion is perhaps best summed up in the words of Robert Godlonton, in an editorial in the Graham's Town Journal:

"We agree very generally", he said, ".... on the propriety of calling on the public to be perpetually on their guard, to watch narrowly every measure which might be brought forward by Mr Montagu, more especially of a financial nature. The pitiful trick of introducing sundry items into his stamp act, which by his own admission, were never intended to be enforced, and others, which he acknowledges were unjust, errors which would never have been corrected, but for the vigilance of the public, are a sufficient proof how little confidence can be placed in the Hon. Secretary and his coadjutor, the Attorney-General. From want of better training, he is headstrong and wilful, and unless ridden by a skilful, watchful Jockey, he will prove unmanageable and commit all sorts of mischief"

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1. Stamps upon Bills of Exchange and Promissory Notes other than those in townships.
 2. Montagu never acknowledged the inclusion of unjust items. In his speech in the L.C. 27.1.1845, he distinctly pointed out that: (a) The Stamp duties would have been applied to Joint Stock Companies as Companies, (b) The stamp was never intended to be extended to charities or schools, as some rumours had it, (c) That there was a serious misunderstanding: the government had no intention, for example, to make a farmer pay for cutting reeds or grazing cattle on his own lands: the tax would involve crown land only, a practice which, he pointed out, had been adhered to for the last thirty years.

Yet even Godlonton must admit at the end of his attack, that

"The Hon. gentleman possesses the elements of public usefulness in no common degree, as is manifest in the improvements and practical reforms he has suggested .."¹

It gave common ground of opposition to groups between whom there was nothing in common but dislike of the new measure. For once, the Western and Eastern Districts shared a common platform. More. In the defence of their interests, the critics had come very near to a broad challenge of the constitutional right of the Executive Council to impose taxation, stated to be repugnant to the people. Rightly, Maitland had yielded, since the risks of continuing with the measure were greater than the practical inconvenience of the status quo. But as so often happens, intelligent and lively concession was construed as weakness, and demonstrated the power of organised public opinion. To quote the Zuid Afrikaan: "After this it will be in vain for any future government of the Cape to attempt to force any unpopular tax down the throats of the people."²

Undoubtedly the success of the agitation against the Stamp Duties, was an axial point in Cape politics. It is clear, too, that Montagu took the brunt of the attack. Approbation had already, over the Market Relief Bill, given place at times to bitter personal attack. After 1841, he was almost the scapegoat of conciliar government. Up to a point, but only up to a point, his conduct during the debates on the Stamp Duties, shows the defects of his qualities: he tended to forget that wise government is "the art of the possible".

But that does not detract from the lasting benefits which accrued from his financial reforms. Any scheme of fiscal organisation, stands or falls by its practical outcome:

1. G.T.J. 20.3.1845

2. Quoted in C.F.T. 31.7.1845

Colonial Revenue went on improving till in 1852 it had more than doubled the total of 1834, and was one hundred thousand pounds in excess of what it had been in 1843 the year of Montagu's general enquiry into taxes.¹ While it is true that between 1834 and 1843, when Montagu began enquiries into the Port Dues, there had been an increase of 17 per cent, this is dwarfed by the fact that between 1843 and 1852, despite the absence of Port Dues, customs revenue more than doubled. Petty devices of direct taxation had disappeared by 1852, and revenue was collected under only 14 heads in 1852, as compared with 16 in 1843 and 17 in 1834. The overall picture is one of prosperity. The direct interest of the Colony in British Kaffraria after 1848 opened up further possibilities for extending the system of financial control inaugurated by Montagu. Due to the improved state of the Revenue, £293,592 was available to be expended on public works, a sum quite distinct from the levies raised under the Road Ordinance.

With reorganisation, retrenchment had moved parallel to Colonial Expenditure. The published Minutes of the Governor submitting the financial arrangements for 1845, show that the expenditure for 1845, as compared with 1844 was reduced by £9,791. 14. 2., while there was an augmentation of revenue in 1845 over the year 1844 of £10,790. 11. 0; and this notwithstanding the abolition of the Port Dues, and the relinquishment of turnpike tolls by the Central Road Board, which altogether amounted to £5,500.²

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1. For a statistical analysis of Colonial Revenue, 1834, 1843 and 1852, see Appendix IV to this Chapter.
 2. NEWMAN op cit p. 51.
See also Appendix VI to this Chapter.

Year after year, officials and members of the public paid tribute to the sound state of the Cape finances. When Sir Peregrine Maitland was about to leave the Cape, the South African Commercial Advertiser published a tribute to him, in which the following commendation was made:

"It is true that Sir Peregrine, as well as Sir George Napier in the last months of his government, had the inestimable advantage of Mr Montagu's service at the head of the Colonial Office; Sir Peregrine devoted his head steadily to the course of public business, and his despatches prove that this union with Mr Montagu, in the numerous services rendered to the Colony, was one of intelligent conviction and enlightened confidence Mr Montagu's merits, so far from cancelling or detracting from the merits of his chief, reflect upon them all their lustre."

At the same time, Sir Peregrine Maitland reported the following to the Secretary of State:

"As to the civil state of the Colony, I trust it will be found satisfactory by Sir Henry Pottinger. The Government departments are in an efficient condition, and the business is habitually conducted with due regularity. The customs' revenue has been large, showing a healthy state of our commerce, and the treasury, in consequence, is in a very satisfactory state." 2

In 1848, the Secretary of State wrote to Smith about the government of the new territory of British Kaffraria; he remarked that as far as he could ascertain, Pottinger had been under the impression that Her Majesty's Government had authorised him to draw on the military chest for the expenses of organising a government for this territory. Grey stated categorically that Kaffraria ought to be made financially self sufficient as soon as that were possible, and if that should prove difficult, then the Cape should be prepared to bear the burden.

"I see no reason" he said, "for now taking a different view of the question, and as the Colonial Revenue is in a position, not only to bear an increased expenditure for the civil establishments, but also to provide a sum of £10,000 for immigration, the necessity for resorting even temporarily to the military chest, has not arisen."³

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1. S.A. Commercial Advertiser 20.1.1847
 2. P.P. Feb 1848; xliii (912) p.26 Maitland to Grey No. 40 27.1.1847
 3. P.P. Feb 1848 xliii (969) p.38 Grey to Smith No. 100, 17.3.1848

This optimism on the part of the Imperial Colonial Office was substantiated by Smith in his despatch to the Secretary of State, on the 23rd March 1848. Smith announced that in the estimates for 1848, provision had been made for eight additional seats of magistracy, and five new divisions for Civil Commissioners. Although Pottinger had thought that the colony could not afford more than six, Smith pointed out that the termination of the latest Kaffir War had rendered his suggestion absolutely imperative, and added further that "the Colonial Treasury is able to provide the funds necessary for defraying all the expenses incidental to my policy ... without resorting to Imperial funds for any portion of it"¹ He fortified his argument by quoting that the revenue of the Customs department was steadily increasing, that the general financial state of the colony was so sound that he proposed to deposit some portion of the land sales in the reserve fund, for two reasons: first, because the disposable land would probably quickly be sold, and because certain districts would largely depend on these sums as their principal source of revenue; secondly, to promote emigration on a large scale from the United Kingdom.²

The problem of immigration was one with which the Cape had been continually confronted; yet though immigration was as much desired at the Cape as emigration was encouraged in Britain, the Cape could never offer sufficient attraction to entice settlers to come out. The necessity for immigration was perceived by Montagu from the start and it was a project continually before him. Two problems to be solved before a workable scheme of immigration could be

1. P.P. 3 May 1849 ~~25~~ xxxvi (1056)^{p.5} Smith to Grey No 51
23.3.1848.

2. Ibid. pp 6-8.

undertaken with anything like prospects of success. The first concerned the disposal of crown land, the second the financial means to put the idea into practice.

Free grants of land subject to quit rent were made until Lord Glenelg, by despatch No 119 of 3.10.1838 gave instructions that for the future all crown lands were to be sold to the highest bidder; but even after this, Napier granted lands either freely, or at a valuation. A Select Committee of the House of Commons had advised in 1836 that the proceeds of land sales should be directed to immigration.¹ Wakefield's principles of 'systematic colonisation' were becoming increasingly more favoured, and in December 1839 Lord John Russell appointed a Board of Colonial Land and Emigration Commissioners who in 1840 reported that "the extent to which opulent and intelligent settlers may be attracted to the Colonies, will depend in great measure upon so adjusting the price of land as to maintain due proportion between labour and appropriated land."² Russell was not in favour of earmarking all proceeds of land sales for emigration; he was of the opinion that some part should go towards other more necessary contingencies for particular colonies. In 1840 he remarked that the state of the Cape revenues would not allow any part of the land funds to be devoted to immigration there, even though he agreed that for the colonies in general, crown land should be sold at a uniform price within the colony, and that not less than fifty per cent of the proceeds should go to immigration.³

In 1840 the Cape Town and Grahamstown inhabitants signed memorials, praying that the greater amount of land

1. ROBERTSON H.M. The Cape of Good Hope and Systematic Colonisation, SOUTH AFRICAN JOURNAL OF ECONOMICS, vol 5, No. 4, 1937, pp 371 ff.

2. Ibid

3. Ibid

sales should be devoted to immigration from the United Kingdom. Napier, in his covering despatches to the Colonial Secretary, advised very strongly against this, arguing that the Colonists were too optimistic in the figures they quoted for the sale of crown lands; he advised that the colonial finances could not afford the scheme so rightly desired by the memorialists. Russell agreed with Napier and wrote back: "Until advices of a contrary nature be received any scheme of systematic emigration to the Cape must be entirely out of the question."¹

Montagu approached and solved the first problem directly, the second indirectly. In June 1843, he was appointed senior member of a "Committee for investigating the claims to lands and houses"² and in August the Governor announced that in future the Colonial Office would be the place, both for the meetings of the above Committee, and for the conduct of the business of the above nature.³ In future, unappropriated Crown lands in the Colony would be sold in freehold and by public auction, the upset price would be two shillings per acre; persons desiring to purchase, should apply in writing to the Secretary to Government who would pass on the applications to the Surveyor-General; the latter would survey the land desired to be purchased at the expense of the interested party. This fitted in too, with the scheme of Colonial Agents, who could purchase for clients, not yet residing at the Cape.⁴ Before May 1844, land to the value

1. Ibid. p 378

2. G.G. No. 1956, 16.6.1843

3. G.G. No 1965, 18.8.1843. Montagu took as his model, the Crown Land Sales Act passed in 1842 (CHBE Vol VII p. 167); the regulations, laid down for the disposal of Crown land at the Cape, reflect the spirit of the above act, point by point.

4. G.G. No 1969, 15.9.1843.

of £1,058 had been sold at the Cape under these new regulations, while for the whole of 1844, land sales totalled £8,080.²

On 1841, Russell had pessimistically refused to support the plea of the colonists for immediate emigration from the United Kingdom, yet in 1844 Maitland could obtain the unanimous assent of the Legislative Council for appropriating £10,000 from the 1845 revenues for the very same purpose.³ The finances of the Colony had increased so favourably, that in 1848 Sir Harry Smith stated to the Legislative Council "I propose to devote the sum of £16,000 in the course of the year 1849 to the introduction of emigrants from Great Britain and Ireland into the Colony."⁴ In the next three years, the groundwork was laid for the more ambitious immigration of the 'fifties, and although only 1700 settlers were added to the labour of the Colony by 1852, over £39,000 could be voted, and reserved without detriment to the other needs of the Colony, between the years 1845 and 1851.⁵

Such then in outline were the masterly, and successful arrangements of the Secretary to Government, to improve the financial conditions of the Colony. As early as 1844 the Governor reported to the Secretary of State:

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1. ROBERTSON op cit p. 380
 2. Ibid.
 3. NEWMAN op cit p. 52
 4. NEWMAN op cit p. 54
 5. ROBERTSON op cit p. 389

"I am happy in being able to ensure your Lordship, that the revenue is now well collected throughout the Colony; that all the financial arrangements are upon a sound and healthy footing, and that there is no probability of the collection falling again into arrears in any branch of the service. The expenditure is narrowly watched, and as the system of advance to the public functionaries to provide for the wants of their departments has been abolished, no expense can consequently be now incurred, until the propriety of it has been submitted for my consideration and approval."

This, and other undertakings, together with the most advantageous changes in the entire management of the Colonial finances helped to stimulate industry and commerce. "Private undertakings were now spurred on by public projects; commerce found a more encouraging mart than it had heretofore done, through the ports of the colony; ... additional banks were opened; insurance companies multiplied; ... in a word, the Cape awoke from its slumbers ..." ² The stage was set for a programme of more general reconstruction. Once the finances of the Colony had been placed on a sound footing, Montagu could turn his attention towards meeting the need for good roads, for better harbour facilities, and for all the other public services around which centered the life of a civilized and progressive community.

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1. Maitland to Stanley, July 1844. Quoted in NEWMAN op cit p. 57
 2. NEWMAN op cit p. 58. In 1843 there were only 3 banks, the Cape of Good Hope, the South African and the Eastern Province. In 1853 there were 12, by the addition of the Colonial, Frontier Commercial and Agricultural, Port Elizabeth, Commercial of Port Elizabeth, Paarl, Western Province, Worcester, Swellendam and Graaff-Reinet Banks. In 1856 the number had increased to 17. ARNDT. op cit pp 243 sqq Insurance companies increased from 4 in 1843 to 10 in 1853. Cape of Good Hope Almanac op cit 1844, and 1853.

APPENDIX NO I TO CHAPTER II

Extracts of the additional instructions, issued from the Colonial Office on the 23rd September 1848 "for the guidance of the respective Civil Commissioners and all other Sub-Accountants, and which are to have effect from and after the 1st January 1849, and are to be strictly conformed with."

1st. Every Civil Commissioner and all other Sub-Accountants are to forward to the Colonial Office, on or before the 15th January in each year, an Annual Estimate of the anticipated Revenue of their respective departments, prepared in a prescribed form, to be accompanied by an Estimate of the Expenditure in a similar form, distinguishing the Establishments already "Fixed" under the sanction of Her Majesty's Government, from other Expenditure not so "Fixed". These Estimates will form the basis of the future system and plan of account, and on that account the prescribed forms are to be strictly adhered to.

3rd No sum is to be set down as "Unforeseen Charges", - and in cases of emergency where an expenditure becomes unavoidably necessary, a Supplementary Estimate must be prepared in the same form as the Annual Estimate.

5th The Cash Book is to be closed and balanced at the end of every month

6th All Sub-Accountants are to send to the Treasurer General a transcript or duplicate of the Monthly Cash Book for each month, together with the usual Cash Accounts, accompanied by the vouchers in duplicate in support of the same.

8th Officers who collect Revenue and pay it over to the Treasurer General in Cape Town, or to the Civil Commissioner in the Country Divisions, but who are not Sub-Accountants for Expenditure, keeping Cash Books, are to transmit monthly to the Auditor a statement in the prescribed form, showing the total amount collected under each head of receipt, within the month, and the dates of payment to the Treasurer General or Civil Commissioner, supported by the receipt of the latter for the sums paid over to him.

10th All Sub-Accountants and Heads of Departments, will be furnished by the Colonial Secretary, through the Treasurer General, with a printed statement of the different heads of account under which the several services are to be classed and also with printed forms of vouchers applicable to each head of service and account, and every bill or voucher is to be made out for its own distinct head of service, and not to be blended with or include any other services; it being necessary, with a view of carrying the present system of account into effect, that from the first application for authority to incur an expense, the final warranting by the Governor, each service and charge should appear in their several stages under one and the same head, as defined in the Annual Estimates. (My italics)

11th Previously to the termination of the year, a separate and complete schedule of the different Establishments of every Sub-Accountant and Head of Department will be forwarded from the Colonial Office, accompanied by the authority of the Governor, to the respective parties entrusted with the expenditure, for paying monthly in the ensuing year the Salaries, Allowances, and Office Contingencies therein enumerated

13th For all the services not comprised in the authorised Establishments special authority is to be applied for in the following manner viz:

As early in each month, as the necessary expenditure for the ensuing month can be foreseen with sufficient accuracy, the heads of the several departments are to draw up and transmit to the Treasurer General, to be by him forwarded to the Colonial Secretary, a requisition (in strict accordance with the classified head of service on the Annual Estimate) of the charges for which provision is to be made in the ensuing month, showing by a memorandum at the foot of the requisition what further sums may be required during the current year, for the same work or service; The requisition, after being laid before the Governor by the Colonial Secretary, will be returned to the Officer entrusted with the expenditure, accompanied by a letter of authority, describing under the proper heads the services and charges to be defrayed, and referring to any special circumstances which may be necessary for the information of the party by whom the payment is made. A copy of this authority will be forwarded to the Treasurer and Auditor respectively, for their information and guidance.

14th Three days at least before the termination of each month, every Sub-Accountant and Head of Department will send in duplicate to the Treasurer General, or other Chief Accountant schedules of the charges to be defrayed in the ensuing month, with the necessary authority, and documents annexed thereto, (including estimates for works, contracts, agreements and tenders) excepting only the receipts of the parties, which are to be obtained when payment is made; the charges are to be classed and particularised under the several heads of service, in the same manner as in the requisition for authority to incur the expenditure.

17th The Sub-Accountants must complete, and transmit to the Treasurer General by the first post after the close of the month, their cash account, and vouchers for the preceding month, in order that the Treasurer may post the accounts monthly.

26th No expense will be allowed to be incurred on verbal authority; and whenever any head of department, or other officer of Government, may receive from the Governor, or Secretary to Government, by his authority, a verbal assent to the commencement of any work or repairs, or to the expenditure, in any way, of the public money, such assent is merely to be considered as an approval of such officer making an official application to him, through the regular channel, for authority, in writing, to incur such expenditure. - Any item of expense that may be incurred by any head of department, without such previous written authority, will be surcharged against him.

31st The Treasurer and Auditor are in future to report immediately to the Secretary to Government, for the Governor's information, whenever any sum is not duly received by an Accountant, or accounted for by him.

Colonial Office
Cape Town,
23rd September, 1848.

(Sgd.) JOHN MONTAGU.
Secretary to Government.

These instructions are taken from the Cape of Good Hope Almanac and Annual Register for 1849, pp. 91-96.

APPENDIX NO II TO CHAPTER II

No. 1.

RETURN of Rations of Provisions required by a Detachment
of at for days, from to 185

Number of Officers
Number of Men

Number of Rations for
Days

Certified that Rations of Provisions have been
furnished by as above.

Civil Commissioner.

Commanding the Party.

Certified that the current market Value of the above
is per ration.

(Place and Date,)

Received from the Sum of in
Payment of the above Supply, having signed Duplicate Receipts.

Witness:

No. 2.

(Place and Date.)

I Certify that waggon belonging to
has been employed carrying from to
between and 18 , for which he will
be entitled to be paid at the rate of per diem.

No. 3.

(Place and Date.)

The Civil Commissioner of Dr. to
For the following Articles furnished to him for the Public
Service:-

We hereby certify that the Rates above charged are fair and
reasonable.

(Place and Date.)

Received from the sum of
in payment of the above Account, for which I have signed a
Receipt in Duplicate.

Witness:

Certified.

Civil Commissioner.

SPECIAL SERVICE ordered by his Excellency the Commander-in-Chief, under date.

No. 4. (FOREIGN, No. 15)

Office of Ordnance.

prays to be allowed the following Sum for the undermentioned Articles by him supplied agreeably to the Board's Order of 16th November, 1849, $\frac{T}{572}$

£ s. d.

Certified that the above-mentioned Articles have been actually supplied.

Certified that the Prices charged for the before-mentioned Articles are fair and reasonable.

We hereby certify, that the foregoing Articles received from Mr. for the Service at pursuant to the Order of the were delivered into Store between the and the and that they have been inspected and compared with the Patterns and Specifications, and found to be conformable thereto, and to the terms of the Contract or Agreement for the supply, and that they are fit for Her Majesty's Service.

*Date of Contract or Agreement to be noted in the margin.

£ day of 18
RECEIVED of Storekeeper, the
Sum of the Amount of my
annexed Bill

Paid in the presence of) _____

APPENDIX NO III TO CHAPTER II

FORM No. 1 - BOUNTY MONEY

Particulars of Bounty Money issued to Levies by Civil Commissioner at _____ during the month ended _____ 1851.

No.	Names	Amount of Bounty	Signature of Volunteers acknowledging Receipt of Bounty
-----	-------	------------------	---

Total

I certify, that I have paid the sum of _____ pounds, _____ shillings, and _____ pence sterling, to the above-named Volunteers, as per receipt affixed, being at the rate of two pounds sterling per man, per authority dated Colonial Office, 6th January, 1851.

(Signed)
Civil Commissioner.

Witness to payment and)
to signature or mark.)

FORM No. 2 - DAILY PAY

Particulars of Daily Pay issued to Levies by Civil Commissioner at _____ during the month ended _____ 1851.

No.	Names.	Amount.	Signatures.
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Total .

I certify, that I have paid the sum of _____ pounds, _____ shillings, and _____ pence sterling, to the above-named officers, non-commissioned officers, and privates as per receipts annexed being their daily pay, warranted by Government authority dated Colonial Office, 6th January, 1851.

(Signed)
Civil Commissioner

Witness to payment and)
to signature of mark)

Certified,
Officer Commanding.

FORM No. 3

(Place and Date)

The Civil Commissioners of

Dr. to

For the following articles furnished to him for the Public
Service:-

We hereby certify that the rates charged are fair and
reasonable.

Received from
the sum of

in payment of the above Account, for which I have signed a
receipt in duplicate.

Witness:

Certified.

Civil Commissioner.

PERIOD	TABLE BAY		ALGOA BAY		SIMON'S BAY	
	Inward	Outward	Inward	Outward	Inward	Outward
Year ending 5th Jan. 1844	No. of ships		No. of ships		No. of ships	
	467	480	114	113	53	46
	597	586	98	92	41	39
Year ending 5th Jan 1845	568	558	152	154	31	30
Year ending 5th Jan 1848	688	672	163	161	51	52

Imports, Exports & Customs Revenue

PERIOD	Imports	Exports	C.R.	Imports	Exports	C.R.	Imports	C.R.
Year ending 5th Jan 1844	665,338	211,226	63,515	135,919	118,860	10,991	5998	650
Year ending 5th Jan 1845	628,703	305,150	57,043	149,183	166,638	10799	5,491	1,171
Year ending 5th Jan 1848	1,049,342	154,458	78,735	320,979	185,599	22,872	39,020	897
Year ending 5th Jan 1852	£1,344,270	£382,357	85,608	£317,421	£268,241	27,361	£11,589	820

APPENDIX V TO CHAPTER II

Comparative Statement of the Revenue of the Cape of Good Hope in the years 1834, 1843, and 1852

Heads of Revenue	1834			1843			1852		
Customs, dues & wharfage	15,778	2	5	75,190	18	10	152,281	17	7½
Land Sales & sales of other Govt. Property	2,550	12	5¼	5,823	14	5¼	(612	16	10½
							(3,810	5	5
General direct taxes	18,067	4	2	2,767	16	3			
Land Revenue	9,170	5	8½	14,749	13	4½	17,617	7	0
Port Dues	1,674	15	10½	2,023	1	10			
Rents, exclusive of lands	271	17	11¼	834	11	2½	229	6	11
Transfer Dues	9,422	7	2	18,512	12	11¼	31,551	12	0½
Auction Dues	10,808	0	5¼	15,108	1	6¼	21,185	8	4¾
Tolls and Ferries	2,780	8	0¼	3,013	18	4¼			
Market Dues	3,611	12	8¼	34	12	4¼	26	0	4¾
Licences etc. in British Kffraria							2,234	0	7
Stamps and stamped licences	16,465	18	9½	19,288	12	5¼	19,420	16	3
Postage	3,963	6	3	8,570	17	11¼	14,364	10	1½
Fines, Fees & Forfeitures	7,102	7	8¾	6,134	12	11¼	7,076	17	6½
Reimbursements in aid of expenses etc.	516	16	10½	472	1	8¼	4,593	3	0
Interest on monies.									
Discounts of the late Govt. Bank)	9,043	5	4	3,035	17	6	118	7	10¾
Special Receipts	2,855	3	3	2,633	11	6	65	4	6
Tithes on Colonial Produce	4,395	5	2¼						
	£118,477	10	5¾	178,204	15	1¾	275,547	14	6¾

Revenue from Guano £53,050 0 0

Public Works paid for from the Colonial Treasury from 1st January 1843, to 31st December 1852 £65,603

Roads, streets and bridges £227,989

£293,592

APPENDIX VI TO CHAPTER II

The following statement shows how far in different years the actual Revenue exceeded the estimate.

1843 -	£ 8,300	7	2	
1844 -	£57,036	19	8	
1846 -	£15,651	0	0	(i)
1847 -	£56,462	0	0	(ii)
1849 -	£12,292	0	0	(iii)

- (i) The diminution in this year from the preceding is accounted for by the Kafir War lessening amount received from auction dues, land rates, transfer dues, stamps, and sales of land.
- (ii) The increase is again accounted for, from customs', auction and transfer dues, postage and land sales, all indicating a steady, yet gradual return of internal prosperity after the ravages of a disastrous war.
- (iii) Decrease due to diminution in customs' collection (only temporary) and land sales from local causes.

CHAPTER III

PUBLIC WORKS AND ADMINISTRATION

In 1806 the Colonial administration inherited an administrative structure, barely adequate to the demands of an expanding European settlement. The problem was to adapt this to a changing socio-economic structure: to develop different forms of administration and flexible institutions on a growing periphery, and to maintain effective central control. Where before 1843, there had been a series of experiments, often unco-ordinated, after Montagu's appointment, a coherent pattern of administrative control was developed. In part this followed lines which in some cases, can be traced back to the Eighteenth Century, in part it was invented ad hoc, and it was on the changes introduced by Montagu, that public comment was focused. It is no reflection on his undoubted abilities to point out that part at least of Montagu's pre-eminence during the formative years covered by his secretaryship, was due to the nature of the office he held. For already in 1843, the Secretary's office was "the keystone of the arch of government". On the one hand it held in place the entire structure of a civil service. On the other hand the Colonial Secretary acted as a better link between the bureaucracy and the Executive or Legislative Councils than any other official: he presided over both Councils in the absence of the Governor and generally took the lead in bringing government business before those Councils; and as a sagacious public officer, he was determined to apply the resources of the Colony to securing those public benefits, of which it was sorely in need.

In order to assess the role which Montagu played in this, it is necessary to understand exactly the nature of the Colonial Office with respect to public affairs. It was

more than a secretarial office,¹ for it combined the duties and responsibilities which would be the concern not of one, but of several government departments. The Colonial Secretary was, among other things, expected to be the Statistician in the administration. Even in the days of the Dutch East India Company, the Landdrosts had to submit "Opgaaf Rollen"² that is statistical information about the country, its inhabitants, and the various services: these returns would include Local Revenue, Public Works and other Civil Establishments, Population (births, marriages and deaths) Churches, Schools, Agriculture, Manufactures, Gaols and Prisons.³ This practice continued, with modification, after the British occupation, and the information was used in the compilation of the Blue Book: an official notice dated 14 February 1838 reminded local officials to send their returns to the Colonial Office, since the Secretary to Government was responsible for the compilation of this book. The Colonial Secretary became more and more like an official Gazetteer, and since his office was not only a source of statistical information, but assumed something of the character of an archives, a greater amount of the administration of the Colony came to devolve on him and his staff.⁴

After the abolition of the courts of Landdrosts and Heemraaden by Ordinance 33 of 1827,⁵ many of their functions passed to the Resident Magistrates and Civil Commissioners: the residuum went to the Colonial Secretary, as for example

1. Supra Chapter I. Passim

2. Venter op cit p.27

3. Supra Chapter II on Finances and Infra Chapter IV on Roads.

4. Supra Chapter I ~~pp~~ssim

5. Walker E.A. A history of Southern Africa. London 1957
p 163.

the appointment of Marriage officers.¹ The administration of justice, the administration of police, and the charge of colonial defence, all of this came under the control of the Colonial Secretary's department. (Even the Attorney-General, originally styled "Procureur-General", held his office, till 1878, under the direct supervision of the Colonial Secretary.) The Post Office too, came under the charge of this office. Mr Caldwell's instructions in 1806 stipulated that a list of letters had to be sent to the office of the Colonial Secretary, to which officer he was immediately responsible.²

This wide scope of official duties included a personal concern, on the part of the Colonial Secretary, for public services in general. Despite the creation of the post of "Inspecteur Generaal der Civiele en Militaire Gebouwen" in 1806 - a designation changed to that of "Superintendent of Government Works and Buildings" in 1825 - and the appointment of a Surveyor-General in 1828,³ the Colonial Secretary's responsibilities compare very favourably with the instructions issued to the Divisional Engineer as late as 1906.⁴

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1. An order in Council of 7 September 1838 had made provision for marriage officers directly responsible to the Government through the office of the Colonial Secretary. In 1860, for example, inhabitants were reminded that if duplicates of marriage licences were required, they should apply to the Colonial Office, where all this information was filed. Venter op cit p. 31 sqq
 2. Caldwell was Deputy Postmaster. Venter op cit p. 36
 3. Ibid p. 160
 4. The following is an extract from the Divisional Engineer's instructions, issued in 1906: "It shall be his duty to suggest public improvements and to prepare detailed designs for them, if so instructed He shall afford to all chief officers of other departments within the area under his charge, professional advice to such extent as he may find possible, without detriment to the duties specifically cast upon him by his own department; and he may correspond direct with all such chief officers within his area, on matters relating to details of buildings or works appertaining to their departments in respect to which expenditure has been authorised, or is in progress ... he shall, without in any way committing the government, collect such information as he may deem useful and necessary and report to the Chief Engineer." By substituting the words 'Governor and Legislative Council' for 'Chief Engineer', the passage could quite easily have been a paragraph out of Montagu's instructions.

This, then, was the position as Montagu found it upon his arrival in the Colony in April 1843. The Colonial Office had become a source of information, the focal point of the Cape's administrative machine. He accepted this as the inevitable result of the history of the office at the Cape; but acceptance does not imply satisfaction. He realised that the existing system of public administration had its defects.¹ The Colonial Office itself was overburdened, with routine business which could more properly devolve on subordinate departments duly co-ordinated with one another, and the Colonial Office; and partly because of this lack of delegation, the civil or public service was understaffed. The immediate result of Montagu's development of administrative routine, as likewise the extension of public works, was increased centralization. The Colonial Office not only established itself more firmly as the central cog in the administrative machine; it became a rendezvous for official appointments: not only with the Colonial Secretary, but even, at least for a short period in 1847, with the Governor. In a Government Notice issued on the 29th January 1847, it was announced that "His Excellency the Governor directs it to be notified that he will attend at this Office on Wednesday and Saturday in each week, at 12 o'clock, to receive persons who may desire to see him on public business; and he requests all such persons will be pleased to enter their names in the Audience Book on the days mentioned, and before the hour stated."² In the long run

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1. In his analysis of the fundamental causes of frontier problems, Dr Philip insisted that these arose from the weakness of a distant government in Cape Town, attempting to control a frontier where there was scarcely any civil administration at all. Macmillan W.M. Bantu Boer and Briton: The making of the South African Native Problem. London. 1929. p. 96
 2. Issued from the Colonial Office. See G.G. No 2149, 4.2.47.

not the least of his reforms was that increased efficiency resulted from the necessary creation of subordinate departments. For example, before the appointment of a Civil Engineer as head of a separate department in 1848¹ Montagu had been in immediate control, not merely of the broad planning, but also of the detailed execution of public works. By 1852, when he left the Cape on sick leave, not only had the Civil Engineer's department been developed, but the creation of Divisional Road Boards from 1843 onwards, marked the first step of the introduction of an elective element into local government, outside the embryo urban communities.² In brief, Montagu increased the efficiency of the colonial service, extended its activities into new fields and built up a sound tradition of public service. Thus, whatever his attitude to the question of Representative government³ it remains indisputable that by his flair for adapting existing administrative machinery to meet new needs, he laid the soundest of all foundations for a parliamentary structure. True, Montagu was often confronted by the uncompromising, often confused criticism of the Eastern Province, but that cannot be allowed to detract from his services to the country as a whole.

Financial reconstruction⁴ had, among other things, drawn his attention to the need for improving communications, especially by sea. As early as 1838 the Cape of Good Hope Steam Navigation Company attempted to establish a regular coastal trade service.⁵

1. Venter op cit p. 161

2. Infra Chapter IV

3. Infra Chapter V

4. Supra Chapter II

5. Theal op cit Vol II p. 226

The annexation of Natal in 1843 showed up the prospects of minor ports on the Cape coast. But Montagu was less concerned with the broad strategy of trade or defence, than with the practical need of making existing harbours safe.

Montagu touched on this subject in the Legislative Council in August 1843¹; he suggested that an early start should be made with constructing a breakwater for Table Bay.

J. B. Ebdon objected to the scheme, on no stronger grounds than that it was too large an undertaking for the colony. Montagu was not to be put off by such pessimism, and moved that the Governor be requested to employ a Board of competent persons to report upon the practicability, the advantage and probable expense of constructing this breakwater. The scheme was not again touched upon in 1843, but in 1844 Montagu communicated with the Port Captain of Table Bay, and in May he laid upon the table of the Legislative Council all his correspondence on the matter, together with the Port Captain's plan and section of the proposed work.² On the 27th June, he repeated his motion of August 1843 which was this time carried unanimously by the Legislative Council,³ and on the 15th August the Governor appointed the Surveyor-General Lieutenant-Colonel Michell, the Port Captain Captain Bance, Reverend J. Adamson, and Mr John Fairbairn a Board "for the purpose of inquiring into the practicability of making Table Bay a safe harbour of refuge"⁴. When the Board had been appointed, Montagu wrote to Michell, informing him that there was no necessity for the Board to confine their enquiries to the terms of their commission only.

1. See Report of L.C. meeting in GTJ 29.8.43

2. L.C. ~~1834-44~~¹⁸³⁷⁻⁴⁵ p. 502. 28.5.1844

3. Ibid. p. 542, 27.6.1844

4. Government Notice d.d 15.8.1844, printed in Government Gazette, No 2017, 16.8.1844

He requested them "to give your best attention to any other plan which may appear to the Board well calculated to attain the objects in view." As an initial plan, he suggested that they should ascertain the actual insecurity of the Bay, noting the depths at low water, neap and spring tides, the height of the waves in severe gales, and from what point the heaviest seas run into the bay; whether any protection to the anchorage was, or might be, obtained from Robben Island; and many other points of technical import, which showed that Montagu was no armchair legislator, but a man who knew what he was about in the technical as well as in the administrative field - he supervised the enquiry from both sides.¹ The Board's report was laid on the table of the Legislative Council on the 23rd December: they pointed out that the Bay had a clear wide opening, very suitable for harbour facilities, that its position "renders it of eminent importance as a place of refuge for the trade of the Southern Seas", but that it was at present at a disadvantage because of its unsheltered position. The Bay, they pointed out, would be given greater shelter by any structure along the Western shore, though they did express an opinion that the advantages of this great structure would not counterbalance its cost at that time. The plan which the Board proposed was accompanied by a sketch from Colonel Michell, recommending an outer or sheltering pier on the North side of the Bay, to be supplemented by a landing pier on the Southern side. In addition to this, they recommended the construction of an interior seawall for the transference of cargo; jetties or stages could be erected along the beach for the accommodation of boats and coasters. The total cost was estimated at about £700,000. The obvious advantages to be derived from such a project were, security to vessels and goods, a reduction in

1. G.G. No. 2038, 10.1.1845.

the time taken to land and discharge goods; better facilities for stores and refreshments; improved demand for ships' stores and victuals; facilities for the repair of ships, for warehousing and exchange of goods, and for the religious instruction of seamen. The bay would also be more secure against shipwrecks, while the whole project would, in their opinion, give "a more effective military command of the South Atlantic,¹ and security to navigation in it, and the adjoining seas." In other words, colonial commerce, revenue and security would benefit. The reports were sent off to the Imperial Colonial Office together with a most detailed analysis by Montagu of the importance of shipping to the colony.² In his accompanying despatch, Maitland requested that financial assistance be given to the Cape for this most important undertaking.³ In the meantime, two ships, the 'Francis Spraight' and the 'Diana' had been wrecked in Table Bay, and the Executive Council recommended that the subject be referred to the Secretary to Government and the collector of Customs, who were asked to report on the situation, and make any practical suggestions they might think fit.⁴ Montagu and Field presented their report on the 25rd April and recommended the appointment of a Port Captain, the maintenance of two efficient life boats and one surf boat and that the Boat House at the Port Office be enlarged.

When the whole subject of the harbours of the Colony was again discussed in the Legislative Council, Montagu pointed out to the Council the recommendations which had been

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1. Ibid.
 2. For an abstract from Montagu's analysis, see Appendix I to this Chapter.
 3. G.G. No. 2125, 20.8.46, in which is printed Maitland's despatch No 115 of 14.8.45

made to the Executive Council, but added that they had not gone far enough.¹ He suggested that the Council resolve itself into committee to consider the available evidence and the correspondence between the Cape authorities and the Imperial Government. He pointed out that the Home Government could be expected to be generous in its contribution to this scheme of improved harbour facilities for the Colony. The Colony's own contribution towards the expenses would be very small, since the tariff or wharfage dues would supply all the interest on the loan which could be raised over the six year period of construction. He gave an analysis of how the shipping dues could be slightly raised: while it would not effect, unduly, any one vested interest, it would raise about £10,000 per annum to help defray the interest on the loan. He supported the Secretary of State's suggestion to employ convicts on the proposed breakwater scheme, and emphasised the fact that this did not imply that the convicts would either be detained in the Colony for an undue period of time, or that the Colony would eventually be turned into a penal settlement. The same scheme would be adopted at the Cape as had been adopted at Gibraltar a few years previously, when the thousand convicts who were used in government schemes there, were constantly kept under good supervision, and removed afterwards.

On the 26th August, the Legislative Council received petitions in favour of the scheme from the Municipality and from the inhabitants of Cape Town.² The Council then resolved that the Secretary to Government be requested to draw up a report on the Breakwater scheme; this was presented to the Council on the 28th August. The points covered in this report, correspond closely to what Montagu had said in

1. L.C., 1345-52, p. 88, 19.8.46.

2. L.C. 1345-52, p. 90. 26.8.46

the council nine days before. He described the plan of obtaining a loan of £3000,000 from the British Government as "highly advantageous" since it placed the whole scheme on such a basis that the construction of the harbour could be achieved without drawing on the general revenue of the colony, and with an actual reduction of the existing imposts on the trade of that port. A revenue of £20,000 per annum could be expected from the harbour, of which £15,000 should go towards liquidation of the debt. The loan, he said, should be invested in Exchequer Bills, so that no charge for interest would have to be provided for on the whole amount beyond that for sums drawn from year to year as the work advanced. The mind of the financier who had salvaged the Cape from its serious economic setbacks, was again at work. He contended that without altering the scale of wharfage dues, but by removing certain exemptions, ample provision could be made to help redeem the interest on the loan. After completion of the breakwater, the wharfage dues could be doubled, ensuring an extra £15,000 per annum. To attain this end, he suggested that the tariff of the existing wharfage dues should be revised, and that wharfage and tonnage dues should be set aside to help stand as security on the loan with the British Government. After the work had been completed, and until the revenue of the harbour should be available for that purpose, repairs required for the harbour or its works, should come from contingent charges on the public revenue, to be provided for in the annual estimates.

In pursuance of the principles which he had propounded, Montagu presented a draft ordinance to the Council for devoting wharfage and other dues in Cape Town "to the construction of a harbour of refuge in Table Bay, and for other purposes."¹ The Ordinance was passed by the Council

1. L.C. 1845-52, p. 112, 30.9.46.

on the 14th December, but was a dead letter since it was not confirmed by the Imperial Government. The subject was frequently raised during 1847, and correspondence between the Cape authorities and the Imperial Government upon the subject of a breakwater for Table Bay was despatched by almost every mail.¹ In September, the scheme was extended, and Montagu laid upon the table a Bill "for improving the ports and harbours of this Colony."² It was passed at the end of October, and a Board of Commissioners was appointed for this purpose; at the end of November, Montagu introduced a similar Bill for Table Bay, which was passed in January 1848.³ The Council unanimously approved of a plan proposed by Mr Hamilton Ross, that the Commissioners should be allowed to use any monies deriving from wharfage dues for the purpose of affording additional facilities for the landing and shipping of goods.⁴

The project was well on its way to realisation, and it was obvious that the services of the Civil Engineer would be in great demand. Thus it was that the Governor, in his finance minute to the Council in June 1848, stated that he had written to Earl Grey, suggesting the propriety of separating the Departments of Civil Engineer and Surveyor-General.⁵ The breakwater scheme did not have the general support that was expected. The Municipality of Cape Town expressed their support of the principle, but asked that the project be deferred for a while. Referring to this, the Eastern Province Herald remarked that the Municipality was probably afraid

1. In the L.C. on 27th April 1847, Montagu, in the chair owing to the absence of the Governor on the frontier, laid upon the table a series of six despatches upon the subject.

2. L.C. 1845-52, p. 233, 11.9.47

3. Ibid. p. 295, 8.1.48.

4. CTM 8.1.48

5. Supra, p.79 Capt. Pilkington was appointed Civil Engineer; Michell, as Surveyor-General, was enabled to enlarge the staff of his department. Vide GG. No 2219, 8.6.48.

that the Legislative Council was yielding too much to the wishes of the merchants of Cape Town.¹

As the Constitutional and Anti-Convict struggles tended to monopolise the attention of the government from 1848 to 1853, the harbour works came virtually to a standstill.² Montagu still struggled to get his Bills for regulating the payment of wharfage dues through the Legislative Council³, but the Council was paralysed by the Anti-Convict Association and even when it was reconstituted in 1850, it never managed to give proper consideration to ordinary legislative business, because of the united opposition of the "popular party."⁴ It was only at the end of 1851, when the Legislative Council had been reconstituted with more co-operative men, that attention could once more be turned to the question of harbour facilities. On the 26th November 1851 Montagu, after having laid on the table the 26th and 27th reports of the Commissioners for improving the port and harbour of Table Bay, gave notice that at the next meeting he would move: "That in the opinion of this Council it is expedient that the Commissioners for improving the Port and Harbour of Table Bay should be authorised to borrow any sum of money not exceeding £50,000, for the purpose of the seawall to be constructed ... and for the several wharves of which the plans and estimates are now before the Council ..."⁵

1. It is true that this remark had been made in 1846, vide EPH 5.9.46, but Ebdon expressed similar sentiments in the L.C. when he asked the Council not to yield to the wishes of a "minority" vide CTM 8.1.48

2. Vide Theal III p. 137

3. Vide L.C. 1845-52, p. 326, 4.7.48, p.361, 13.7.48; p. 395, 15.6.49.

4. Infra Chapter V

5. L.C. 1845-52, p. 475, 26.11.51.

Godlonton moved as an amendment, that consideration of this subject be deferred till some provision was made for the inhabitants of the Eastern Province, who were 'ruined' by the Kafir War and the Hottentot Rebellion. The amendment was defeated, and Montagu then laid upon the table of the Council the first, second, third and fourth annual reports of the Board of Commissioners. These reports showed that the North wharf and the approach thereto had been enlarged, that the old South jetty had not been removed, but repaired because of its utility in the watering of ships and the protection afforded by it to boats which would otherwise be exposed to the South east gales during the summer months. As a single project, it was satisfactory yet hardly anything had been done to bring into effect the objects which lay behind the promulgation of Ordinance 21 of 1847 - for improving the ports, harbours and roadsteads of the whole colony. A Committee of the House of Assembly, reporting on the project in 1855, paid tribute to the preliminary work which had been effected in the 'forties and expressed their conviction that the best mode of procedure was that which had been suggested by Montagu and the Legislative Council. This time the Imperial Government was successfully approached on the subject of a loan, and the work commenced.¹

In his thesis on Separatism, Sole points out that the mainspring in the Easterners' demand for separation can be found in their demand for "justice"² No sooner had it become known that Montagu was contemplating the establishment of Harbour facilities for Cape Town, than the Eastern Province press took up the challenge and demanded a similar boon for the East. The advantage of the Kowie River as a port for

1. Report of a Select Committee of the House of Assembly, dated 26.4.55 in Votes and Proceedings of the Cape House of Assembly, 1855, p. 7.

2. Sole op cit p. 2

the trade of Grahamstown, had been brought to the attention of the government ever since William Cock took up residence at Port Frances as a merchant in the late thirties.¹ When he was nominated to the Legislative Council in 1847 Cock continually championed the cause of a harbour at the Kowie. Prior to this, he had drawn up a private Bill "for the opening and improving the River Kowie," which was presented to the Legislative Council in 1839.² Cock spent huge sums on the improvement of the port, but soon realised that it was essential for the government to assist in the development of the harbour. The Eastern Province was quick to take up the matter. When Montagu's harbour scheme had become known, the Graham's Town Journal remarked that "we trust the Eastern Province wants will also be discussed."³ Montagu's scheme for obtaining money from the Imperial Government came in for severe criticism in the Eastern Province Herald: the editor said that there was obviously something wrong with results "which come out on paper with the exactness and facility of an algebraic evolution."⁴ Meeting after meeting was held in Port Elizabeth, to challenge the superior qualities and claims of Table Bay over Algoa Bay; Montagu's figures were time and again rejected as incredible. In September, the inhabitants and merchants of Port Elizabeth sent a petition to the Governor: they argued that what Montagu had said about the necessity of a breakwater for Table Bay could equally be applied to Algoa Bay, and observed that if he could give figures, so could they. Accordingly they asked

1. Le Cordeur op cit p. 137

2. Cory G.R. The Rise of South Africa Vol IV, London 1930. p. 257.

3. GTJ 18.8.44

4. EPH 5.9.46

the Governor to set up a Commission "to examine and enquire on the spot, into the practicability and estimated cost of erecting a jetty and mole or breakwater, and laying down moorings, in Algoa Bay."¹ It was firmly believed by some in the Eastern Province that Montagu was distinctly opposed to any such scheme for Port Elizabeth.² But the crux of the whole matter was an economic rivalry between the main centres of the Eastern Province. A Board of Commissioners had been appointed to investigate the possibilities of the Kowie Harbour, in 1847³, and in 1849 Captain Pilkington, the Civil Engineer, announced that his department would shortly commence work at the Kowie.⁴ In the meantime, Montagu, after attending the opening of the Montagu Pass in January 1848, had had several meetings with prominent Eastern Province officials, and had shown a great interest in the public affairs of this part of the Colony.⁵ He had gone back to Cape Town with some definite ideas about harbour improvements in the Eastern Province.⁶ Yet in 1849, the schemes he might have cherished, were brought to nought, because there was no Legislative Council. In September 1850,

1. EPH 10.10.46

2. Vide EPH 26.9.46

3. Le Cordeur op cit p. 137

4. GTJ 16.6.49

5. EPH 12.2.48

6. In March 1848, he wrote to a Mr Niepoth of George acknowledging the receipt of a letter in which Niepoth had requested that the Governor appoint a commission under Ordinance 21 of 1847, for improving the harbour of Victoria Bay. Niepoth was requested to forward the names of five persons whom he wished to have appointed to the Commission. A public meeting was held in George, and five names were sent to the government. They were appointed to the Commission - Messrs. Allen, O'Connell, Dutton, Niepoth and Watson - and the EPH commented that "the opening of the Montagu Pass taken in connection with this bay, will now afford facilities for developing the resources of this district .."
EPH. 1.4.48

Sir Harry Smith listed, among the items which he proposed to put before the reconstituted Legislative Council the improvements of the ports of Port Elizabeth and Mossel Bay, while the Kowie improvements were particularly recommended as "a work of vital importance to the best interests of the farmers of Albany."¹ The break up of the Council once again delayed the implementation of the government's plans and it was not till 1852 that the Kowie Harbour Improvement Bill was finally passed.² On the 11th June 1853, a Board of Commissioners for the improvement of the mouth of the Kowie River was appointed, a company was floated to undertake the work, but nothing much resulted from this effort.³ The Kowie scheme had been feared by the economic rivals of Grahamstown: the wool farmers and merchants of Graaff-Reinet strove for more direct communications with Port Elizabeth, and the inhabitants of Port Elizabeth supported this cry, claiming that Algoa Bay was in a "state of nature" as compared with Cape Town.⁴ Moreover, there were close business connections between Graaff-Reinet and Port Elizabeth, and the economic rivalry between Port Elizabeth and Grahamstown was becoming more and more acute in the 'forties.⁵ The government was well aware of this tension, and did their best to placate all parties. In January 1847 Colonel Michell, the Reverend J. Adamson, Mr Lloyd - the Resident Magistrate of Port Elizabeth - Mr Jamison - the Harbour Master - and Mr Fleming, - a merchant - were appointed a Commission for Algoa Bay. They were to report upon the best means by which the Bay could be turned into a safe harbour.⁶ Montagu had

1. P.P. 19.5.51. xxxvii (1362) p. 23

2. L.C. 1845-52, p. 601, 26.3.52

3. Theal III p. 137

4. EPH 25.12.47

5. Vide Le Cordeur Chapter III passim.

6. Pottinger-Young Correspondence p. 159 Government Proclamation dated 20.1.47.

had previous correspondence with Jamison on this matter and had advised him to solicit the aid of Lieutenant Forsyth of Waterloo Bay, whenever necessary.¹ The government continued with this plan, and in 1849, called for tenders, and appointed commissioners, for the improvement of the ports of Port Elizabeth, Kowie, Mossel Bay and Victoria Bay.² Reports were periodically laid on the table of the Legislative Council, from the various Boards, but little beyond the preliminary paper work, was done before the introduction of representative government. The Port Elizabeth Wharf Company had been floated as a private venture at the end of 1853³ and the work done by it was later extended by the Government.

Closely linked with the problem of ports and harbours, was the question of lighthouses. Montagu introduced this topic in the Legislative Council in September 1847, and laid on the table all the correspondence with the Imperial Government relating to the erection of lighthouses at Cape Agulhas in the West and Cape Recife in the East. In the early 'forties petitions, complaints and suggestions had poured into the Colonial Office. The Graham's Town Journal of 1843 and 1844, and the Eastern Province Herald of 1847 and 1848 contended that until a proper department had been established, the Colonists held the Colonial Office alone responsible for public facilities.⁴ The arrival of the lighthouses was reported in March 1848⁵; in January 1849 the Colonial Office

1. Ibid p. 161. Montagu to Jamison 16.1.47.

2. Vide G.C., No 2273, 21.6.49.

3. Le Cordeur op cit p. 145

4. EPH 12.2.48: Montagu was praised for his interest in Cape Recife and Algoa Bay; EPH 6.3.48: announcing that Montagu will start on Cape Recife and Agulhas Lighthouses quite soon; EPH 24.6.48: Montagu blamed for not yet having provided lighthouse for Cape Recife.

5. EPH 6.3.48

announced that Agulhas lighthouse had been erected¹ and before the end of the year the lighthouse at Cape Recife was completed². The government extended its operations in this field, and in 1852 the Legislative Council was informed of Montagu's intention to move that an amount of £400 per annum be set aside to maintain the lighting and keep in repair, the lighthouse intended to be erected at the entrance of Simon's Bay.³ But any further work in this direction, upon a motion from Porter⁴, was deferred for the consideration of the future parliament.

As has been seen⁵ the Post Office also came under the direct control of the Secretary to Government.⁶ Montagu thus had a double incentive to attempt a reform of the postal establishment, and the postal arrangements. The second arose out of the result of open communications to all parts of the Colony, afforded by his road scheme.⁷

In 1844 there was only a weekly post between Cape Town and Grahamstown,⁸ and the postage was necessarily heavy. In his finance minute to the Legislative Council in 1849 the Governor pointed out that, in consequence of the great additional facilities for internal intercourse, afforded by

1. G.G. No 2249, 4.1.49

2. G.G. No 2273, 21.6.49

3. L.C. 1845-52, p. 539, 24.2.52.

4. *Ibid* p. 543

5. *Supra* p. 97

6. On 4th April 1846, for example, Montagu issued a memorandum in which postal officials and Civil Commissioners were reminded that any suggestions, complaints or irregularities should be reported to the Government, through the office of the Colonial Secretary. Venter op cit p. 37.

7. *Infra* Chapter IV

8. Newman op cit p. 210

the important improvements in the public roads throughout the Colony, he proposed, after the 1st January 1849, "to establish a postal communication in seventy hours, three times a week from Cape Town to Graham's Town, and vice versa, and twice a week to all other parts of the Colony."¹

In his finance minute to the Legislative Council in 1845, the Governor suggested to the members the advisability of a uniform postage, and the prospects of a more frequent post between the Cape and the frontier.² This was again discussed in 1846, and it was decided that, to afford better facilities than existed for the receipt and delivery of post, letters and newspapers, additional Post Offices would be established, "upon any line of road the inland mails now travel." It was realised that the want of intermediate Post Offices between the several townships, caused serious delay and inconvenience in correspondence.³ Once the Government had announced its intention of improving the postal arrangements, the people were impatient for the scheme to be commenced with the least possible delay. Montagu was often blamed directly for any mishaps in the arrangements, because it was felt that the establishment was his responsibility.⁴ At the end of 1847, Montagu, while presiding over the Legislative Council announced that by the 1st February 1849, there would be a great alteration in the Post Office establishment: the postage would be altered in accordance with principles operative in England, as by that time it was hoped that the post would be conveyed through to Grahamstown on wheels.⁵ Montagu was

1. Ibid p. 213

2. Ibid p. 212

3. This notice, issued on 2nd February 1846, was again re-printed in G.G. No 2418, 1.4.52.

4. EPH 10.1.46

5. CTM 1.1.48

in constant communication with persons in the districts in order properly to assess the situation before making any recommendations to the Legislative Council. He corresponded with Mr Harries of Port Elizabeth - in 1848 a member of the Legislative Council¹ - about the best ways in which the existing inconveniences could be rectified so as to provide the best postal service for the Eastern districts.² Montagu's plan to have small carriages, conveying mail from Cape Town to Grahamstown three times a week won the plaudits of the frontiersmen. This prospect, said the Eastern Province Herald, would soon silence the complaints of the country districts, and would produce "a general expression of gratitude from all who can appreciate the services of our public men, towards him who has carried out so many improvements for us."³ Despite this, there was still much criticism in the press.⁴

Postal communications were improved to such an extent that Montagu could confidently announce in his memorandum on Representative institutions for the Cape in answer to the strictures of Lord Stanley in 1842⁵ that "in regard to the means of communication between representatives and remote constituencies, post office establishments have been formed in every town and village in the colony, and the mail, which is now despatched twice a week from Cape Town to the Eastern Frontier, will next year on the completion of the main line of road between Cape Town and

1. Kilpin op cit 126

2. EPH 26.2.48

3. EPH 15.1.48

4. For example, EPH 15.4.48 in which the bad postal facilities at Colesberg, an important link with the Orange River Sovereignty, were pointed out.

5. P.F. 17.6.46, *** (400), p. 4 Lord Stanley to Sir George Napier. No 62, 15.4.42

Graham's town, ceased to be carried on horseback, and will be conveyed in carriages, effecting the distance in about sixty hours.¹ By the time his term of office at the Cape drew to a close, the great benefits of his admirable postal arrangements, in relation to his even more praiseworthy road scheme, upon which the former depended, were enjoyed by the public throughout the colony. There is no doubt that it played its part in quickening agriculture and commerce², and in helping to create the prosperity which enabled the Cape to support a parliamentary form of government by 1854. Furthermore, the Report of the Board of Post Office Inquiry, commissioned by the House of Assembly in 1854, in drawing attention to the diffusion of post office benefits throughout the colony, argued implicitly that the work which had been done in the 1840's accounted, to a large degree, for the facility with which reforms were being carried through the new parliament.³

In 1843, the judicial system needed as much reorganization as any other department of the government. The Judicial reforms of 1827, and the Charter of Justice of 1832 had not replaced all the anomalies which existed before. In 1843 the judicial structure was still inadequate to the needs of an expanding colony. At the base of the pyramid of justice were the Justices of the Peace who supplemented the field cornets, and wielded hardly any judicial authority. The Resident Magistrates and Civil Commissioners had taken

1. P.P. 5.2.50. xxxviii, 1137, p. 15

2. Vide letter from Montagu to Messrs Heugh, Fleming, Maynard and others, who had signed memorials from Port Elizabeth, Graaff-Reinet and Colesberg. Montagu stated that it was the intention of the government to establish a direct post between these centres, and gave details of other proposed postal arrangements between the Graaff-Reinet wool area, and the Western districts. RPH 12.1.50

3. Vide Votes and Proceedings of the Cape House of Assembly Report of Post Office Board dated 23.1.45. pp. 143 sqq.

over the functions and administrative duties of the Landdrosts and Heemraden. At the apex were the Chief Justice and the two puisne judges¹.

In 1845 Montagu suggested the appointment of a committee by the Legislative Council, to inquire into, and make recommendations for, the improvement of the judicial and law establishment of the colony. The committee's report was laid on the table of the Legislative Council on the 31st March.² They pointed out that the circuit court visited Cape Town, Stellenbosch, Swellendam, George, Uitenhage, Grahamstown, Somerset, Graaff-Reinet, Beaufort West and Clanwilliam twice a year: this meant that the chief justice and two puisne judges had to cover a 1,550 miles circuit annually. The mode of travel was most wearisome and trying, and rendered more so by the tight hold kept on the purse strings by the Attorney-General. Trials were invariably rushed and opportunities for presenting an adequate defence were rare. As the shortest interval between the session of one circuit and the next was at least six months, it meant that a prisoner often had to spend this lengthy period languishing in a gaol before being brought to trial, and if he was subsequently acquitted, he was not able to obtain any compensation. Native offenders were invariably unable to provide the bail demanded and were the worst sufferers in this connection. Similar defects were found in the lower courts. The distance, the expense and the danger to the homestead, left without protection, to the natives discouraged farmers from taking matters to the courts.³ Montagu suggested the appointment of a committee of the council to consider the evidence.⁴ Thereafter, his

1. Walker E. A. op cit p. 164. Eybers B.W: Select Constitutional Documents Illustrating S.A. History 1795-1910 London 1918. pp 109-117

2. L.C. 1837-45. p. 603, 31.3.45

3. See also Newman op cit p 508 sqq

4. L.C. 31.3.45 op cit

procedure was typical. He sent out circulars to Resident Magistrates, Clerks and Justices of the Peace, asking them for all the information relative to the conduct of criminal and civil business, in the Supreme or Resident Magistrate's Courts,¹ which would help the Legislative Council in its investigations.² The report of the Committee together with a minority report was brought up in the Legislative Council on the 13th November; the majority report was considered for the first time on the 4th December. Right throughout December, the Council devoted most of its time to this matter, and the Cape Town Mail, gave full reports of all the discussions relative to this subject. On the 22nd, Montagu spurred the Council on to positive action, by moving a series of four resolutions arising out of the majority report. He asked the Council to agree with the Committee on the evils connected with the then system of administering civil and criminal justice in the colony; he moved that additional seats of magistracy were highly desirable in the country districts, that this might be effected by abolishing the office of Clerk of the peace, and appointing to the new seats of magistracy, "such of the incumbents as are found qualified"; that the summary and civil jurisdiction of the Resident Magistrates might be advantageously extended, but that their power of inflicting corporal punishment should be limited; that Resident Magistrates should work on an itinerant

1. GTJ 17.4.45

2. The following is an extract of a letter received from J. Mitford Bowker, Justice of the Peace, in answer to Montagu's circular asking for information. "In this neighbourhood cases of theft escape daily with impunity, the distance from the petty judicial courts being so great, the farmers find it impossible to prosecute as they ought. The witnesses are generally herdsmen, who cannot be spared for the length of time required, and the farmer having so much to look to at home, sees it would be ruinous to give his time and attention to the case, and thus nearly all felony escapes with impunity, to the encouragement of roguery and vagabondism." Bowker J.M. Speeches, Letters, and Selections from Important Papers. Grahamstown 1864. p. 126

basis in their respective districts, and that the Grand Jury system be adopted as to issues of fact in civil cases in all courts where trial by jury in criminal cases was then practised.¹ These resolutions were vehemently opposed by the Attorney-General, who, in supporting the minority report, maintained that the increase in the number of Resident Magistrates would suffice to remedy all the present defects in the administration of justice, and that the whole question of hardships could be laid at the door of the bad prison system. After long discussions had led to frayed tempers, Montagu's resolutions were passed by a majority of two.² Ebden had complained that Montagu's "arbitrary bearing in the chair" was "no longer sufferable" to which Montagu had replied "I know my duty and as senior member of this council I am not to be bullied or brow beat He (Ebden) will never find me ashamed or afraid to stand in the gap to protect the public interests whenever I see anyone attempting to injure them. So long as I am the servant of the public, I will allow no wrong to be done to the public without raising my voice against it."³

His measure, while not popular with some of his colleagues in the government, earned for Montagu the gratitude of the majority of the colonists. The Graham's Town Journal

greeted the news that Montagu's measures had passed in the Legislative Council by stating: "Mr Montagu has supported the measure in the Council with that ability energy and tact, which has rarely, if ever, been surpassed in the discussion of any public service He has performed a Herculean task in a manner which justly entitles him to the respect and confidence of the Colony at large Mr Montagu has taken his stand upon popular ground; he has stood forth as the advocate of the people and he has well earned thereby, the applause and gratitude of the whole colony." 4

1. L.C. 1845-52 p.28 22.12.45

2. The Auditor-General, the Attorney-General, and Messrs Ebden and Ross voted against them.

3. CM 8.1.46

4. GTJ 3.1.46

The Imperial Government acquiesced in the reforms approved by the Legislative Council and the administration of justice was reformed. Thereafter, the apprehension and prosecution of criminals was made considerably easier.

What Porter had said about the gaol facilities, was however quite true. But Montagu did not neglect this matter either.

Most sentences of imprisonment with hard labour and all sentences of banishment were carried out on Robben Island until 1844. After Montagu's reform of the Convict system in that year¹ Robben Island became a sanctuary for chronic sick, lunatics, lepers and paupers; furthermore, the new scheme of convict labour on the roads of the colony, necessarily involved a change in the prison system. This was commenced in 1847: in November of that year Montagu, who was in the chair, presented to the Legislative Council a bill for improving the gaols of the Colony.² This was passed in December³: the Governor was invested with full powers to take such steps as should appear advisable for the improvement of the colony's prisons, for the due classification of prisoners and for the establishment of such a system of prison discipline, as appeared best calculated, not only to punish, but to reform. It was for this reason that a General Board of Prison Commissioners was appointed on 22nd March 1848⁴. It was felt that the Convict system, which had taken the male

1. Infra p 146

2. L.C. 1845-52 p. 258. 19.11.47

3. Ibid. p. 287 28.12.47

4. G.G. No. 2210, 6.4.48. The following were appointed to the Board.

J. Montagu - Chairman
Clarke Bruton Esq.,
William Hope Esq.,
Rev. Dr Adamson.,
Dr Innes.

prisoners in hand, needed general extension in the colony. From the returns annually made by the Resident Magistrates, it appeared that there were in all twenty-three gaols throughout the colony which were reported to capable of holding 1,235 prisoners. But, as the Governor pointed out, if the existing prisons were reorganized on the principle of separation of classes and sexes then being practised in Britain, they would not accommodate more than 171.

In his capacity as Colonial Secretary, Montagu was charged with issuing instructions to the Board, and when he did so his instructions assumed more of the character of a memorandum.¹ In this memorandum he drew the attention of the Board to the great objects of penal discipline: the punishment of crime, and the reformation of the offender. Prior to 1844 the latter had been ignored at the Cape, and the former very inefficiently secured "as it ever must be a system which contemplates the removal and punishment of individual criminals rather than the diminution of the general mass of crime." The adoption by the Government of the Convict and Robben Island schemes, had made it imperative to attend also to the other classes of prisoners, namely female convicts, persons detained for trial, and prisoners whose sentences to labour or confinement, were for periods of less than thirty days. He pointed out that society had no right to create crime under the pretence of punishing it; "to confirm the principles of vice in which a criminal has been reared, by forcing him into contact with others more hardened than himself, and then to turn him loose upon the world exposed to temptations which have acquired additional force over his mind, by the pernicious associations of a prison by adopting such a course, what we call the

1. Vide G. G. No 2210, 6.4.48

prevention of crime, becomes the promotion of crime, and the prison, instead of being an abode of correction, is turned into a school of vice." As there was a sufficient demand at the Cape for honest and steady labourers, so there was also the necessity for the promotion of honest and steady habits, among the labouring classes. Prison discipline ought to be so arranged, he said, as to discourage indolence, to create the motives and to promote the habits of industry. Insufficient accommodation in the public gaols rendered the classification of prisoners and the separation of the sexes impossible. To combat this evil, new regulations would have to be framed for the gaol officers; there should also be provision for periodic inspection of prisons by Resident Magistrates. Prisoners of different sex would henceforth be confined separately; all prisoners would be divided into six classes: civil criminals, disturbers of the peace; those committed for more serious crimes - murder, homicide, rape, house-breaking etc. ; crimes of a lesser degree; and two further subdivisions of the last two categories. Then, specifying the general duties of the Board, Montagu requested it to promote the formation of local prison Boards in the townships of the colony and to draw up regulations for these. The Central Board should also see to the construction of adequate gaol facilities, ensure constant communications between the General and local boards, and secure the periodic inspection of the gaols by some member of the general Board. Finally it should submit an annual report to the Legislative Council, and attend the religious education of prisoners.

The Public Prison's Board started immediately on a survey of the gaol facilities of the Colony, and submitted a report to the Legislative Council in which it was stated that at least £40,000 would be required to bring about adequate improvements in the gaols of the country.¹ Though the

1. See Appendix II this Chapter for analysis of the findings and recommendations of the Board.

report, dated 21 June 1849¹ was signed, not by Montagu but Rivers - the Treasurer-General - who was at that time Chairman of the Board, Montagu maintained an active interest in the subject, and after the Board had presented their first report moved a series of resolutions in the Legislative Council concerning the improvement of the public prisons². As was the case with the other public services, consideration on a large scale was deferred until the new parliament took over in 1854, for the turmoil of the years 1849-1853 gave the Legislative Council hardly any time to devote to matters of general legislative import. But judging again from the report of a Select Committee of the House of Assembly, the extensions mentioned above were begun: alterations to the Cape Town Gaol, which commenced in 1849, were discontinued in 1854, when the Board put forward its new scheme for a completely new prison; by 1854, improvements, though not very extensive, had been effected at Grahamstown, Port Elizabeth and most of the Eastern Province townships, but the boycott campaign of the Anti-Convict Association had prevented much work in the Western Cape. The scheme put forward by the prisons Board in their report for 1854, corresponds very closely to the one originally laid down in 1849. Only about £2,000 had been expended between 1848 and 1854, but the basis had certainly been laid for the extensive system of prison reform undertaken by the first Cape Parliament.³ In the educational and ecclesiastical affairs of the colony, Montagu played perhaps a less conspicuous part than in the other aspects of colonial life. Yet, by virtue of his official position, he was drawn into much of the controversy

1. G.S. No. 2273 21.6.49

2. L.S. 1845-52, p. 405 23.6.49

3. For report of the General Prisons Board dated 1.8.54 see Notes and Proceedings of the House of Assembly, 1854, pp 63-78.

and administrative reform of the 'forties. His opinion on the responsibility of any government to the people, was clearly expressed in these words: "If the ends of government comprise the highest and best interests of the community, it cannot safely or rationally neglect those means of moral improvement, without which even social and physical and social advancement must languish and recede."¹ The interference of the government in the internal affairs of the church had long been a matter of dissatisfaction. The struggle into which the government was drawn, between the Reverend Mr Shand of Tulbagh, and his congregation, had made it clear that as long as the Governor of the Colony, as nominal head of the church, had to endure the embarrassing position of having to conciliate conflicts between ministers and their congregations, no ecclesiastical authority could be established on a cordial basis.² Montagu realised this anomaly, and consequently introduced into the Legislative Council an Ordinance "for the better regulation of the ecclesiastical affairs of the colony."³ This was passed on November 8th, repealed de Mist's regulations of 1804, and invested the Synod of the Dutch Reformed Church with the power of regulating its own internal affairs. This Magna Carta of the Colonial churches⁴, placed their affairs under the sole control of their own authorities, independent of the state. In the progress and extension of the Church of England at the Cape, Montagu took the warmest interest.

1. Newman op cit p. 308. See also his pronouncements in the L.C. on moving a bill "to regulate the issue out of Her Majesty's Colonial Revenue of pecuniary aid towards the maintenance of the ministry and the erection of the churches of the several christian denominations in this colony." L.C. 1845-52. p. 383, 15.6.49.

2. Cory IV op cit p. 224

3. L.C. 1837-45 p. 389 31.7.43.

4. Cory IV op cit p. 225

The appointment of the first Bishop for the see of Cape Town, necessitated an addition to the annual estimates of £800 per annum. When this question came before the Legislative Council in 1849¹, Montagu firmly defended the addition of this grant. He gave a detailed analysis of the position of the various denominations in the country, pointing out that the Church of England was the one denomination seriously in need of extra clerical officers and pecuniary aid from the government. Yet it must not be imagined that he wished to procure for it the support of the government at the expense of the other churches. In his speech on this occasion² he claimed that the government at the Cape knew no one established church, exclusively or especially as such. What he did on behalf of the Church of England, was only an example of his belief that the primary duty of a Christian state was to disseminate the Christian faith among all classes, colours and races.

Interest in ecclesiastical affairs was matched by a kindred interest in education. On the 25th June 1844, Montagu laid on the table of the Legislative Council a return from the Superintendent-General of Education which showed the shocking lack of educational facilities at the Cape, despite the co-ordinated efforts made, especially in the last five years to improve the facilities and organization of Cape Education.

The appointment of a full-time Superintendent-General of Education in 1839 - the first office of its kind in the world³ - marked a new era in education. The system of government education was traditionally paternalistic: the government paid the piper and called the tune, the result being that

1. Vide L.C. 15.6.49 op cit

2. Vide Newman op cit pp 282-295

3. Fells B:G 300 Years of Education in South Africa. Cape Town 1938. p 21

in the past, people and institutions - notably mission institutions, Dutch Reformed and to a lesser extent the Anglican Churches¹ - had established their own private schools, a practice which gave rise to so many different standards that a compromise had to be effected. After 1839 government schools were divided into two classes, first class and secondary class schools; government grants were extended to mission schools in 1841² and to outlying rural communities in 1843;³ by this latter arrangement, the third type of government schools, namely aided schools were added to the classes of government schools, on the condition that the locality provided the school buildings and contributed a certain proportion to the teachers' salaries.

Rose Innes' report in 1844 showed that existing facilities did not meet the demand for education. When the report was tabled, Montagu remarked that "the most pressing demands are made from nearly every part of the colony for an extension of the advantages which (the government schools) are found to bestow ... I think we must be prepared to make a considerable advance in the expenditure for schools next year, if we would keep pace with the pressing demands upon us."⁴ He was in constant communication with Superintendent-General of Education, who was directly responsible to him⁵ and the system was gradually extended during his Secretaryship when

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1. Van Wyk A.H du Preez: Die Invloed van die Engelse Skoolwese op die Kaapse Skoolwese, 1806-1915. Pretoria 1947. Section B Chapters III & IV passim.
 2. Malherbe E.G. Education in South Africa, 1652-1922. Cape Town 1925. p. 88
 3. Pells op cit p. 21
 4. CTM 20.7.44
 5. Du Toit even suggests that the policy of Rose Innes depended largely on the sentiments of the Colonial Secretary. See Du Toit P.S. Anderwys in Kaapland, 1652-1939. Pretoria, 1940 p. 91

Pottinger left the Cape at the end of 1847, he could report to the Imperial Government that the annual grants for schools had been increased, while elementary schools were being established in the country districts.¹ Despite this, Montagu in the Legislative Council in July 1848 reiterated his remarks of 1844, adding that it was now clear that the educational system which had been extended on such a large scale in 1839, had become inadequate to the demands of the country, because of the great increase in the population, and the consequent increased desire for educational facilities in the country. He therefore suggested that a general inquiry be instituted, in order that the defects which experience had revealed might be remedied, and the requisite reforms might be introduced. He suggested that a Committee of the Legislative Council should be charged specifically with the object of receiving evidence, and that in order to meet the exigencies which might arise from the gradual development of the intellectual resources of the colony, a similar inquiry be made every three years, so as to enable the government to introduce periodically, such provisions as might adapt the system to the growing needs of the colony.² The resolutions were carried, and Messrs Montagu, Rivers, Porter, Ebdon and van der Bijl were appointed to the commission. They were in close touch with Dr Innes, and work steadily progressed: the Commission of the House of Assembly, which reported on the educational position in the colony in 1854, could paint a more promising picture than was possible at the beginning of the 1840's. There were twenty-four established elementary schools among the agricultural population of the country districts, as compared with four at the beginning of the 'forties; sixteen first class schools (i.e. modern secondary schools) as

1. Newman op cit p. 318

2. L.C. 1845-52, p. 340, 6.7.48

compared with twelve in 1843; seventy institutions, half public, half mission, throughout the country, receiving financial aid from the government; thirty-eight mission and other schools which received no financial aid from the government. The average attendance for the year 1853-1854 was approximately 23,500 as compared with approximately 5,000 in 1843.¹

It is clear then, that quite apart from his conspicuous services in the reorganization of finance, and the development of road communications, Montagu left his impressions on the Secretary's Office, and through that office, on every aspect of public administration during a crucial period of colonial development. One is tempted to talk of a Montagu technique as moving through four characteristic phases: diagnosis of a problem, local enquiries by circulars, presentation of the facts to a central committee, finally a report and the request for action through the then legislative machinery. This was but one aspect. The close co-operation with the Governor, the conventional support in Council of his unusually able colleagues, both of these were vital to the success of his plans, for it was on the Governor that the assent or dissent of the Colonial Secretary in London often depended. Inevitably there was criticism and, at times, failure. It remains true though that by separation of function, co-ordination of administrative departments, by the necessary links between central and local government, quite as much as by a veritable revolution in finance and transport, Montagu, despite the war of 1846 gave to the colony that substratum of sound administrative practice without which representative institutions, whether local or central, could not have thriven.

1. For report of Commission of Enquiry, 1854. pp 177-211. See Votes and Proceedings, House of Assembly. The comparisons were drawn from returns in the above report, and from speech by Montagu in L.C. 25.6.44, printed in CTM 20.7.44.

APPENDIX I TO CHAPTER III.

Year	Port of Cape Town- Table Bay				Port Elizabeth- Algoa Bay				Simon's Town- False Bay			
	Inward		Outward		Inward		Outward		Inward		Outward	
	No. of ships.	Tons	No.	Tons	No.	Tons	No.	Tons	No.	Tons	No.	Tons
1824	63	19,525	47	12,436								
1829					41	4,274	40	4,663	3	1,300	1	196
1844	597	171,599	586	166,855	98	19,626	92	18,754	41	16,096	39	16,191

Imports, Exports and Customs Revenue

Year	Cape Town			Port Elizabeth			Simon's Town.		
	Imports	Exports	C.R.	Imports	Exports	C.R.	Imports	Exports	C.R.
	£	£	£	£	£	£	£	£	£
1830	402,319	210,764	22,081	18,455	24,439	688	2,504	10,103	227
1844	628,703	305,150	57,043	148,183	166,638	10,799	5,491	42,381	1,171

The above is an abstract from Montagu's analysis of the importance of shipping to the Colony.

(See G.G. No. 2125, 20. 8. 46.)

Analysis of the findings and recommendations of the
General Prisons Board, Report dated 21st June 1849.

APPENDIX II TO CHAPTER III

CENTRE	FINDINGS AND RECOMMENDATIONS	NECESSARY EXPENDITURE
Cape Town.	Old gaol completely unfit; new gaol required with at least 80 separate cells, besides lock-up rooms	£10,000
Wynberg	Gaol completely unfit. Extensive alterations needed.	1,200
Paarl	No separate accommodation at present. Alterations on large scale needed.	300
Worcester	Ditto	500
Tulhagh	"No place deserving the name..." New gaol must be erected.	800
Caledon	The only prison was an outhouse belonging to private premises. New gaol absolutely necessary.	1,200
Swollendam	On the whole, facilities good. Some alterations and extensions needed.	600
George	Gaol very damp and insecure. Extensive alterations needed.	700
Riversdale	No gaol at the time.	No suggestions made for erection of either temporary or permanent structure.
Mossel Bay	No gaol at present. Only solitary lock-up room in one of the Customs Department buildings.	1,200
Beaufort	"Insecure and inconvenient" Alterations on extensive scale needed.	700
Uitenhage	In good order, but not secure.	800
Port Elizabeth	A new gaol is "quite indispensable"	1,500
Grahamstown	"The best and most extensive gaol in the country districts." Some improvements needed	1,000
Bathurst Port Beaufort Burgher's Dorp Alice Richmond	Alterations and extensions needed; in some cases completely new gaol facilities would have to replace old ones.	5,400
Graaff-Reinet	Building wholly unfit for the purpose of a gaol. New gaol must be built.	1,500
Cradook	Gaol amongst the worst for security.	1,500
Colesberg	Gaol is new, but requires enclosing wall.	500
Somerset East	Gaol has room for extensive improvements	600
<u>GENERAL PRISON MANAGEMENT</u>		10,000
TOTAL		£ 40,000

CHAPTER IV

ROADS AND CONVICTS¹

For more than thirty years after Britain had taken over the Cape in 1806, the internal parts of the Colony were to a great extent cut off from the centre of administration due to bad communications. The guarantee of a good market would undoubtedly have stimulated the initiative of the inland farmers, but the natural geographical barriers, did not allow easy access to ports. In the inland areas, remote from even the precarious coastal trade agriculture was at a subsistence level, and pastoral farming was conservative of poor techniques. The internal resources of the Colony were almost locked up and, even more important, the lack of direct and easy communication between the Eastern and Western Provinces, had led to political and social estrangement.

Various factors combined to bring matters to a head in the 'forties. In the Eastern Province, for example the expansion of the wool trade², spelt new prosperity for that province. Immigration³ more than compensated for the loss of population in the period 1836-1838, and introduced new methods, incentive, market towns and shipping ports at Kowie and Port Elizabeth; in the thirties various attempts were made to procure less difficult access to the sea.⁴ The disturbed state of the Eastern Frontier had also proved to be

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1. See appendices to this chapter for (i) Statistical analysis referred to from time to time. (ii) Map, showing the work of the Central Road Board, 1843-53.
 2. Exports 1838: £26,627. 1839: £30,190. 1840: £45,985. Vide Cory op cit vol IV p. 209. See also Thom H.B. Die Geskiedenis van die Skaap-Boerdery in suid Afrika. Amsterdam. 1936. Part I Chapter V passim. Part II Chapter VI passim.
 3. Robertson op cit passim
 4. e.g. the construction of the Howison's Poort Road by private enterprise. Cory op cit p. 239

a blessing in disguise, for the establishment of military posts and the development of townships wakened public and official opinion to the necessity of new and good roads, and also established a market for all those prepared to tender for government contracts.

At the end of the 'thirties, Major C. C. Michell revived the interest in a general road scheme, which would serve civil, military and commercial interests throughout the Colony. Earlier on, Colonel Michell had begun to educate Western opinion in favour of such a scheme,¹ while in England in 1839, Mitchell with Sir George Napier's concurrence,² urged the Secretary of State to allow the Cape to inaugurate an extensive scheme whereby mountain passes would be opened. But his further project for the construction of lighthouses convinced the Secretary of State that he was merely an enthusiast out to squander money, and so permission was refused.³ Napier himself continued the campaign: arguments in favour of Road Boards for the Colony were woven into his appeal for representative institutions for the Cape. At the end of 1841 he informed Lord Stanley that "the establishment of a Representative assembly and the formation of local Boards for the maintenance of roads, would teach the inhabitants to think and act for themselves. They would thus be led to see that their individual prosperity was bound up in the general prosperity of their native country, and those petty local interests which at present militate against any measure of general improvement, would rapidly disappear.⁴" Further attempts were made in 1842 to establish the machinery whereby a programme of road construction could be executed. On the 5th November of that year, the Attorney-General presented to the Legislative Council, a Bill "for enabling the owners of immovable property in the Divisions of the Cape and

1. His construction of the Sir Lowry's Pass over the Hottentot Holland mountains in 1829-30 had caused many a conversion in favour of a general scheme. Vide Theal op cit Vol II p.24
2. Ibid. p. 230
3. Ibid.
4. P.P. 17.6.46 xxix (400). p. 2, Napier to Stanley, No 141, 20.12.41.

Stellenbosch to make a hard road over the Cape downs."¹ But owing to the many petitions against the Bill,² Porter withdrew his measure on the 20th March 1843.³ It was not until the end of 1843, that the schemes entertained by Michell, Napier and Porter, found, in the master mind of John Montagu, convincing formulation and support.

The newspapers and official correspondence of the time taken together give a first class picture of the state of the Colony's roads in 1843. In 1842 the editor of the Graham's Town Journal scolded the government for "the disreputable neglect" of public communications:⁴ there were constant complaints about the delay of the post, because of the geographical barriers;⁵ and while the government was blamed for its apathy, the public was chastised for its lack of initiative.⁶

Montagu had not been at the Cape for more than a few months, when the first of a series of circular despatches asking for local information left the Colonial Office for the districts. In particular, a circular, sent to all the Civil Commissioners of the Colony on the 7th July 1843, elicited replies which made the position and state of roads at the time abundantly clear.⁷ In this circular, Montagu informed the Civil Commissioners that a Bill would shortly be submitted to the Legislative Council for making and repairing

1. L.C. 1837-45, p. 324, 5.11.42. See also The Porter Speeches. Cape Town 1866. pp sqq. Porter's speech on the subject in the Legislative Council, 19.12.42.

2. L.C. op cit p. 328, 19.11.42.

3. Ibid. p. 346, 20.3.43

4. GTJ 3.3.42.

5. GTJ 2.3.43.

6. e.g. GTJ 14.9.43.

7. P.P. 23.7.47, (742). p.22. This Blue Book is not listed in a list of Parliamentary Papers, or, for example, in the Index to the CHBE Vol VIII.

the main roads of the Colony: he desired information from them on a number of points. He enquired after the general state of the public roads in each particular division, the number of miles of road needing either construction or repair, the estimated average expense per mile, and the estimated cost of keeping them in repair. He sounded the Civil Commissioners on the possibility of placing toll-gates, which could not be evaded, upon some, or most of the public roads; he enquired whether sufficient funds would thus be collected in tolls, to pay for the upkeep of the roads. Failing this, he put forward alternative propositions: he suggested that the landed proprietors of any one division might be prepared to come forward as collateral securities, binding their properties to such an amount as might be advanced for the project of road construction. In conjunction, with this had to be considered the advisability or otherwise, of mortgaging the present tolls to obtain funds, and of obtaining the balance required, either by voluntary contribution, or by compulsory assessments. Finally, he announced to the Civil Commissioners his own feelings which were in favour of elected Road Boards for the Divisions, acting in concert with the Surveyor-General.

The replies of the various Civil Commissioners - namely those of the Cape Division, Beaufort, Clanwilliam, Cradock, George, Somerset, Stellenbosch, Uitenhage, Worcester, Swellendam, Colesberg, Graaff-Reinet and Albany - are most illuminating.¹ A critical analysis of the replies taken separately by districts, reveals the following situation. Even in the Western Cape, where more work had been done, local grievances showed that conditions were still far from satisfactory, due to engineering difficulties. The Civil Commissioner for the Cape Division explained that of late, the existing roads had been repaired - such as, for example, the Malan's Hoogte

1. For these replies, see P.P. 1847, op cit pp 23-48.

by convict labour under the superintendence of the Surveyor-General, and other roads by "common labourers". But the surfaces were so impermanent, that the roads would at present require "extensive repairs", to the extent of about 260 miles. Something positive had to be done to overcome the barrier of the Sand Flats. It was anticipated that once the roads had been constructed, about £300 per annum would be needed to keep them in repair.¹ In the division of Swellendam, the position seemed quite satisfactory. The Civil Commissioner, Mr Lothian Dickson reported that "the main roads of this division are mostly in good condition" and that only about 20 miles of road required repairs.² His next door neighbour from Stellenbosch, Mr D. J. van Rijnveld, painted a more gloomy picture: the public roads in his division were reported to be in a bad state. And after he had consulted with "some of the most intelligent inhabitants in my division on the subject," he had come to the conclusion that, to bring the lines of roads into a fit state of repair, would require an initial outlay of at least twenty to thirty pounds per mile.³ The Civil Commissioner for Worcester, Mr P.J. Truter, reported that, since the discontinuation of the system of overseers, the main roads in his division were generally out of repair. The roads to which he referred were, the lines from Cape Town to Worcester via the Tulbagh Kloof - a distance of seventy two miles - from Cape Town to Worcester via French Hoek - thirty-six miles - from the Swellendam division to Worcester - thirty-two miles - and lastly, from the Worcester division to Beaufort. He observed further that the road through the valley of the Hex River crossed the stream eleven times, and that the fords were most insecure when the

1. Ibid. p. 24. P.B. Borchers to J. Montagu, 24.8.43

2. Ibid. p. 43 L. Dickson to J. Montagu 18.9.43.

3. Ibid p. 32 D. J. v. Rijnveld to J. Montagu. 3.8.43.

river was swollen. Truter suggested the making of a road to Worcester, from Cape Town through the du Toit's Kloof, which would be forty-two miles shorter than the main road through the Tulbagh's Kloof, and thirty-eight miles shorter than the road via the French Hoek.¹ Further to this official information from Worcester, a memorial was sent direct to the Governor, from some of the landed proprietors of the Hex River area, in which they expressed themselves wholly in favour of "some general and well-matured plan for the attainment of so desirable an end as the improvement of the main roads of the Colony."² They showed their eagerness by putting forward some positive suggestions, such as the repair of certain sections of the road, at their own expense. Adverting to the dangers of the Hex River Pass, they petitioned that the Governor should "direct the Surveyor-General or some other scientific man to inspect the line", since, they argued, the road was extensively used by traders from Cape Town, Stellenbosch, Paarl, and Swellendam, and by farmers from the vicinity of the Roggeveld and Nieuwveld mountains, as well as by travellers from the Eastern districts.

The evidence submitted by the Civil Commissioner for Beaufort, is of a somewhat contradictory nature: having prefaced his report with the remark that the roads in his division were in "a tolerable state", he proceeded, in the same breath almost, to solicit government aid for the repair of a hundred out of the 400 miles of roads in his district, which, he remarked, were in thoroughly bad condition.³ He became more definite in his remarks on the absolute necessity of a road to the nearest sea port, which was Knysna or Mossel Bay. The difficulty to be overcome, was the formidable

1. Ibid p. 38 P.J.Truter to J. Montagu 31.7.43.

2. Ibid p. 41, signed by J. P. Jordaan, Field-Cornet; D. de Vos; P.J. de Vos; J.D. Conradie; P.G. de Wet; G.F. Hugo; W. de Vos; W. v.d. Merve.

3. Ibid. p. 23 J.J. Meintjes to J. Montagu, 4.8.43.

Zwarteberg range, which prevented the regular intercourse in trade between Beaufort and the sea ports. This was confirmed by the report from George, which pointed out that "the inhabitants of the centre of the Colony are almost cut off from access to the adjacent sea ports."¹ Nor was the Zwarteberg range the only obstacle - the Nieuwveld mountains seriously obstructed the traffic to Cape Town. Thus while Meintjies urged the construction of a road via Mosterd's Hoek, Mr Moodie looked even further ahead, and suggested a road through the Cradock's Kloof, as the main trunk line which would remove "a most serious impediment" to the advancement not only of the George division, but of all other adjacent divisions.² He added that, so bad were the communications in the George division, that an initial outlay of about £15,000 would be required to make or repair roads. The last Western Division to be considered is that of Clanwilliam, which, oddly enough, found it easier to trade with the Eastern Province than with Cape Town. For in the Graham's Town Journal of 14 September 1843, attention was drawn, not so much to the long lines of roads, as to the critical places, and as an example was quoted the road to the North-Western boundary which was obstructed at Steenkamp's Berg; farmers from the Oliphant's River, without a direct route to Cape Town or to another Western Province market, brought their produce to places in the Eastern Province, like Grahamstown. The Commissioner for Clanwilliam, Mr J. van Rijneveld, confirmed the inadequacy of road communication, observing that of the 1,100 miles of main road within the district, about 700 miles were in need of repair.³

1. Ibid p. 28 D. Moodie to J. Montagu, 5.8.43.

2. Ibid.

3. Ibid. p. 26. J. v. Rijneveld to J. Montagu, 29.8.43.

The position was as bad, if not worse, in the Eastern Districts of the Colony. Mr Martin West from Albany reported that "the state, generally, of the public main roads in this division, is extremely bad, with the exception of that leading to Fort Beaufort, with its branches to several outposts, which is a military road, having been constructed under the Royal Engineer Department."¹ His report overlaps, to a certain extent with that of the Civil Commissioner for Uitenhage, because of the continuous flow of traffic between Grahamstown and Port Elizabeth. Both from the report of Mr J.W. v.d. Riet, the Civil Commissioner² and a separate communication from Mr J.G. Cuyler, a former Landdrost of Uitenhage³ it seems clear that the construction of a durable road between the above two important Eastern Province centres was an absolute necessity. The increase of Eastern Province prosperity, and the fact that the commissariat had constantly to be transported from Port Elizabeth to Grahamstown, were all pointers to this necessity. The interior parts of the Eastern Province were no better off. The divisions of Somerset, Cradock, Colesberg and Graaff-Reinet, would all benefit from a new line of road through the Zuurberg range: communication between these various inland divisions was both insecure and tedious. But more important still, is the fact that, despite the increase in wool production, intercourse with Port Elizabeth, the only important port of the Eastern Province - of one excludes Port Frances - was severely hampered by geographical barriers.⁴ And even though the Civil Commissioner for Colesberg reported

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1. Ibid. p. 47. M. West to J. Montagu, 22.9.43. This was the Queen's Road, begun by Major Selwyn in 1837.
 2. Ibid. p. 33 J. W. v.d. Riet to J. Montagu, 12.8.43.
 3. Ibid. p. 36. J.G. Cuyler to J. Montagu, 11.8.43.
 4. Ibid. p. 27. W. Gilfillan of Cradock to J. Montagu, 15.8.43; p. 31 P.R. Marillier of Somerset to J. Montagu 26.7.43; p. 45 W.C. v Pijneveld of Graaff-Reinet, 16.9.43.

that "the state of the public main roads is, in general extremely good", he omitted to point out that easy access to Colesberg was blocked by mountain ranges, while in the districts to the South of it, road communications were poor. As a result, just as Clanwilliam 168 miles from Cape Town, sent its produce to Grahamstown, so per contra Colesberg sent its produce not to Port Elizabeth, but via Beaufort, to Cape Town 225 miles further away.¹

The Commissioners throughout the Colony were unanimously of the opinion that the farmers would not come forward as collateral guarantors, in the event of a loan being floated for the purpose of road construction. In fact, the Commissioners were not very helpful in their suggestions for the means of control or finance. Of the thirteen who were consulted, nine admitted that they could see no intrinsic value in elective divisional road boards to execute the object in view² two were in favour of the idea³ and the remaining two did not comment.⁴ And even those who seemed to think that Divisional Boards might work, stressed the necessity for official supervision and guidance.⁵ With the exception only of the divisions of Beaufort and Colesberg, the feeling was unanimously in favour of some general form of assessment, or road tax, as the only possible solution to the financial implications of the scheme. Some parts of the Colony were more enthusiastic than others: the Civil Commissioner for George

1. Ibid. p. 44 F. Rawstorne to J. Montagu 14.9.43.

2. Those of Beaufort, George, Cape, Clanwilliam, Albany, Uitenhage, Somerset, Cradock, Colesberg.

3. Worcester and Stellenbosch.

4. Swellendam and Graaff-Reinet

5. e.g. the Civil Commissioner for Stellenbosch: "An elective board working in concert with the Surveyor-General would be the best mode of effecting this object."

reported that the inhabitants had "repeatedly entreated the government to impose on them a compulsory assessment."; at a public meeting, held in George in October 1842, the inhabitants had re-iterated this, suggesting further that assessments be done on a proportional basis to fixed property.¹

Montagu's circular had served a dual purpose: the replies which it elicited had drawn attention to the growing need for good roads, and at the same time, had provided the authorities with a guide as to what action to take. The next problem was perhaps more practical: somehow measures had to be devised to secure effective labour force for the execution of the extensive project. Montagu's procedure was again typical of what has earlier been referred to as a Montagu technique.² Having come to the conclusion that the convicts of the colony comprised in themselves a labour force - but one which was at the time being misdirected - he set about an thorough enquiry. Less than three months after his arrival at the Cape, he sent a circular to all the Civil Commissioners, requesting from the several divisions, a return of the number of convicts employed on public works not under the specific direction of the Surveyor-General.³ Montagu had brought the matter to Napier's attention, very soon after reaching the Cape: he was dissatisfied with the whole system of penal servitude at the Cape, especially since the convicts were dispersed irregularly throughout the colony, and were engaged in works not consonant with the terms of hard labour.⁴

1. Ibid. p. 29

2. Supra p. 127

3. P.P. 1847 op cit p. 4 Montagu to Civil Commissioners 15.6.43.

4. Cf a letter received from Colonel Hare, Lieutenant-Governor of the Eastern Division, in which he informed Montagu of a robbery, in the office of the Civil Commissioner for Albany, by a gang of convicts who had been employed as assistant constables and turnkeys, and had thus become very familiar, both with the officers of the law and their respective offices! P.P. 1847 op cit p. 56. Hare to Montagu, 24.8.43.

The returns received from the Civil Commissioners, reveal a most interesting position: of the 202 convicts at that time in the colony, only 147 could be effectively employed; the others were either too old or too decrepit. The expense for superintendence was about £3. 3. 4¹d per head per annum. Convicts were employed in or about the towns of the colony without many restrictions; of the 147 able-bodied convicts, only 77 were being employed by the Surveyor-General.¹ Montagu's proposed solution was simple. It can best be studied in relation to two other documents. The one is a subsequent memorandum dated September 11th 1843, which showed up the advantages of the new system by comparing it with the former system. The other is a formal report submitted on the 4th September by a Board comprising Montagu, as Colonial Secretary, Porter, as Attorney-General, and Colonel Michell, as Surveyor-General. The tenor of these reports, already implicit in Montagu's suggestions in August, advised that all convicts be placed under the control of the Surveyor-General in gangs of about 80 or 100 and employed exclusively on main roads, opening mountain passes and constructing bridges.² The existing system of convict labour was reported to be quite impractical, in the absence of a coherent code of regulations for management and discipline. To remedy this the Board advised the Governor to appoint a Board of Road Commissioners - three officials and three unofficial persons - to take over the entire management of communications, and even those functions previously performed by Civil Commissioners, such as the disposal of all funds allocated for road purposes. Montagu's own analysis of the 11th September was more elaborate, and is a reliable forecast of later developments.³

1. Memorandum drawn up by Montagu, 16.8.43. P.F. 1847 op cit p 12

2. Ibid pp 14-22

3. Ibid pp 16-22

He suggested a scheme of monthly allowances to the Central Board of Road Commissioners, whose accounts were to be audited by the Colonial Auditor. More. He even outlined, in detail, the necessary staffing of the Central Board; how the convicts were to be organised and supplied with food, clothing and tools, and, with considerable care, sketched his plan for an extension of the scheme to a local level in the several divisions of the colony: Local Boards, comprised of about five elected residents of a division, subject in a sense to the Central Board, which would be responsible for the proportional allocation of funds when central and divisional interest were involved in the same road. The whole plan depended on a sound system of central control, and efficient administration, on the general as well as the local plain: this was the only way to ensure a sound economy within the administrative network.¹

He argued that the new roads would bring advantages to the entire colony. Land values would increase and the sale of Crown lands would be facilitated. This, in its turn, might well lead to a reduction in taxation. More. The general improvement in trade would profit everybody and encourage immigration. Finally, not only would military communications be improved, but there would be satisfaction that the work was efficiently planned and performed.

1. He estimated that the Central Road Board would need about £20 p.a. for each of 300 convicts - food, clothing, tools etc. - and an extra £2,000 p.a. - carts, bullocks, materials for roads etc. - making a total outlay of about £8,000 p.a. He compared this with the monies voted by the Legislative Council for road construction in previous years:

1841:	£12,181	6	3
1842:	£12,442	8	9
1843:	£12,110	8	9
1844:	£10,725	10	3

£47,459 14 0

An Average of £11,864 18 6 p.a.

The Legislative Council met on the 16th October to consider the volume of correspondence conducted by Montagu and his associates.¹ His reports were unanimously accepted and the Legislative Council advised the Governor to put his recommendations into effect as soon as possible. So enthusiastic was their support of the principle, that they resolved "to vote, annually, towards the improvement of the new roads of the Colony, the largest sum which the Colonial Revenue, for the time being will afford for that purpose." On the 22nd November the Governor and Legislative Council passed "An Ordinance for improving the public Roads of the Colony."² It provided for a Central Board of Commissioners of Public Roads with a Chairman appointed by the Governor, and three official together with three unofficial members, charged with the organization of convict labour on the roads, with the appointment of surveyors, engineers and clerks; its subsidiary powers extended even to the right of encroaching on private property, should the necessity arise.³ The Board was to obtain ways and means from the Legislative Council; if this did not provide sufficient funds, the Board might exercise the right extended to them, of imposing a rate on

1. Ibid. p 48

2. L.C. 1837-45 p. 430 22.11.43.

3. The taking of land and/or materials from it for road purposes, has a history which goes back to 1813. In that year, Sir John Cradock, advised by the Chief Justice Sir John Truter, issued a proclamation, stipulating that in the case of loan places or land held on fifteen-year quitrent, the government would have the right to take and use such land and/or its material for road purposes. Even when quitrents were abolished, then, the right to take land and raise materials was unaltered. See Randell G.H. and Bax K.C.: The Law Relating to Divisional Councils in the Cape Province. Durban, 1953. p 92.

all immovable property, valued at £50 or upwards.¹

Provision was further made for Divisional Boards, consisting of the Civil Commissioner as ex officio chairman, and four elected inhabitants. The Central Board could send convicts to the branch roads, when they were not required on the main roads, the Divisional Boards had the right, each to appoint its own administrative staff. Finally, the Central Board had the right to call upon Divisional Boards to furnish funds and labour, when main roads passed through their divisions.

Napier had some initial difficulty in finding men prepared to serve on the Central Board. "The gentlemen to whom I proposed the office," he informed the Secretary of State,² "were unwilling to enter upon it, unless Mr Montagu, with whom the whole scheme originated, was Chairman of the Board. I felt some hesitation in adding to the labour of an officer who has so much to do as Mr Montagu, but when I mentioned to him what had occurred, he did not hesitate to accede to my request, and I have accordingly appointed him to that office" On the 23rd November, the Board was formally appointed. It consisted of Montagu, as Chairman, Rivers and Michell as the other two official members, while Messrs Ebdon Watermeyer and Busk made up the quota of unofficial members.³

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1. The Central Board would get its finances from two sources: in the first place, there were the annual grants of the Legislative Council. In the second place, moneys raised under the Road Tax would be handed over to the Central Board for control; the Central Board could use these moneys from time to time on schemes within the particular division where the money had been raised. No provision was in fact made for the Central Board to expend the moneys from the Road tax on works outside the division in which it had been collected.
 2. P.P. 1847. op cit p. 56. Napier to Stanley No 9. 23.1.44.
 3. Ibid p 69.

The establishment of the Central Board was not unani-
mously welcomed by the Colony. Thus, an anonymous corres-
pondent, writing to the Cape Frontier Times¹ labelled the
Ordinance yet another instance of the "crude and slovenly"
pieces of legislation rushed through the Legislative Council.
"The evil complained of," he maintained, "may probably be traced
to the faulty form of our government, being altogether, so
far as the people are concerned, absolute and irresponsible."
He complained that the Ordinance was rushed through the
Legislative Council. "I think," he concluded, "that seven
tenths (of the people) knew not of the existence of this
very measure, and probably do not know now that it is now
law." The criticism is completely without justification:
Montagu's circular to the Civil Commissioners on the 7th July
had alluded to the possibility of such a measure being intro-
duced into the Legislative Council - and this circular had
been printed in most of the Colonial newspapers. More.
The circular had specifically referred to some sort of
taxation, or other means of procuring funds; the replies
which he had received from the Civil Commissioners, moreover,
reflected that a general assessment was acceptable to the
majority of divisions.² Yet this was not the only kind of
opposition which Montagu had to face. More weightily per-
haps, the guld-Afrikaan sniped at Montagu for saying in the
Legislative Council, that "the gardeners who live on the
hill above the town, got alarmed and opposed the making of a
road through the flats because they feared it would injure
their vegetable monopoly."³ The paper gave an account of
Montagu's speech in the Legislative Council on the 20th
November,⁴ when a petition, against the proposed tax, and

1. CFT 1.2.44.

2. Supra. p. 138

3. ZA 28.11.43.

4. See also: L.C. 1837-45. p. 428, 20.11.43.

signed by 278 people, was presented, Montagu spoke at great length on this topic, pointing out how the petitioners, by means more foul than fair, had obtained signatures; he ended his harangue on a scathing Note: "Such, Sir, are the people who petition to stay our proceedings, - a few cabbage growers, - a printer's devil, - and some selfish householders who disregard the improvement the colony will certainly derive from good roads." This outburst on his part, was hailed in the Eastern Province, as another instance of the autocracy that would result from the idea of a "central" road board, holding its sessions "at the extreme verge of the most distant and narrowest point of the colony, 700 miles in length."¹ This last was the only vital attack really made: it was perhaps a bit premature, but not altogether misdirected from the Eastern Province point of view. The original concentration by the Central Road Board, during the next few years, on the roads of the Western Province, convinced the Eastern Province of the wilful neglect of its interests by the government.

Meanwhile, the machinery of administration had been set in motion. Montagu had visited Robben Island from the 13th to the 21st December,² and on his return, drafted a comprehensive report. The importance of the report is reflected in the new regulations which were issued for the discipline and management of convicts, on the 1st January, 1844.³ Montagu had found conditions on Robben Island quite inadequate to any system of penal reform, and advised a complete reorganization. His proposals foreshadowed the reorganization of the colony's prison system: he advised that transportation to Robben Island should be reserved for the more hideous offences. All convicts

1. GTJ 18.1.44.

2. P.F. 1847 op cit p. 56. Napier to Stanley, No 9, 23.1.44.

3. Ibid pp 70-78

sentenced to hard labour within the colony, should in future be transferred to Road Stations, in parties of about 100, where their labour would be placed at the disposal of the Central Road Board. The scheme necessitated the inauguration of a more extensive system for the control of convict discipline: Montagu had anticipated this, and had called for applications for convict overseers in October.¹ Regulations were issued to Superintendents² and Constables³ at the Road Stations, three of which had already been established - one on the Cape Flats, and one each at either extremity of the Cradock's Pass in the division of George.⁴ The entire organisation of the scheme was conducted through Montagu's office, and though it imposed a heavy and responsible addition to his duties, Napier reported that "he was cheerfully undertaken it."⁵

Montagu's suggestions were embodied in an ordinance passed by the Legislative Council on the 28th February 1844.⁶ In March 1845 Maitland, in a despatch to Stanley, included a report by Montagu on the working of the system. He observed that

the advantages expected to be derived from the systematic application of convict labour to the roads ... have been realised to the utmost extent that the brief space of one year would allow."

Not only had the internal communications been improved by the well-regulated employment of a large labour force, but also

an important amelioration of the state of convicts themselves has been effected by the careful discipline and instructions to which they have been subjected."⁷

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1. Ibid. p. 78 Government Notice dated 26.10.43
 2. Ibid p. 79 Montagu to Convict Superintendents 19.1.44.
 3. Ibid p. 80 Montagu to Constables, 1.1.44.
 4. Ibid. Stanley to Napier, 23.1.44. op cit.
 5. Ibid.
 6. L.C. 1837-45, p 460. 28.2.44
 7. P.P. 4.3.1850 xxxviii, (104), p.1 Maitland to Stanley, No 39 3.3.45.

In this report referred to above, Montagu observed that though the convicts were at first suspicious of the new plan, they soon co-operated to such an extent that maximum labour could be exacted, without any ill-feeling, especially since a Government Notice of the 24th March had announced the principle of remitting one-fifth of a convict's sentence for uniform and uninterrupted good conduct. Ordained ministers had been appointed to many of the stations, and in some cases, provision had been made for evening classes - of the 464 convicts at stations at the beginning of 1844, 446 could neither read nor write; at the end of the year 380 could either read or spell. "On the whole", Montagu concluded, "I think there is every reason to be satisfied with the experiment so far as it has been tried; while it confers benefit on the convicts who come under its operation, it will be of advantage to the colony."¹

The Central Road Board had its first meeting on the 7th December 1843; the improvement of communications between Cape Town and the Eastern Frontier, was the prime consideration. Dr Stanger had been commissioned to survey the road between Cape Town and Grahamstown² yet throughout 1844 the Eastern Province attacked Montagu for neglecting their interests; the Cape Frontier Times protested vehemently against the removal of the Albany convicts to the Cradock's Kloof, when, it maintained, they should have been employed on the Nowison's Poort Road.³ But Montagu's scheme was undoubtedly sound. The aim of British policy was to make the Colony self-supporting so far as possible - even self-governing,

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1. Ibid p. 1 Extract from report of John Montagu, d.d 20th January 1845
 2. P.P. 1847 op cit p. 52 Montagu to Stanger, 11.11.43
 3. CFT 6.6.44

if that were practicable.¹ But in the existing structure of local government, central control, and a planned strategy of road building was, in the long run in the interest of trade and defence in the East. Its immediate advantages were difficult to appreciate in the Eastern Districts, where roads were admittedly bad, and where Port Elizabeth aspired to become the port of the Eastern Province. Montagu saw all roads leading to Cape Town: the Eastern Province wanted them to lead to Port Elizabeth. Thus while Dr Stanger proceeded with his survey, the Central Road Board decided that the two most formidable barriers on the great trunk line were, the Cape Flats, a tract of twenty-four miles of heavy sand, and the impene- trable mountain ranges in the George division.

The Board began work on both projects at once, but the hard road over the Cape Flats was completed almost eighteen months before the Montagu Pass through the Craadock's kloof. The convicts, engaged on the repair of the Wynberg-Simon's Town road, were removed to Tyger Vlei, and another Road Station was established at Kull's River#. A raised road was constructed over the Flats, the Montagu Bridge was built over the Salt River, and another over the Eerste River,² in their report for 1845, the Central Commissioners announced the completion of the whole hard road.³ The gain to the public, they maintained, was enormous.

Assuming that from 50,000 to 60,000 waggons will travel it every year, at an average reduction of expense ... of not less than from ten shillings to twenty shillings each journey, it is not, in the Board's opinion estimating the pecuniary gain to the public too highly, in placing it at £20,000 a year."

The Graham's Town Journal reported that farmers from the Eerste River could now come into Cape Town, "with their

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1. Of the establishment of Municipal Government in 1836 and the institution of elective Road Boards in 1843.
 2. See also Mossop E.E: Old Cape Highways, Cape Town, n.d. pp 34-40 passim p. 70
 3. P.P. 4.3.50. op cit p. 14 Report dated 6 February, 1846.

wagons and mules in the morning, transact business, and be back again in the evening."¹ There was a greater flow of fruit and vegetables to the Cape Town market, and greater competition encouraged farming initiative.² Stellenbosch was linked to Cape Town by an efficient omnibus service, which took only four hours to complete the journey.³

Montagu worked hard to ensure the success of the scheme. The encroachment of drifting sands presented the main problem; the Board erected screens, at intervals, but this was still not enough. Montagu's solution was most successful: on his recommendation, large plantations of Hottentot Fig, Port Jackson Willow, and other shrubs, were planted alongside the entire length of the road. The scheme was gradually extended, the road was protected, and the reclaimed land was given over to foliage.⁴

Work was, at the same time, progressing on the Cradock's Kloof Road. In 1838, while he was on a tour of the Colony, Bunbury remarked that "the road over the Cradock's Kloof certainly deserves its reputation, being the most formidably bad, if not of all the roads I ever saw, assuredly of all that pretended to be passable by wheels."⁵ By the end of 1844, about 1,900 yards had been sufficiently cleared by convicts for operations to commence, but the Central Road Board had to interrupt its work; assistance was needed with the construction of two bridges which had been started, one over the Great and one over the Little Brak River.⁶ At the same time, the Attaquas Kloof Pass, an essential point of communication with Mossel Bay, was repaired

1. CJF 31.1.46

2. Ibid

3. P.P. 1850 op cit p. 15.

4. Newman op cit p. 164. In 1846, the L.C. passed a specific ordinance which rendered anyone, found destroying herbage liable to prosecution, because "it has become an object of the utmost importance to this colony to preserve from the effects of drifting sands, the new hard road." G.G. No 2134 22.10.46

5. Bunbury CJF: Journal of a Residence at the Cape of Good Hope. London. 1848. p 176.

6. P.P. 1850 op cit p. 13.

as well as the road between Cape Town and Simon's Town.¹

Eastern Province feeling ran very high. The Graham's Town Journal complained that while Easterners paid the same road taxes, their inconveniences were in many ways as great as before the inception of the Central Road Board.² This needs some analysis. During 1844, £10,796 was collected in road rates from the Western Province: nothing was received from the Eastern Province.³ Further to this, the Cape Frontier Times complained that the Road Tax was

"generally unpopular with the Dutch farmers and that it would have incurred their most serious opposition if they had heard of it before it passed into law, and if they had known, or thought they possessed any voice or influence in the matter."⁴

The only complaint in this connection was received from a Dutch farmer in Colesberg, who objected, not to the tax, but to the faulty valuation of farm land, which meant that in some cases the tax which was proposed, would not have been in proportion to the actual farm values.⁵ Criticism in the Graham's Town Journal was hardly pertinent in any case. At the end of 1844, Montagu had conducted an extensive tour of the Eastern Province, where he had examined the communications system, the plans of the Kowie River Mouth, and, on the return journey to Cape Town, had inspected the Uitenhage district and the harbour facilities of Port Elizabeth.⁶ And while nothing had been received, in road rates, from this half of the colony, £994 of the Central Board's general funds, had been spent in the Eastern Province, part of which was to repair the Howison's Poort Road.⁷ The attack was waged on

1. Ibid.

2. GTF 27.2.45

3. See Appendix v to this Chapter.

4. CFT 6.2.45

5. CFT 31.1.45.

6. GTF 12.9.44, 10.10.44

7. See Appendix VII to this Chapter.

another front as well. The Graham's Town Journal discredited his convict scheme, and in support of its thesis that the Cape would do well not to regard the scheme with too much optimism, for fear of suffering the same fate as van Dieman's Land, where Montagu's probationary system had been "an unqualified failure," quoted large extracts from the Adelaide Observer.¹ But what the Journal did not take into account was this: at the Cape the convicts were indigenous and were employed through road stations; they were not, as previously, distributed freely among the population: they were not a competitive force in the labour market, but were actively engaged in matters of public benefit.

The Central Road Board reported a great deal of activity during 1845; the Cape Flats road had been opened on the 24th December, a pass had been started on the line of road between the Lourens and Bot Rivers, through the formidable Houwhoek mountains; about 2½ miles of the Cradock's Pass could now be traversed by loaded waggons, and it was hoped to complete at least another mile in 1846, so that the pass could be thrown open to the public in 1847. The Robben Island convict settlement had been broken up in September 1845,² and about 100 additional convicts had been placed at the disposal of the Central Board for employment on the public roads. The convicts, formerly employed on the Cape Flats road, were transferred to du Toit's Kloof, and those, at that time working in the Cradock's Kloof, were to be shifted to the Zuurberg mountains, on the completion of the pass in the George division: an easy passage through the Zuurberg range

1. 1. GTJ 27.2.45

2. P.P. 1850 op cit p. 19 Government Notice d.d. 5.9.45. All convicts confined in Robben Island were to be transferred to road stations "with the exception to those sentenced by courts martial to transportation who will shortly be forwarded to van Dieman's Land."

would be to the advantage of the divisions of Colesberg, Graaff-Reinet, Beaufort, Cradock and Somerset, by facilitating their access to Fort Elizabeth.¹

Eastern Province indignation was mounting, and there is at least some justification in the strictures they passed on the proceedings of 1845. Almost £200 more had been collected in Road taxes in the Eastern Province than in the Western Province, for the same period.² Yet nearly £28,000 more was expended, from the General Revenues of the Central Road Board, on the Western Province, than on the Eastern districts. An anonymous correspondent to the Eastern Province Herald, suggested that if Montagu wanted to earn a 'good name' he should turn his attention immediately to the improvement of the road between Grahamstown and Port Elizabeth, and the construction of a durable road over the Zuurberg range.³ The report of the Central Road Board was not printed in the Eastern Province Herald till the end of the month; this in part, explains the severity of the author's remarks.

On the 10th March 1846, the Legislative turned its attention to the question of the Road Tax again. In an attempt to make the imposition as fair as possible, a new principle was laid down for the valuation of immovable property: it was stipulated that the absolute value of immovable property was to be taken as twelve times the amount of the annual value or rent.⁴ Work was commenced in the Eastern Districts in 1846, but another frontier war intervened, and the Central Board was obliged to suspend most of their operations. The convicts who were to have been sent to

1. P.P. 1850 op cit. p. 17. Extract from Report of the Central Road Board fro 1845.

2. See Appendix V to this Chapter.

3. EPH 21.2.46

4. EPH 21.3.46

Du Toit's Kloof, were taken to the Mosterd's Hoek instead.¹ By concentrating this labour force in the Mosterd's Hoek area, the Board hoped to open up communications between the Worcester division and the districts further inland, and to establish a direct line of communication through the Fransche Hoek. In this way, the journey from the warm Bokkeveld to Cape Town would be reduced by about thirty-five miles, transport costs would be cut by about four-fifths while the wagons would be able to carry increased loads to the Cape town market from the Warm Bokkevelde "which are most fertile, and, as the Board are informed, produce the best corn in the colony."²

The work on the Cradock's Pass had been proceeding so satisfactorily, that there was every prospect of its being opened by the middle of 1847. A survey had been done by Mr Bird³ of the road between Cradock's Pass and Grahamstown, as another step towards completing the great trunk line of the Colony. On their way to the Zuurberg, the convicts from Cradock's Pass were to go via Port Elizabeth and Grahamstown, to make the necessary improvements on the road between these two centres. New lines of road to Grahamstown from Uitenhage and Port Elizabeth would be constructed by using free labour; improvements were badly needed on the Howison's Poort Road, and the Board announced their intention of spending a larger amount on the Eastern districts in general, during 1847.

The year 1847 marks, in more ways than one, an axial point in the history of road making in the Cape. In its report on the activities of the year, the Central Road Board

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1. The Division of Worcester had rejected the terms of the Central Road Board.
 2. P.P. 1850 op cit. p. 25. *Extract from the Report of the Central Board for 1846, d.d. 24.2.47.*
 3. Second son of Lieutenant-Colonel Bird, at one time Secretary to the Government to the Cape; Bird was Acting Surveyor-General in 1852.

observed that "great progress has been made in improving several parts of the main road between Cape Town and Grahamstown." ¹ The most important event of the year, was undoubtedly, the opening of the "Montagu Pass", officially designated as such on the 19th January 1848. ² In a despatch to the Secretary of State, Sir Harry Smith paid tribute to the magnum opus in these words

The roads, through the exertion of Mr Montagu, have improved beyond my power of description .. This Pass (through the Cradock's Kloof) at the request of the people, is to be designated the Montagu Pass, a compliment this gentleman richly deserves." ³

The Central Board's comment is also worthy of note:

The Cradock Pass, which was formerly the great and almost insurmountable barrier to any communication inland between the Eastern and Western districts of the Colony, has been overcome, and the beautiful and easy passage through the Cradock mountain by the 'Montagu Pass' has been submitted for it." ⁴

At a meeting of the George Agricultural Society in 1849, further testimony was given of the great boon which had been conferred on the colony. The chairman observed that

It is difficult to enumerate all the advantages that are likely to result from the completion of the road and the removal of the 'natural boundary' which had hitherto divided the two provinces; during the past year, farm produce has been passing into the town to an extent never known before; the poor man has been enabled thereby, to procure cheaper bread, while, at the same time, the grower has been well remunerated. The farmer is saved the labour and expense of dragging his half-filled wagon over a toilsome road; the timber felled in our beautiful forests is easily and expeditiously conveyed to the interior; and not the least benefit of all, is the establishment of the present Agricultural Society ... Your committee cannot refer to that grand undertaking without expressing, in the name of the agricultural community, their grateful thanks to the Hon. the Secretary to the Government for the important and lasting benefits he has conferred upon the whole colony....." ⁵

1. P.P. 1850 op cit. p. 26. sqq for the Board's report.

2. Ibid p. 27

3. Ibid p. 24, Smith to Grey, No 19, 1.3.48

4. P.P. 1850 op cit p. 27

5. Ibid. p. 63. See also Newman, op cit. p 173.

In October 1847, another project was commenced which would soon confer another benefit on the Western Division in particular, and the Colony in general: construction was started on the Mosterd's Hoek Pass in the division of Worcester, and its opening was scheduled for September 1848.¹ Smith reported the completion of the work to the Secretary of State in December 1848,² adding that it was "a further benefit under the system devised and conducted by Mr Montagu."³ Smith drew attention to the great value of this vital link in the Cape's system of communications, since the fertile Bokkevelde was now no longer cut off from access to the sea. More. Out of 174 miles of road which formerly linked Cape Town to the interior of the Worcester division, the new road cut off at least 78 miles!⁴

During 1847, a violent battle of words was waged between the East and the authorities in Cape Town. Though the Acting Surveyor-General had left for the Zuurberg in July 1847, to survey the country there, and had decided on a road, twenty-three miles long through the mountains,⁵ the move, if designed to calm the temper of the Easterners, had come too late. On the 30th April the new Lieutenant-Governor had written to the Governor, observing that

1. P.P. 1850 op cit p. 27. From report of Central Board for 1847.

2. See also Mossop op cit. p. 73 p. 179

3. Ibid. p. 29 Smith to Grey No. 213, 21.12.48. See also p. 30: W. de Smidt - Secretary to the Road Board - to Secretary to Government, 18.10.48, reporting the completion of the work. At the suggestion of the Central Road Board, the Pass was named "Michell Pass.

4. Michell had adverted to the importance of the scheme as early as 1839. He had told Napier that "if the farmers and graziers beyond the mountains have once the assurance that the above most important improvements are ordered to be executed, I feel assured that many wagons now being built for emigration purposes, will have their destination changed to Cape Town and Mossel Bay, loaded with the produce of land hitherto untilled." Ibid p. 31 quoted by Smith as an enclosure in a despatch, No 39 of Napier's to the Marquis of Normanby, 23.6.39.

5. P.P. 1850 op cit p. 27.

"It seems to me to have been a defect or imperfection or inequality in the system for the care of the roads throughout the colony, that the Divisional Board of Albany should not possess over the main roads of the Eastern districts the same powers as the Cape Town Board possesses over the main roads of the Western districts. Nor can I think it reasonable that while convict labour is required, and may lawfully be used on the main road of the Eastern districts, it should be abstracted from thence to be applied to the main roads of the Western districts ! I beg respectfully to move Your Excellency to instruct the Attorney General to prepare Ordinances for limiting the authority of the Central Board at Cape Town, to the care of roads in the Western districts; and for conferring on the Divisional Board of Albany, the style and title and powers of a Central Board"

Further to this, he suggested that the Lieutenant-Governor of the Eastern districts should have powers over the Eastern convicts corresponding to the powers of the Governor over the Western ones.² On behalf of the Easterners, Young had expressed that virtual vote of no confidence in the Central Board in Cape Town, which had been threatening for a number of years. In his reply, Pottinger informed Young that the matter would be laid before the Executive Council;³ The Executive Council replied in a memorandum on the 15th May; they submitted that although

up to the present time, none of the convict gangs have been actually employed within the Eastern Division they have been employed for that division, by opening the Cradock Pass, that Pass being within a few miles of the boundary line which divides the Western from the Eastern division. In point of fact it is a work of much importance, utility and benefit to the Eastern as to the Western division of the colony."⁴

The whole purpose behind the establishment of a General Board of Road Commissioners was, they submitted that the Colony should be attended to as a whole, and that the policy of the Board was to execute its programme on a long term basis.⁵

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1. His complaint was that convicts were sent from Grahamstown to the Cradock's Kloof, when they could have been employed on the Howison's Poort Road.
 2. Pottinger-Young Correspondence. p. 1. Young to Pottinger 30.4.47
 3. Ibid. p.5 Pottinger to Young, 4.5.47
 4. Ibid p. 6.
 5. Ibid 7.

The Eastern province regarded this as merely begging the question. Young took up the 'neglect' of Eastern Province roads as part of his campaign for separate government for the Eastern division of the Colony: on the 24th June he drew up a comprehensive memorandum on the subject of Eastern Province roads;¹ on the 26th June he sent a circular to "the most influential and well-informed colonists of the Eastern Districts"² asking them for their observations on the practicability of establishing a Registrar of Deeds' Office, a Surveyor-General's Office and a Public Roads' Board in the Eastern Province, separate and distinct from those in Cape Town. In his memorandum, Young pointed out that although the Central Road Board had, or will have received over £7,000 in road rates from the Eastern districts by December 1846, the districts of Somerset, Graaff-Reinet, Cradock and Colesberg had, at that time received no benefit from the monies collected in the East or from approximately £62,000 voted by the Legislative Council. This, he argued was not in accordance with that section of the Road Ordinance of 1843, which had laid it down that the greatest part of monies collected in any division would be expended in that particular division. An examination of the returns of the Central Board verify this: by the end of 1846, £726 had been collected in Somerset, £580 in Cradock, £1,401 in Graaff-Reinet, and £596 in Colesberg. Nothing had as yet been spent in any of these divisions.³ But if the Eastern Province did not exaggerate its needs, it sometimes exaggerated its contributions to the road levies. Thus for example, the Civil Commissioner

1. Ibid. p. 30. See also CPT 20.7.47

2. Blue Book on Separatism p. 7. Young to Pottinger 26.6.47.

3. See Appendices IV, V and VII, to this chapter.

for Somerset maintained ¹ that his division had received no benefits from the £732 10s. which it had contributed by 31st May 1845 - judging from the returns of the Central Board Somerset had contributed only £617 by the end of 1845, while the total reached only £726 by the end of 1846.² Still, the Eastern Province had a case. The response to Young's circular make the facts quite clear. Public meetings were held in many of the Eastern Province town to gauge public opinion. In Grahamstown on the 7th July, Mr J. Temlett, a Municipal Commissioner, remarked that

under the management of others, their roads were in the wretched state in which they were at present found. This had cost them within the past year, in carriage from Algoa Bay, thousands of pounds, which would have been saved had that road been kept in proper repair.³

On the same occasion, Mr Jarvis drew attention especially to the wretched state of the Howison's Poort Road, which was "literally paved with broken yokeskeys."⁴ At a public meeting in Port Elizabeth, the same sentiments were expressed.⁵ All the other replies to Young's circular, drew attention to the shocking state of the Eastern Province roads, and remarked that the establishment of an Eastern Province Central Board would do much to remedy the state of affairs.⁶

The Executive Council and the Central Road Board, both

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1. Pottinger-Young Correspondence, p. 9 Hudson to Young, 10.6.47.
 2. See Appendix V to this Chapter.
 3. Blue Book on Separatism p. 31. Extract from report of a public meeting in Grahamstown 7.7.47.
 4. Ibid. p. 24.
 5. Ibid pp 31-41 passim. Port Elizabeth Meeting 7.7.47
 6. In the first session of the Cape Parliament, when the state of roads was referred to, Mr Pote, the Grahamstown representative remarked that not only were the roads in a shocking state but the absence of bridges in the Eastern Province added to the inconvenience and delay in travel. He drew attention to the Koonap River "where great detention frequently occurs to both passengers and traffic, and where persons have been obliged to take boats in wagons from Grahamstown to assist them in getting over." He continued that in the Eastern Province "it is no uncommon thing to see, when these rivers are flooded by rains in the interior, one hundred or one hundred and fifty wagons lying for days together on the banks of one stream between Port Elizabeth & Grahamstown unable to effect a passage." The Advertiser & Mails Parliamentary Debates. Cape Town 1854. Vol I p. 59

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drew up minutes in reply to Young's memorandum. In their minute, the Executive exonerated the Road Board from all charges laid against it. In reply to the allegation that the Central Road Board had not spent its funds in accordance with the provisions laid down in the Road Ordinance of 1843, the council maintained that the Road Board was bound to spend the monies raised in levies, specifically on those lines proclaimed as Main Roads of the Colonies; and since the Board was bound to pool all the monies collected, into a central fund, it had to start operations in the area of greatest contribution. Further to this, the Council argued that since a main road, which connects one district or division to another eventually serves both, it was "better to start at the point of greatest physical and geographical resistance." To the charge that the Western Province was receiving preferential treatment, the Council replied that the Central Board "must husband with care the resources with which they are entrusted for the public good, and to apply them, in the first instance, to the removal of those barriers which may obstruct internal intercourse throughout the colony" in whatever division these might be found. They reminded the East that the Board had pledged, in 1843, "to open up a continuous line of communication between the Western Province and the Eastern districts." These sentiments, while they might be admirable, failed either to answer the direct charges of Eastern Province neglect, or completely to exonerate the Central Board from rather irregular procedure. On paper the reply was both eloquent and tenable. In practice, the Council had revealed at least two flaws in the Road Ordinance of 1843. In the first place, it claimed that the Central Board was bound to expend monies on proclaimed

main roads only, but offered no explanation, for example, of the Central Board's activities in the Zuurber area, which was not at the time, or afterwards proclaimed a main road. In the second place, the principle of expending monies collected in any particular division only, had not in fact, been adhered to; it rather suggests that had Montagu thought more carefully about his contention that the roads of the colony must be made on the principle that the colony was to be treated as a whole, he would never have included the above clause in the Ordinance of 1843. Had the Colony been told in 1843 that road rates would be levied and expended on a general basis, the Eastern Province might have been less severe in its criticisms. As it happened, they were justified in their complaints, and Montagu might perhaps, - conditions being as they were, - have been more psychological in his approach, and have urged the Central Board to show a more positive disposition by, for example, constructing ordinary pile bridges across some of the Eastern rivers.¹

During 1848, 250 convicts were placed on the Zuurberg line, but the bulk of the work was not undertaken till 1849; work progressed steadily, and the line was sufficiently open to traffic even by the end of that year.² The convicts formerly employed on the Michell's Pass were removed to the Bain's Kloof, which was scheduled for completion by the end of 1850; at the same time, a road connecting Bain's Kloof

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1. Cf. the remarks of Mr White in the House of Assembly, in 1854, on the question of this particular part of the Ordinance of ~~1843~~¹⁸⁴³: "Now although the contravention of an Ordinance is indefensible, and which contravention carries with it a breach of contract, yet it has been better for the public interest that the Ordinance has been broken, than if it had been adhered to, for there is no doubt that the money has been better spent out of the districts in which it has been collected, than if it had been spent in the districts according to the Ordinances." Advertiser and Mail's Parliamentary Debates. op cit p. 57
 2. See Appendix I to this Chapter, by the end of 1853, over £6,000 had been spent on the project.

with the Michell's Pass was under construction.¹

At the end of October 1849, Montagu completed a 2,000 mile circuit of the colony, having inspected all the lines of communication. In a despatch to the Secretary of State, Smith remarked that

"the benefits which the colony has derived from the exertions of the Board, and the skilful manner in which their resources have been applied, are universally felt and appreciated ... I ought not to fail to record here the cast attention bestowed by Mr Montagu, the Colonial Secretary, who is also chairman of the Central Board of Commissioners, and to whom the colony is mainly indebted for those improvements."²

Montagu's report of his tour was submitted to the Central Board on the 18th December, and was of the nature of a memorandum:³ it displays a keen insight into both the needs and resources of the Colony. The operations of the Central Road Board were conducted, at the time, in the absence of all the requisite facts; a factor which accounted to a large degree for the opposition of the Eastern part of the Colony. On his tour he had collected information from well informed people throughout the colony, and his memorandum was, therefore designed to supply the Central Board with those details which might suggest large scale additions or alterations to their present programme. Aware of public sentiment, wounded by Earl Grey's actions over the Anti-Convict crisis of 1849, and for a long time critical of Executive 'despotism', Montagu suggested, in order to ward off future estrangements, that "the public, by knowing what their - i.e. the Central Road Board - views are, may have the opportunity of suggesting alterations before the several

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1. See Report of the Central Board for 1848, P.P. 1850 op cit p. 63 sqq. Report dated 25.4.49
 2. P.P. 1850 op cit p. 62, Smith to Grey, No 174, 26.10.49 Of the remarks of Mr White, in the Cape House of Assembly in 1854. He paid tribute to the efficiency of the Central Board, but continued that "I cannot help saying that the credit of that efficiency is due to the efficiency of the late Mr Montagu. The Board met about a quarter of a day in the week. On the other five days and three-quarters, it may be said to have been a body without a head, - .. If therefore what was done, was well done, it was not in consequence of their being a Board, but in spite of it. Advertiser & Mail's Parliamentary Debates op cit. p. 58
 3. See Newman op cit p. 191 sqq.

works are commenced, and so enable the Board to correct any errors they might otherwise fall into.¹

In the first place he suggested that the Seven Weeks Poort through the Zwarteberg mountains in the Swellendam division should be opened, as this would give easy access to the Beaufort and Worcester divisions, and hence to Graaff-Reinet and Colesberg. "This opening" he observed, "would enable the farmers travelling from the Swellendam district to the Karoo to perform in three hours a journey which now occupies as many as four, five or six days" The George division needed a further link with the fertile Long Kloof, through the Langeberge range, especially since such a road could easily be linked with the road from Plettenberg Bay and Knysna to the Long Kloof, at that time under construction. He reminded the Central Board that about a hundred miles of road from Cape Town to Grahamstown, falling within the Uitenhage division, was badly in need of repair; he advised the Board to redirect the main road, through Port Elizabeth in stead of through Uitenhage, arguing that this line would be nearly level, and would cut out that part of the road, between Uitenhage and the Sunday's River, which, besides having a very steep gradient, passed through very dense bush. For the same reasons, the road between the Sunday's and Bushman's Rivers should be redirected to bypass the Addo Bush; a more direct line from the Bushman's River to Grahamstown would complete a project of vital importance to the Eastern Province. Distances and travelling times would be reduced considerably: and if, further, Port Elizabeth could be directly linked with the new Zuurberg line, produce and traffic from the Cradock and Colesberg divisions would

1. Ibid.

be able to avoid a circuitous route via Grahamstown to Port Elizabeth.¹ A reduction of the traffic through Grahamstown, he argued, was necessary if, in the long run the country as a whole was to benefit. But he did propose an improvement of the line between Grahamstown and Cradock, by the erection of reliable bridges over the Fish River, especially since this line would be continued southwards: a road between the latter place and the Kowie Mouth was indispensable, in view of the Government's projected scheme of improving the facilities of the Kowie harbour.² Improvement to the divisional roads of Somerset might easily be directed towards linking that division with either the Zuurberg or the Grahamstown-Cradock Road. Graaff-Reinet, at that time the most completely land-locked of all the Eastern divisions, should be linked up with the Zuurberg-Port Elizabeth road. The Montagu and Michell passes had virtually solved Beaufort's harbour problems; despite this, Montagu urged the speedy completion of the Bain's Kloof project, which would enable the Beaufort farmers to make a straight run through the Karoo, (sic) with a saving in time of "from twenty to twelve days."

The Central Board's high estimation of Montagu's exertions, insight, and enlightened suggestions, is formally recorded in its minutes of the 26th December 1849. Montagu was thanked by Mr J.C. Gie, appointed to the Central Board in 1845, on behalf of the Board. The memorandum, he said, showed

the attention you have bestowed and the trouble you have taken to discover the nearest and most eligible lines of roads for general traffic, and the best points in the mountain chains where passes can be opened for general communications, in order, by the removal of those barriers, which formerly were deemed so hopelessly insurmountable, to open the sources of wealth throughout the length and breadth of the colony.³

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1. Antea p 138 . Though Colesberg did prefer to trade direct with Cape Town, owing to easier communications it was possible at considerable inconvenience to go South to Grahamstown, and from there to Port Elizabeth. The New Zuurberg line was thus designed to obviate both difficulties.
 2. Supra p "o 599 .
 3. Newman op cit p. 200

He thanked Montagu for all the trouble he had taken

which had placed us as members of the Central Board, in a position to be able, at any future period, to form our judgement in regard to, and recommend with confidence the proclaiming of, such main roads as will tend to the welfare of the colony at large."¹

A resolution was unanimously passed in which much of the above was incorporated; they paid tribute to the general system of which he had been the originator, and placed on record their high approbation of his present memorandum which "independent of being at all times a most valuable document, will be of the utmost service to this Board in guiding their future operations."²

In 1848, Smith called upon Montagu to report on the operation of the new convict system, over the last five years³ and on the 27th July, Montagu complied with this request; once again, he presented his report in the form of a memorandum. The report was forwarded by Smith to the Secretary of State, in September 1849.⁴ The Governor observed that the management of the convict system

has been left by me, as by my predecessors entirely in the hands of Mr Montagu, by whom it was devised in 1843. Its success is, no doubt, in a great measure, to be attributed to the interest he has constantly felt in the subject, and to the fact that the application of its principles and the management of its details have always been left in the hands of its author. But it is also clear that it is founded upon sound principles, applicable to the circumstances of this colony....."

In his memorandum⁵ Montagu traced the whole history of the convict system prior to his arrival in the Cape. He pointed out how, before 1843, one-fifth of the convict labour had been lost to the public, in a system which counteracted

1. Ibid.

2. Ibid.

3. P.P. 1850 op cit p 28, Smith to Grey, No 213, 21.12.48

4. Ibid. p. 32, Smith to Grey No 167, 6.9.49

5. Ibid. pp 32.62. Montagu to Grey, 27.7.49

reformatory discipline¹. Montagu's solution was, not the remedy of the old system, but the introduction of a completely new system, based on three principles: first, the duty of the government to society in enforcing the laws of the land; secondly the reformation of the convict before his restoration to society; thirdly, the practical utility of convict labour in the light of his own new schemes for public improvements. The labours of his own office were multiplied: he scrutinised the weekly reports of labour performed, prepared for him by the Superintendents: the monthly reports of character and conduct from visiting magistrates, medical officers and resident chaplains and the annual reports of a more general and comprehensive nature.² To illustrate this, one only has to look at the appendices to the memorandum; screeds of returns, each one analysed in minute detail, with all the discrepancies pointed out and explained. He even appended analyses of the types of crime committed, and the class of persons among whom these chiefly abound.³ The results of the new system were most salutary. Employers were now sending in numerous applications for the services of discharged convicts. At the time of the report, no instance had occurred, of a discharged convict becoming a vagabond from inability to obtain service in consequence of his conviction. The improved system of communications was proof of the practicability of the scheme, and the reports from the superintendents conveyed impressions of orderliness and discipline, unknown before 1843.

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1. Supra p. 139, footnote No. 4. Letter from Colonel Hare to Napier, 24.8.43, re the Grahamstown robbery. See also P.F. 1847 op cit p. 55. Letter from Superintendent of Cape Town Police, d.d 26.8.43, stating that some of the convicts in Cape Town had habitually been employed as assistant constables and turnkeys.
 2. In the Regulations drawn up for Convict Stations, between 1845 and 1848, the following was laid down:
 - (1) Visiting Magistrates and Medical Officers had to report monthly to the Secretary to Government on general discipline, barracks, clothing, health, etc.
 - (2) Superintendents were to keep in constant communication with the Secretary to Government, from whom they would receive all their instructions. Matters effecting the Road Board, it is true, went to the Secretary of the Board - of which Montagu was the Chairman - but all matters of principle, such as discipline and training, had to go to the ^{Secretary to Government} government.
 3. He showed, for example, that for Assault during the years 1844-48, 14 Europeans, 4 Emancipated slaves, 51 Hottentots Bushmen, 3 Natives from the Border Tribes and 4 other Natives, had been convicted. Ibid p. 38

The Secretary of State expressed his entire satisfaction with the prevailing system remarking that he had supreme confidence in Montagu's capabilities. "The best reward to Mr. Montagu for the thought and the exertions which it must have cost him, will doubtless be found in the sense of the service which he has been enabled to render his fellow-creatures. I feel it not the less due to him to record the gratification with which I have perused the accounts of the favourable results of his plan of convict management."¹

In order to ensure proper attention to the state of the main road through the colony, sub-inspectors of roads had been placed on the principle lines in 1843²; there was regular communication between the Board and the sub-inspectors, by means of weekly reports, detailing the operations carried on under their supervision. Many branch roads were opened, both in the Western and in the Eastern districts of the colony, to link up with the great trunk line. The Bain's Kloof road moved rapidly towards completion, and the new line of road from Port Elizabeth to the Zuurberg was opened during 1850.³ The returns of the Central and Divisional Road Boards showed that the public money was being expended in a most useful manner. During 1850, the more direct route between Port Elizabeth and Grahamstown was completed. The Central reported that "even in its present state, it affords practical proof of its superior advantages over the circuitous ... line of road which formerly connected these two most important towns of the Eastern frontier."⁴ The Cliphant's Hoek area was now

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1. P.F. 1850, op cit. p. 66, Grey to Smith No 445, 7.2.50
 2. Cape of Good Hope Almanac. op cit 1852. p. 80
 3. Ibid pp 82-84
 4. Extract from the report of the Central Board for 1850. Printed in Annexures to the Proceedings of the Legislative Council, 1854. p. 391.

linked to Port Elizabeth "by half the former distance" a factor much appreciated by the agricultural interests in that area. During 1851, the disturbed state of the frontier, prevented the resumption of works in the Eastern division on any large scale, except in the neighbourhood of Port Elizabeth where the convicts, who had been removed from the Zuurberg, had been stationed. During 1852 and 1853, less money was being spent on road construction than in any of the other years between 1843 and 1851¹; the finishing touches were being put to the enormous project which had been started less than a decade before.

Looking back on the activities of the decade, 1843 to 1853, and examining the returns of the Central Road Board² it is clear that the Board's long-range interest was the improvement of communications between Cape Town and the Eastern districts. In this spirit the Road Ordinance of 1843 had been passed. It was, of course not without its defects: the very fact that the clause, which covered the method of spending the monies obtained from the Road tax, was contravened time after time, points to one of its fundamental weaknesses. It is tempting to remark that the establishment of two Central Boards, one for the Eastern and one for the Western districts, might have been a better solution to the whole problem. It would be too optimistic to imagine that this, in its turn would not have occasioned many instances of bad feeling. Yet such an arrangement would at least have prevented the aggravation of provincial jealousies and suspicions which sprang from other causes³ which did exist, and for good reasons. Taking the situation all in all, one must

1. See Appendix I to this Chapter.

2. See Appendices I-VIII to this Chapter.

3. Sole op cit Chapter I passim

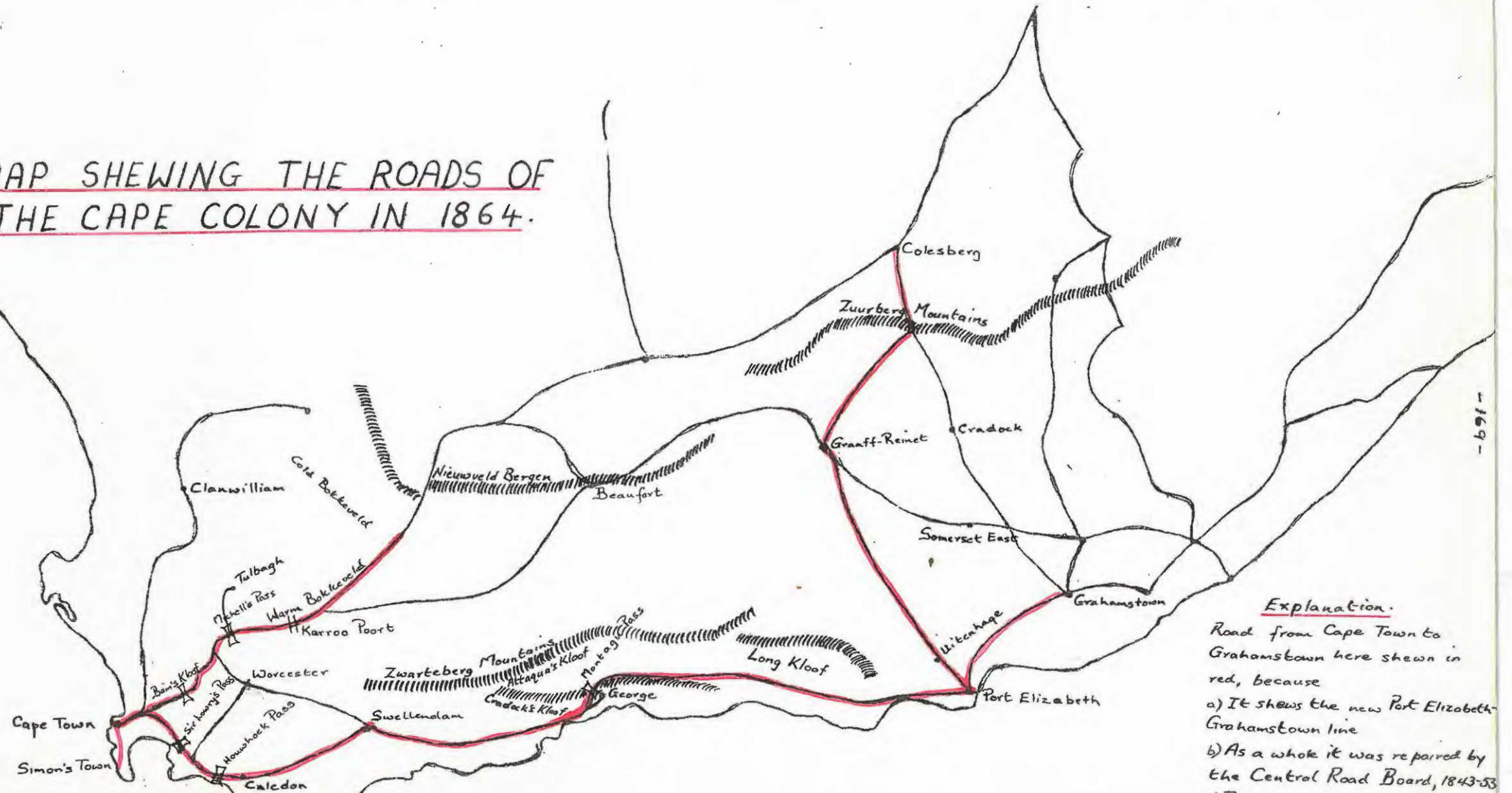
at least commend the Central Board for not continuing to levy road rates in divisions where little or no work was being done partly because of the frontier wars, and partly because it was the policy of the Board. Thus, for example, while rates were levied in the Cape division, the neighbouring districts and in George, every year none were levied in Clanwilliam after 1846; no second rate was levied in Beaufort till 1850 i.e. between the completion of the Michell's Pass and the commencement of the Bain's Kloof. In Graaff-Reinet, no levy was demanded after 1846; in Cradock only three pounds was levied after 1847. In Colesberg nothing was levied between 1846 and 1852.

When Representative Government was introduced in 1854, the Cape Parliament could point with satisfaction to the sound basis of Road construction laid between 1843 and 1853. Just as no one doubted the success of the experiment, no one would deny to John Montagu the praise which was his due. In 1855 the Colonial Secretary, Rawson W Rawson, was requested by Sir George Grey, to prepare a report upon the activities of the Central Road Board in the decade of Montagu's administration. At the end of a very lengthy analysis, Rawson paid tribute to the energy, perspicacity and public spiritedness of his predecessor in the following words:

Before concluding, I cannot, upon a review of the foregoing summary of the Board's transactions, refrain from offering my humble meed of praise to my distinguished predecessor, the Honourable J. Montagu, who devised, and put in execution, the scheme for improving the public roads, which has incontestably conferred so much benefit on many parts of the colony, and has laid the foundation for the general extension of similar advantages to all parts of it

1. Annexures to Proceedings of the House of Assembly, Cape of Good Hope, 1855 p. 386

MAP SHEWING THE ROADS OF
THE CAPE COLONY IN 1864.



- 69 -

KEY

- Main Road System, 1864
- Roads constructed by the Central Road Board, 1843-1853.

Explanation.

- Road from Cape Town to Grahamstown here shewn in red, because
- a) It shews the new Port Elizabeth-Grahamstown line
 - b) As a whole it was repaired by the Central Road Board, 1843-53
 - c) Important links in main trunk line, e.g. Cape Flats Road, Montagu Pass.

APPENDIX

STATEMENT of the DISBURSEMENTS of the CENTRAL ROAD BOARD on each Reports of the Board, in each

	1844.	1845.	1846.
	£	£	£
1. Line from Cape Town to Simon's Town—construction ..	.	.	1958
" " " repairs.....	878	2216	.
" " " protection .....	.	.	.
2. Line from Cape Town to Caledon, construction ..	15800	17294	9878
" " " repairs.....	275	515	.
" " " salary to sub-inspector	.	.	.
From Caledon to Gouritz River, construction ..	.	3544	2226
" " " repairs.....	752	.	10
" " " working of Breede River ferry	20	.	.
" " " salary to sub-inspector	.	.	.
From Gouritz River to Langekloof, construction ..	2102	4814	3413
" " " repairs.....	546	216	62
" " " construction of wooden pontoon for Brak River	.	.	.
" " " salary to sub-inspector	.	.	.
From Langekloof to Uitenhage construction ..	.	.	.
" " " repairs.....	53	9	.
" " " salary to sub-inspector	.	.	.
From Uitenhage to Graham's Town, construction ..	428	3738	1224
" " " repairs.....	205	15	.
" " " salary to sub-inspector	.	.	.
3. From Port Elizabeth to Graham's Town, construction ..	.	.	.
" " " repairs.....	14	9	.
4. From Port Elizabeth to Zuurberg, construction ..	.	.	.
5. From Cape Town to Wellington, <i>via</i> Lichtenberg, do.	.	.	.
6. " " " <i>via</i> Paarl, do.	.	.	.
7. From Wellington to Darling's Bridge, do.	.	.	.
8. From Darling Bridge to Karroo Poort, do.	.	.	.
" " " repairs.....	.	.	.
9. From Darling Bridge to Worcester, construction ..	.	.	512
10. Line through the Zuurberg, do.	.	.	.
11. Roads in Division of George, do.	.	.	.
" " " repairs.....	56	427	76
12. " " " Beaufort, construction ..	.	.	.
" " " repairs.....	.	150	.
13. " " " Worcester, construction ..	.	.	.
14. " " " Charwilliam, do.	.	.	.
15. " " " Albany, repairs.....	.	50	.
16. " " " Uitenhage, construction ..	.	.	.
" " " repairs.....	2	97	157
17. " " " Colesberg, do.	.	.	.
Total.....	21195	33100	19520

No. 1.

LINE of ROAD, distinguishing Construction from Repairs, abstracted from the General Year, from 1844 to 1853.

1847.	1848.	1849.	1850.	1851.	1852.	1853.	TOTAL.
£	£	£	£	£	£	£	£
1887	1667	.	.	94	.	.	5600
.	.	1871	2776	2240	2283	1736	14012
1755	1637	1668	975	592	468	384	7482
6830	5655	640	1070	583	940	.	58754
177	.	2710	3300	4807	3206	3245	18427
.	.	191	231	262	242	297	1225
2228	3622	778	3655	5308	1706	470	23542
.	.	371	152	49	268	385	1990
57	94	147	111	218	36	.	684
.	.	200	280	280	224	72	1066
5590	10087	7373	2968	917	880	337	38486
65	.	1073	1893	1383	1678	120	7039
.	.	.	264	467	101	202	1036
.	.	200	256	231	196	88	973
.	.	.	.	.	1099	692	1791
.	.	100	203	119	150	115	754
.	.	134	228	226	256	244	1080
626	2088	.	.	.	.	.	8105
.	.	556	400	39	158	362	1737
.	.	100	208	240	47	.	595
.	.	.	1544	2034	1366	431	5406
.	.	.	.	.	.	.	24
.	.	.	329	47	6	4	387
.	.	.	.	.	116	1363	1480
.	.	.	.	.	.	126	126
.	27	1861	2107	1870	1675	2733	10275
2635	2591	242	622	173	.	45	6310
.	.	1200	162	133	49	10	1557
187	.	.	.	.	.	.	699
.	807	2846	1765	471	156	32	6080
725	21	.	.	.	.	.	746
61	.	.	.	.	.	.	621
.	.	.	13	17	.	.	30
.	.	.	.	.	.	.	150
.	528	.	.	.	.	13	541
.	.	44	.	38	.	38	121
.	.	.	.	.	.	.	50
192	327	.	40	.	.	.	559
.	.	200	.	.	12	1	470
4	.	.	.	.	.	.	4
23025	29157	24513	25667	22897	17419	13554	230052

APPENDIX

STATEMENT of the Sums granted annually by the Legislature for the MAINTEN-
each Year from

Year.	Maintenance and Discipline of Convicts.	GRANTS FOR ROAD		
		Salaries to Secretary, Clerks, & Officers.	For making Roads.	For arresting drift sand on Cape Flats.
	£	£	£	£
1844 .....	..	..	..	..
1845	7000	2000	11000	..
1846	9000	2000	11000	..
1847	8000	..	..	..
1848	9000	2100	11000	1000
1849	9000	2100	11000	..
1850 .....	..	..	5500	..
1851	9000	2100	11000	1000
1852	11000	4000	11000	..
1853	12000	1000	11000	..
1854	12000	4000	11000	..
1855	11225	..	2325	..
1856	10000	3000	11000	..
1857	5500	90	..	..
Total	118925	25390	106825	2000

No. 2.

ANCE of CONVICTS and the SERVICE of the CENTRAL ROAD BOARD, in
1844 to 1853.

SERVICE.	TOTAL.	REMARKS.
£	£	
..	..	No specific vote passed the Legislature for the service of the Board for 1844.
13000	20000	Ordinance passed in 1844.
13000	22000	Ordinance No. 13, 1845.
..	4000	Ordin. No. 31, 1846,—for years 1844, 1845, to 30th June, 1846.
14100	24000	Ordinances No. 30, 1846, and No. 19, 1847.
13100	23000	Ordinance No. 13, 1847.
5500	5500	Supplementary vote, passed 14th December, 1848.
14100	24000	Ordinance No. 11, 1848.
15000	26000	Ordinance passed in 1849.
15000	27000	Estimates published September 19, 1850.
15000	27000	Ordinance No. 8, 1851.
2925	13551	Ordinance No. 5, 1853.
14000	30000	Ordinance No. 9, 1852.
90	5500	Ordinance No. 5, 1853
134215	253141	

STATEMENT of the RECEIPTS of the CENTRAL BOARD of COMMISSIONERS
from 1844

	1844.	1845.	1846.
	£	£	£
Balance in hand on the 1st January . . . . .	.	2514	1418
Amount received from the Colonial Treasury	12479	21665	27421
TOLLS RECEIVED:--			
At the Military Lines } Cape Division.	.	1798	1898
.. Muizenberg . . . . .	.	175	180
.. Simon's Town . . . . .	.	166	144
Not distinguished	1743	.	.
.. Sir Lowry's Pass, Stellenbosch Division	180	456	259
.. Houw Hoek, Caledon Division	89	227	121
.. Montagu Pass, George Division . . . . .	.	.	.
.. Michell's Pass, Worcester Division . . . . .	.	.	.
.. Great Brak River, George Division . . . . .	.	.	.
.. Bain's Pass, Worcester Division . . . . .	.	.	.
.. Port Elizabeth, Port Elizabeth Division	113	270	67
.. Howison's Poort, Albany Division	20	95	75
.. Fransche Hoek, Paarl Division	11	26	7
.. Ferry at Breede River, Swellendam Division . . . . .	.	.	48
Total	2157	3216	2803
ROAD RATES RECEIVED:--			
From Cape Town and Green Point	4958	401	2072
.. Cape Division	1637	755	155
.. Stellenbosch	2173	391	236
.. Swellendam	1704	634	87
.. George	322	621	151
.. Beaufort . . . . .	.	651	.
.. Colesberg . . . . .	.	550	46
.. Albany . . . . .	.	1372	283
.. Uitenhage . . . . .	.	1357	74
.. Worcester . . . . .	.	1045	10
.. Clanwilliam . . . . .	.	714	81
.. Cradock . . . . .	.	524	56
.. Somerset . . . . .	.	617	109
.. Graaff-Reinet . . . . .	.	992	109
Total	10796	10629	3475
Loans negotiated	10000	10000	.
Fines and Forfeitures	1	.	5
Penalty on forfeiture of Contract . . . . .	.	.	.
Insurance recovered on shipwrecked Pontoon . . . . .	.	.	.
Sale of Oxen, Materials, Stores, Gunpowder, &c. . . . .	.	52	27
Do. of Berry Wax . . . . .	.	.	.
Sums received from Divisional Board of George . . . . .	.	.	.
Do. do. do. Worcester . . . . .	.	.	.
Do. do. do. Somerset . . . . .	.	.	.
Advances refunded . . . . .	.	50	.
Balances due to Road Officers . . . . .	.	35	51
Total, inclusive of balances,	35435	48163	35203

APPENDIX

STATEMENT of the EXPENDITURE of the CENTRAL BOARD of COM-
Board, in each Year

	1844.	1845.	1846.
CONVICTS:	£	£	£
Superintendence and Discipline.....	2832	3772	4507
Maintenance	4636	4856	7204
Total.....	7469	8628	11712
ROADS:			
Construction	18301	20301	19214
Repairs	2784	3708	306
Miscellaneous	20	.	.
Total.....	21195	33100	19520
MISCELLANEOUS:			
Valuation of Property.....	1400	739	.
Percentage on Road Rates collected.....	.	.	.
Expenses connected with above two objects.....	.	546	43
Surveys and Inspection of Roads .....	.	95	232
Purchase of Cattle, Forage, Implements, Powder, &c.....	728	1156	112
Purchase of Iron Pontons and Expenses of maintenance....	.	.	.
Purchase of Fire Engines.....	.	.	.
Erection and Repair of Toll-gates, Houses, and Fences.....	.	.	23
Conveyance of Mails .....	.	.	.
Conveyance of Money to Road Stations.....	.	64	24
Law Expenses .....	.	20	.
Sundry Petty Disbursements.....	.	.	17
Grants to District Board of Cradock .....	.	.	.
Do. do. Worcester.....	.	.	.
Loans—Interest on.....	244	297	1053
„ Refunded.....	.	.	.
Advances from Treasury refunded .....	.	.	.
Salaries and Contingencies, Board's Office.....	730	1496	1131
Total.....	3103	4417	2638
ABSTRACT:			
Convicts	7469	8628	11712
Roads	21195	33100	19520
Miscellaneous	3103	4417	2638
Total Disbursements.....	31768	46146	33871
Balances on 31st December, viz.: —			
Division Officers.....	363	500	.
Board's Officers.....	2200	769	872
On account of Treasury .....	.	.	.
Cash in hand.....	308	648	431
Total.....	2880	1918	1303
Grand Total.....	34648	48064	35175

No. 4.

MISSIONERS for PUBLIC ROADS, abstracted from the Annual Reports of the
from 1844 to 1853.

1847.	1848.	1849.	1850.	1851.	1852.	1853.	TOTAL.
£	£	£	£	£	£	£	£
4492	5581	5267	5433	7067	7570	8848	55283
8334	11680	13906	9201	7005	10727	14873	92616
12737	17271	19263	14635	14162	18297	23721	147900
20803	27425	13787	14118	11585	7948	6288	169056
309	.	8083	8092	8782	7897	5975	16840
1812	1731	2641	2556	2520	1573	1289	14156
23025	29157	24513	25067	22897	17419	13554	230052
1	.	.	.	.	.	.	2141
.	16	54	198	24	95	159	579
.	.	.	.	.	.	.	590
54	12	111	92	30	53	374	1087
906	784	446	1002	920	654	650	7462
.	.	2164	844	199	32	250	3491
.	.	161	.	.	.	.	161
.	81	278	211	91	120	16	823
.	9	.	.	.	.	.	9
.	1	.	.	.	.	.	93
.	.	.	.	.	.	.	20
10	35	.	.	.	.	.	63
.	.	.	150	.	.	.	150
.	.	.	.	50	.	.	50
1200	1415	1718	1795	1795	1821	1658	13000
.	.	.	.	150	1900	2600	4650
1000	.	.	7000	5500	7801	10198	31500
1051	1000	1483	1706	1618	1642	1594	13456
4344	3389	6419	13002	10388	14122	17503	79329
12737	17271	19263	14635	14162	18297	23721	147900
23025	29157	24513	25067	22897	17419	13554	230052
4344	3389	6419	13002	10388	14122	17503	79329
40107	49818	50196	53306	47449	49839	54778	457282
.
5826	1160	1101	1197	1692	614	2245	.
.	.	492	106	4	5	.	.
172	147	331	221	96	70	2335	.
3888	1307	1925	1526	1703	690	4581	.
44165	51125	52122	54832	49153	50520	59999	.

STATEMENT, showing the Amount of Road-rates collected in the several Divisions of the Colony in each Year from 1844 to 1853.

[The Years marked with an asterisk are those in which the Rate was ordered in each Division. In some cases a Rate was ordered, but nothing levied.]

Year.	WESTERN DIVISIONS.									EASTERN DIVISIONS.						TOTAL.	
	Cape Town.	Cape Division.	Stellenbosch.	Swellendam.	George.	Clanwilliam.	Worcester.	Beaufort.	TOTAL.	Albany.	Uitenhage.	Somerset.	Grav. Rinet.	Chadock.	Colesberg.		TOTAL.
	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	
Amount of each Rate Assessed.	5413	2539	2626	2386	1227	801	1055	675	..	2210	1452	747	1152	770	606	..	
1844	4958	1637	2173	1704	322	..	..	..	10796	..	..	..	..	..	..	..	10796
1845	401	755	391	634	621	714	1045	652	5215	1372	1357	617	992	524	550	5413	10629
1846	2072	155	236	87	151	81	10	..	2794	283	75	109	109	56	46	680	3474
1847	1962	754	1430	753	996	610	477	..	6984	49	834	..	..	100	..	984	7968
1848	1009	682	542	588	245	160	530	..	3768	262	203	5	..	..	..	471	4240
1849	2728	550	890	1158	203	..	609	13	6154	571	314	345	..	3	..	1234	7589
1850	2682	2166	769	180	600	20	214	148	6782	527	27	236	..	..	..	791	7573
1851	119	97	70	24	152	..	103	..	568	..	..	40	..	..	..	40	609
1852	3808	1345	514	264	496	..	..	114	6544	298	..	..	..	..	135	433	6978
1853	927	626	916	462	774	..	26	982	4716	1209	63	..	..	..	75	1348	6064
Total	20671	8772	7935	5858	4564	1587	3027	1910	54327	4574	2875	1354	1101	683	807	11397	65725

STATEMENT, showing the Amount expended for Convict Purposes in each Division of the Colony, in each Year, from 1844 to 1853.

Years.	WESTERN DIVISIONS.					EASTERN DIVISIONS.				TOTAL.	REMARKS.
	Cape Division.	Mullerbaach.	George.	Worcester.	TOTAL.	Albany.	Uitenhage.	Namposet.	TOTAL.		
	£	£	£	£	£	£	£	£	£	£	
1844	3218	1072	4391	..	8682	6	..	..	6	8688	
1845	3521	1173	4461	..	9156	..	..	..	..	9156	
1846	3822	1276	5546	785	11424	..	..	..	..	11430	
1847	71	23	7330	5496	12921	..	176	176	352	13274	
1848 .....	..	333	6222	7200	13757	..	3182	3182	6365	20122	
1849 .....	..	2975	1167	6734	10776	..	4233	4233	8466	19342	
1850 .....	..	2435	..	4871	7307	..	4143	4103	8246	15554	
1851 .....	..	2611	..	5222	7834	..	8485	20	8514	16348	
1852 .....	..	3251	..	8934	12786	122	6174	..	6297	19083	
1853 .....	..	5593	..	8810	14404	4336	2141	600	7077	21481	
Total.....	10683	21347	29119	48056	109156	4464	28537	12324	45326	154482	

The Expenditure incurred during 1848 and 1849 includes items for the construction, &c., of wooden barracks; and that for 1851 and 1852, additional expenses at Port Elizabeth, in consequence of the Kafir war.

RETURN showing the Amount expended by the CENTRAL BOARD of COMMISSIONERS of PUBLIC ROADS,
from their General Revenue, for the construction and repair of Roads, in each
Year from 1844 to 1853.

Years.	Western Divisions.								Eastern Divisions.							TOTAL
	Cape.	Stellenbosch.	Swellendam.	George.	Clanwilliam.	Worcester.	Beaufort.	TOTAL.	Albany.	Uitenhage.	Somerset.	Graaf Reinet.	Cradsok.	Coleberg.	TOTAL.	
	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	
1844	13450	5451	1182	3001	-	-	-	23003	910	84	-	-	-	-	904	24000
1845	13662	8509	3767	5495	200	180	150	31963	3296	231	-	-	-	-	3527	35493
1846	7464	3261	1568	4421	-	1062	-	17776	1160	195	-	-	-	-	1364	19143
1847	8598	4011	3491	7508	-	3143	-	26751	924	1168	237	-	-	4	2333	29088
1848	6352	1922	3101	10175	-	3744	-	25294	1064	1060	355	-	-	-	2488	27785
1849	5595	2282	1172	8115	44	1668	49	18925	501	2401	902	-	-	-	3804	22735
1850	6709	3312	6320	5792	38	2568	45	24784	462	4871	1003	-	150	-	6486	31275
1851	5277	4306	5134	3352	-	1470	6	19545	123	2499	4	-	-	-	2626	22175
1852	4957	3252	806	2320	-	2458	-	13793	171	2766	-	-	-	-	2937	16733
1853	4730	3345	677	1237	63	1455	-	11507	694	1243	80	-	-	-	2017	13528
Total	76807	30656	27224	51422	347	17752	252	213400	9318	16532	2584	-	150	4	28588	242048

"This Return does not show the particular amount expended from the rates collected in each division, during each year. The general expenditure for the construction and repair of roads being provided for by different sources of revenue, viz.—toll moneys, annual grant of the Council for road purposes, road rates, moneys raised on loan, it is impracticable to supply that information; and as no separate entries of such expenditure have been made in the books, it cannot now be determined whether any or what portion of the rates collected has been applied for any special or particular road service.

"It is impossible to state whether an expense, for instance, incurred in 1850 and paid in 1852, was covered by rates collected in any particular division during the former period, as the sum so paid in 1852 must evidently have been settled from the rates or other sources of revenue received in that year.

"The above information could only have been furnished in regard to the actual payments made in each year, if the Board had not contracted loans to meet the expenses incurred during the early period of its operations (from 1844 to 1848). These loans have partly been, and are still to be, paid off from the rates collected, or to be collected; it is, therefore, impossible to point out the actual proportionate amount of rates collected, or to be received, for liquidating the debt as an item of revenue applied in defraying the expenditure for any particular division during the first-mentioned period."

APPENDIX No. 8

STATEMENT showing the LIABILITIES and ASSETS of the CENTRAL BOARD of COMMISSIONERS of PUBLIC ROADS, on the 31st December, 1853 and 1854, respectively

Particulars.	31st Dec., 1853.	31st Dec., 1854.
<i>Liabilities.</i>		
Balance of Loans negotiated under security of the rates and tolls,	£ 25350 0 0	£ 23250 0 0
Accounts due and unpaid on the 31st December,	6840 3 9	5615 9 11
Interest on loans due on the 31st December,	750 14 1	685 8 2
Probable amount of unpaid accounts not yet rendered, .. .. .	.. .. .	400 0 0
	<u>£ 32049 17 10</u>	<u>£ 29950 18 1</u>
<i>Assets.</i>		
Amounts advanced to the Divisional Road Boards in 1844-45, —		
Cape,	£ 200 0 0	
Worcester,	150 0 0	
Clanwilliam,	200 0 0	
Uitenhage,	100 0 0	
	<u>£ 650 0 0</u>	<u>£ 650 0 0</u>
Balances in hand and due by sub-accountants on the 31st December,	4494 0 10	3684 14 7½
Toll moneys due for 1853 and previous years,	854 6 5	811 5 2
Instalments due on ferry fees levied at Breede River, (Swellendam), and Swartkops, (Port Elizabeth),	2 16 8	105 15 0
Balance of contribution of the under-mentioned Divisional Boards, towards constructing a road to Worcester, and a bridge on the Berg River,		
Worcester,	850 0 0	650 0 0
Paarl, .. .. .	.. .. .	1037 1 8
Balance due on votes of Council for the years 1853 and 1854,	7643 4 5	904 12 3
Balance still due by Col. Dickson, late Civil Commissioner for Swellendam,	87 8 10½	87 8 10½
Amount of balance of road rates already assessed,	17526 4 1½	20528 6 0½
Amount of sales of property belonging to the Board, payable in 1855,	11 9 6	517 8 5
Amount of excess of convict expenses for 1854, already authorised, .. .. .	.. .. .	1744 7 9
Probable excess of convict expenses on account of services rendered for which some accounts have not yet been rendered, .. .. .	.. .. .	250 0 0
Value of the stock of cattle at the different stations on the 31st December,	600 10 0	1043 10 0
Value of tools, &c., in hand on the 31st December,	5805 4 10	7284 10 7
	<u>£ 38615 5 8</u>	<u>£ 39299 0 4½</u>

{ Includes £100 1s. 1d.; doubtful whether recoverable.

{ Balances for each year's votes separately.

These sums include all the levies made. It is doubtful whether the whole will be recovered. To the amount for 1854 is added the levies due in Albany, Somerset, and Uitenhage, on 15th Dec., 1854.

W. DE SMIDT, Sec.

Office of the Central Board of Commissioners of Public Roads, Cape Town, 2nd March, 1855.

CHAPTER V
THE ROLE OF MONTAGU IN CAPE POLITICS,
WITH SPECIAL REFERENCE TO THE
CONSTITUTIONAL CRISIS
OF 1850-52.

"A trimmer may glide down the stream of public life without much difficulty. But not so John Montagu."¹ Few men have emerged unscathed from a period of political turbulence like that experienced in the Cape in the late 'forties and early 'fifties of the last century. Montagu was in the unfortunate position of having clear cut views, without having a clear cut constitutional position from which to defend them. In the orbit of administration, he moved with confidence: but only while the policy of the government which he served, as Colonial Secretary, was unequivocal. For, as Colonial Secretary, he was a public servant: but due to the vacillating policy of his superiors, to the ambiguous position of the Executive and, especially the Legislative Council, as also to the gravity of the crises within the Cape, 1849-1852, he was forced to move into a position of quasi-political activity, seeking to hold an often untenable position against the criticism of the Colonial Office in London, on the one hand, and multifarious groups and so called parties in the Cape, on the other. To a great extent, he became the victim of circumstances, though it must also be conceded that his very proficiency as an executive officer, disqualified him from wise handling of the constitutional crisis in the Cape.

By the 1840's the Legislative Council, established in 1833, had fallen into disrepute. True, it had an unofficial element. But the unofficial members carried little weight.

1. GTJ. 27.12.53.

They were a minority in the Legislative Council.¹ More. The members of the government sat in the Legislative Council, thus swamping the influence of the unofficial members, who, in any case, owed their nomination and their presence in the Council, to the Executive. Complaints about the Legislative Council were not, however, limited to the predominance of the official element: the basic weakness, and men saw it, was that as a representative and legislative body, the Council was ineffective. Members, both official and unofficial, carried little weight, because the Council's functions were circumscribed and its exercise of power, limited by the executive.² There were grounds for complaint. When, for instance in 1842 the Council appointed a committee to conduct an inquiry into the Robben Island convict establishment³, the Chairman of the Committee, Mr Ebdon⁴ requested the judges to give evidence: he was bluntly informed by Messrs Wylde, Menzies and Kekewich that their observations would not go to "an unofficial member of the Council," but to the Governor. The Legislative Council, they maintained, had no right to compel anyone to give evidence, and, therefore, neither had any committee of the Council. The Council's appointment of the Committee, they said, was ultra vires, since only on

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1. Theoretically this does not seem possible, for, according to the Letters Patent, the Legislative Council was to consist of from 5 to 7 unofficial members, together with the 5 official members of the Executive Council and the Governor. But in practice, the Council never had more than 5, in some years only 4, unofficial members, except for the two week period in 1850 when the governor's "election brought the number up to 6, and the period October 1851 to the end of the 1852 session, when the Council also had 6 unofficial members. Moreover, when one considers that the Governor had both a casting and a deliberative vote in the Council, the reality of an unofficial minority becomes more apparent.
 2. These powers and functions were set out in the Letters Patent of 23 October 1833; they were repeated, and were in fact subject to alteration, in the commissions of successive governors. See CHBE op cit, Vol VIII, p 360.
 3. Kilpin R: The Romance of a Colonial Parliament, London 1930 pp 64-66.
 4. Unofficial member of the Council

current bills - and none had been brought up for Robben Island - could committees be appointed. At a later session of the Council, Advocate Cloete moved a series of Resolutions, the most important and most significant of which read:

If the Governor and the Council be not possessed of the power of appointing any Committee or sub Committee of the Council to inquire into and report upon any matter ... brought before the Council, it would be far more desirable to abolish the Legislative Council in toto, than to insult the public by the mockery and semblance of such an impotent interference of the public in the legislation and government of the colony.¹

Although the resolutions were not passed, the prestige of the Council had been dealt a real blow. The sterility of the Council had become an accepted fact. In 1843, the Graham's Town Journal accused the Legislative Council of all the hall marks of "a suspicious and narrow-minded policy", a body whose every action was "incomplete" and "obscure". The members of the government, it complained, directed both the framing and execution of policy; the unofficial members "are placed there merely to hide that pure despotism which is its essence ..."² "Before long," the article concluded, "the Legislative Council must either be strangled or informed." In composition and function, then, the Legislative Council was inadequate, and popular criticism of it was legitimate.

The Executive Council was a different proposition. It was a bona fide executive body, accepted in the main as necessary. Criticism was directed against its policy and location. Because it had a high degree of cohesion, there are grounds for arguing that it acquired a degree of organic unity: its members were criticised, therefore, both collectively and individually. The most mordant criticism came from the

1. Ibid. Kilpin *op cit.*

2. GTJ 29.6.43

Eastern districts, where it was regarded as foreign, oligarchic and irresponsible to public opinion.¹ In 1847 there were two vacancies in the Legislative Council². The Graham's Town Journal, referring to a suggestion that the Council might be given a dash of popularity by the appointment of two popular nominees, sceptically remarked that the ineffectiveness of the Council could not justify the trouble which would be taken to bring it up to its full complement.³ "The Cape Government," added the Eastern Province Herald "as at present constituted has lost all the affection of the people and it now stands separated from this position of the colony like a piece of dead matter detached from the living system."⁴

The colonists had continually pointed to the boon of representative institutions as the only satisfactory solution to the anomalies of the system which prevailed in the 'forties. Colonial development in Australia and more especially in Canada, was given wide publicity in the Colonial press. In July 1846, the ministry of Lord John Russell with Earl Grey as Secretary of State for Colonies, came into power in Britain. Russell had been the prime mover in the Reform Bill of 1832 and was thought to favour the extension of Representative institutions to the Cape.⁵ At this same point, the threatened abolition of the Lieutenant-Governorship spurred the Eastern Province in the defence of its interests, and to support the demand for separate representative institutions as the only way to

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1. Vide EPH, 29.8.46. When addressing a public meeting at Fort Beaufort to petition for "some system of government on the frontier", in 1843, J.M. Bowker remarked that all petitions to the government are doomed to miscarry because "these gentlemen are foreigners, without any knowledge of frontier affairs nor do they feel in any way responsible to the Colony. They have ... no ambitions to be popular they are a caste that look down upon us as very Parias ... they associate only amongst each other and with the military .." Bowker J.M.: Speeches, Letters op cit p 112.
 2. Mr van Breda had died, and the appointment of Mr T.B.C. Bayley in 1845, was not confirmed by the Secretary of State. Vide Kilpin op cit pp 125-126
 3. GTJ 4.9.47
 4. EPH 31.7.47.
 5. See Morrell W.P. British Colonial Policy in the age of Peel & Russell. Oxford 1930. pp 280,454.

break the power of the Westerners who were alternatively charged with a monopoly of power or with neglect of and indifference to the affairs of the East.¹ Though, as has been shown² the East was not entirely neglected or wilfully sabotaged to the administration in Cape Town, they had some ground for complaint.³ Separatism was the theme; on this there was relative unanimity: but even Godlonton swithered between a demand for a local executive, and a demand for representative institutions.⁴

From the first then, Montagu as Secretary to Government confronted, not merely with administrative difficulties, but with mounting, if confused political clamour, grounded mainly, not entirely, on constitutional principle in the West, local interests in the East. When he left the Cape on sick leave in 1852, the stage was set for the introduction of Representative Government which Montagu had not, it is true, designed, but for which he had nevertheless prepared and which he had made more practicable.

His ideas on representative institutions and much of his subsequent line of policy, are contained in a memorandum, submitted at the request of the Governor⁵ on the 10th April 1848,⁶ Smith pointed out that the objections raised in Lord Stanley's

1. Sole op cit pp 2-3

2. Supra Chapters III and IV passim

3. Sole op cit Chapter I passim

4. Le Cordeur B.A. Robert Godlonton as architect of frontier opinion, with special reference to the politics of Separatism, 1850-57. M.A. thesis. Rhodes University 1956. Chapter III passim.

5. P.P. 5.2.50 xxxviii (1137) p. 3 Smith to Grey, No 109, 29.7.48. Smith had sent the memorandum prepared by the Attorney-General "to the members of the Executive Council, to the Chief Justice and the two puisne judges, that I might receive their respective opinions"

6. Ibid p. 13 sqq.

despatch of 1842¹ "are so ably combated and replied to in the clever and comprehensive minute of Mr Montagu, the Secretary to Government, that I conceive, as it carries conviction with it, so will it be conclusive."²

Montagu conceded in his minute that Representative institutions at the Cape were both necessary and proper to the needs of the Colony, but he opposed the plea of the Eastern districts that separation should accompany the grant of representative institutions. On this point, whether he viewed the administrative or the constitutional situation, Montagu's opinion was, as it always had been, that the Cape was an entity: one colony, not two. He suggested that there should be a bicameral legislature, with the second chamber nominated by the Crown.³ This he saw as a necessary check on the lower house, for he was mildly suspicious of a "popular sense." He suggested no device to avert a deadlock between the two houses, but it seems that he visualised the Executive as averting such a rupture. The core of the executive was to be as heretofore, the officials holding administrative offices. They were not, however, to be debarred from seeking election to the lower house, or from nomination to the Upper House. Though the core of the Executive was to be unchanged, he provided for an unspecified number of unofficial members from each house, to be included in it as honorary members.⁴ This was an interesting theoretic structure from which, though it would seem that Montagu did not intend it, a parliamentary executive could in course of time have grown. But that Montagu did not foresee this, and would

1. See P.P. 17.6.1846; xxix (400) p. 4 Stanley to Napier, No 62, 15.4.1842.

2. P.P. 1850 op cit p. 3

3. Nominated Upper Chambers were found wherever bicameral legislatures existed in the other British possessions. See e.g., Canadian Constitution Acts of 1792, 1840. Also in New South Wales the unicameral legislature established in 1842, gave way to a bicameral one in 1850, with the provision that the second chamber should be a nominated body. Vide Marriott J.A.R. Second Chambers: An Inductive Study in political science Oxford 1910. Ch. VII & VIII passim

4. P.P. 5.2.50 op cit p. 19

not have approved, is ^{known} shown by the fact that he did not favour any situation whereby executive officers, ex officio, would either speak or vote in the Legislative. More. He thought that it was possible for all matters of an administrative kind to be reserved exclusively for the consideration of the official element of the Executive. That his ideas about the constitution, at this stage, were hazy, is suggested by his statement that the Upper House should be nominated, lest the Executive should become "the mere tool or passive agent of the popular assembly"¹; for this, logically interpreted implies that the second chamber is the Executive!

Montagu's views about the composition of the Lower House were as follows. Fundamentally, it was to be an elective chamber. With regard to the distribution of seats he held the typical view of his time in Britain²: namely that the House should represent, not artificial constituencies, but interests. He believed that the theory of equal representation alike for dense urban and sparsely populated rural areas would be "subversive of every principle of a just and well-balanced representation of its several interests"³. If a mathematical basis were proposed, Clanwilliam, for example, would be assigned a larger share of representation than the more densely populated district of Stellenbosch. At the Cape, he maintained, there was no necessity for weighting representation: the more remote areas were not now completely cut off from the metropolis.⁴

"in regard to the means of communication between representatives and remote constituencies", he said, "post office establishments have been formed in every town and village in the colony⁵ and the mail, which is now despatched twice a week from Cape Town to the Eastern frontier, will next year, on the completion of the main

1. Ibid p. 18

2. See Gash N.: Politics in the Age of Peel. Longman's 1953 Chapter III passim

3. P.P. 5.2.50 op cit p. 14

4. Vide Supra Chap Iv passim

5. Supra Chapter III p. 113-99.

line of road between Cape Town and Graham's Town cease to be carried on horseback, and will be conveyed in carriages, effecting the distance in about 60 hours."¹

He suggested that corporate communities² should have their own representation, distinct and separate from that of the agricultural and pastoral districts in which they were situated. The proportion of representation should, he maintained, depend on both the wealth and the population of an area.

There remained the question of the franchise. He saw no reason to believe that representative institutions would either emphasise or aggravate the diversities of race, origin and language in the colony, and so he supported the Attorney General's suggestion of a moderate franchise qualification, enabling coloured people of means and intelligence to vote for representatives.³ The theme of Anglo-Dutch antipathy, he observed, had been overplayed in the colony. "I am of the opinion," he remarked, "that with the exception of the law of inheritance and succession in this colony, to which the Dutch are exceedingly attached, and the English equally averse, there is not a single subject within the legitimate province of legislative interference, on which national prejudices, or the conflicting interests of race, are likely to be engendered."⁴ Yet on the details of the low franchise, he differed from Porter who had advocated a £25 property qualification for both voters and members of the Assembly. Montagu proposed an income, rather than a proprietary or professional qualification for membership of the House. The electoral franchise, he saw, should be the same as the Municipal franchise in constituencies where municipalities existed:

1. P.P. 1850 op cit p. 15

2. There were about 21 townships; of these, 10 had municipalities. See Cape Almanac for 1848.

3. Such a system was not foreign to the Cape, for in Cape Town a Malay had previously been returned as Wardmaster by European and Malay voters in Cape Town. P.P. 5.2.50 op cit p. 16.

4. Ibid.

for the rest, he proposed a qualification corresponding to the assessments on fixed property for Road purposes - this would cover all persons possessing fixed property valued at £50 or upwards - a point of policy again reverted to when he supported the move to raise the franchise qualification at the beginning of 1852.

Possibly as he wrote, he classified his ideas. For while conceding in theory the propriety of granting such constitution privileges to the Cape, as an administrator he doubted whether they were ^{compatible} ~~comparable~~ with good government, at that point in the division of the colony.¹

Montagu's forte was administration. As Colonial Secretary he performed his duty in stating his ideas about the form representative institutions should take. He cannot be said to have advocated them for the Cape: it is doubtful whether he had any confidence in representative institutions in central as opposed to local government. Up to a point he was right. A sound administration and some degree of political homogeneity were the necessary background, for constitutional questions cannot be discussed in vacuo, but only against the fabric of society itself. He saw in the demand of the Eastern districts for separation, a threat to the unity of the colony; in the Anti-Convict Agitation a threat to stability and loyalty, and in the cross currents of friction which followed, he feared that Dutch antagonism might harm the English element. He became more, not less conservative. It is necessary, then to look, however briefly, at what may be called the structure of colonial opinion on the quasi-political issues of the day.

Such was the temper of Eastern politics, that the Eastern press continually wove the actions of government officials, however various, into arguments in favour of Eastern Province Separation. Thus Montagu and his colleagues were alternately

1. *Ibid* p. 21.

hailed as champions of Eastern Province interests, or criticised as exponents of executive disregard for Eastern affairs.¹

1. As early as 1843, the Graham's Town Journal had hailed the arrival of Montagu as surely the first step towards the implementation of representative institutions. GTJ 24.8.43. In the very next year Godlonton and the Journal branded Montagu's remarks on the question of a native policy for the frontier, typical of executive neglect and virtually demanded strong executive control on the spot. GTJ 21.3.44. "For the East, the question came to a head in 1845 when a petition from the Kaga (Bedford) district, asking the government to establish a monopoly in the sale of gunpowder or remove the seat of government as the only two alternatives for a satisfactory solution of the frontier problem, came before the Legislative Council. Montagu argued that the allegations from the East were "overcharged", since he believed that "life and property are more secure now than they have been at any former period". He saw "nothing to prevent the most effective proceedings being directed from Cape Town." GTJ 23.1.0.45. This the Attorney-General accepted, arguing that "if Your Excellency and all the other people who hear me, were now sitting in a room in Uitenhage, I entertain grave doubts whether a single ox or horse the less would be lost today in Albany." S.A. Commercial Advertiser 10.10.45

The Eastern Province became more firmly convinced than ever before, of wilful Western antipathy, when in 1845, the Legislative Council accepted the principle of a resolution proposed by Mr Ebdon, that the post of Lieutenant-Governor for the East be abolished.¹ The Eastern province press came out boldly against this stand; separation was demanded as the only thing that would save the East from Western domination²

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1. See Bowker op cit p 190 Also Sole op cit p 71. Also L.C. 1845-52, p. 11, 7.10.45. The L.C. accepted the resolution on the grounds that the advantages of the Lieutenant-Governorship had never been commensurate with its costs, while its existence had led to inconsistency in the framing of policy. It was pointed out that Montagu's schemes for communication by land and sea would soon establish that link between the East and West which would make for expeditious and direct administration from Cape Town.
 2. "What the province requires," cried the Journal "is an officer who shall not be ~~crumelled~~ ^{crumelled} by the Executive at Cape Town." GTJ 13.11.45. An anonymous correspondent to the Eastern Province Herald voiced the opinions of the majority of Easterners in the words. "We, Sir, have no confidence in the body which sits in Cape Town. The Government, instead of being responsible for their acts, are able to screen themselves from merited castigation behind the puppets of the Legislative Council." EPH 10.1.46. Easterners denied the validity of any argument which held that ^{Eastern Frontier} administration could be carried out "by vague legislation at a distance of 600 miles". For this very reason, they argued, there had been no administration of ^{Eastern Frontier} affairs for the last few years. "The ruling power latterly has been utterly unable to make its will felt with any promptitude or decision where it was most necessary; it has become a mere legislating and treaty making body but its laws have not been enforced, and its treaties have never become significant. The people for whom these laws and treaties were chiefly made, have dared to disregard them, because they came not to them with the terrible sanctions of force; they were peddled to them generally with a large bonus, and after this part of the transaction was effected, the crediting party (that is our government,) withdrew to some far distant part of the country, from which they could exercise little or no influence over the other contracting party. Such a Government soon draws upon any country the worst of evils - the whole catastrophe can be laid at the doors of the feebleness of our Government in its administrative capacity". EPH 15.8.46

And in their enthusiasm, some correspondents even hailed Montagu as a champion of separatism.¹ But the East was soon to be disillusioned. For, when Colonel Hare retired as Lieutenant-Governor in 1846, it was provided that, until further instructions were received from Her Majesty's Government, "all communications from the Eastern districts, which have heretofore been addressed to the Lieutenant-Governor, are in future to be addressed to this office"²³ Eastern Province Separatist feeling had come to a head: Montagu was discarded as a champion, and when Young was appointed to the Lieutenant-Governorship in 1847⁴ the press was quick to caution him not to allow his rightful authority to be usurped "by the arbitrary interference of a few official gentlemen in Cape Town."⁵ But Young did not stay long - he was transferred to the Lieutenant-Governorship of South Australia at the end of 1847.⁶

At this juncture the Eastern demands submerged in more general and insistent demands for constitutional changes. To

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1. Thus in 1846, the Eastern Province Herald gave the following explanation of his policy:
"He is constructing a direct road from the present seat of government to the frontier, and he has introduced the twice a week post, and for what purpose? - in answer to what representations? Not so much to meet the necessities of increasing commercial intercourse between the two provinces; not in obedience to any petition from the people on the subject; but to reduce the distance in time between the seat of government and the scene of its actions - to bring the supreme power nearer the points where its force is chiefly to be exerted. He had discovered where the great evil or cause of insufficiency in our Colonial government existed, and he at once entered on such remedial as were within his powers. To change the seat of government could perhaps not be attempted by him - but to construct roads, and increase the post communications, could, and if through these steps he has yet failed ... in securing the object, still the merits of his endeavour is great.
EPH 22.8.46
 2. i.e. the Colonial.
 3. G.T.J., 10.10.46. Govt Notice dated 28.9.46.
 4. CPT 20.7.47
 5. Ibid.
 6. Le Cordeur op cit p. 131

these, the Home Government was amenable¹ - more amenable, in fact than Montagu. Yet it was not till 1848 that the Cape authorities could attend to the question, and not till 1850 that the observations of the Cape authorities² were commented upon in the Report of the Board of Trade and Plantations³. The Board, had advised a bicameral legislature, on the understanding that both Houses were to be elective: the minutiae of constitutional practice were left to the Cape Legislative Council. But in the meantime, the Anti-Convict Agitation swept the whole question of the constitution on to a new plane.

Montagu's projects of civil improvements⁴ for the Colony had aroused interest in Britain; so much so that in 1846 Gladstone sounded the Cape authorities on the possibility of engaging convict labour from the British isles. This suggestion, welcomed by Maitland, subsequently received the support of both the Executive Council and the Cape Town Municipality⁵. The disturbed state of the frontier prevented anything being done till 1848; and when the Secretary of State's plan was made known at the Cape, the colonists, confused by rumours, were determined to oppose any attempt to make the Cape a "penal settlement".⁶

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1. Cf P.P. 5.2.50 op cit p. 92. Earl Grey to Sir Henry Pottinger, No 1, 2.11.46.
 2. Supra p 185
 3. Ibid p. 100. Grey to Smith, No 140, 31.5.50. For Report of the Board, dated 30.1.50, see pp 101 sqq.
 4. Supra Chapters III and IV
 5. Newman op cit p. 560. See Also Gobregts, J.F: Die Antie-Bandiete Agitasie aan die Kaap. M.A. Stellenbosch. 1937. pp 20-23. In September Maitland asked the Secretary of State to send 300 convicts to the Cape.
 6. Vide Gobregts op cit Chapter IV passim. Also Newman op cit p. 558. Newman gives a very picturesque description of the effect this had on the Cape. "The Colony, quiet and unruffled as its own Table Bay in summer's calm, immediately on the spreading of the rumour that it was even thought of as a penal settlement, under any restrictions or modifications, became like that same bay when a strong and sudden south-east wind has swept down upon it." Newman p. 327.

The Anti-Convict Association, formed in Cape Town, had branches which spread throughout the Colony,¹ The colonists' animosities were directed to the officials at the Cape, and the Western press especially, took them to task for not advising the Governor to refuse permission for the "Neptune" to dock in Table Bay.² Only Godlonton and the Journal offered anything like moral support to the government against the unsympathetic onslaught of the irate public.³

The Legislative Council meeting of 15 June 1849 brought matters to a head. Montagu was in the chair, owing to the illness of the Governor⁴. The convict question was discussed for five hours. Petitions were handed in, in opposition to the proposed scheme. Ebden estimated that Montagu was largely to blame for the impending threat to Colonial Security: he adverted to Montagu's scheme of public works as direct initiatory factor for the contemplated introduction of convicts into the Colony.⁵ Ebden then moved that the Legislative Council should advise the Governor "to prohibit and prevent" the landing of convicts,⁶ but previous to any voting on the subject, Montagu read a minute from the Governor, in which the latter pointed out the difficulty of directly disobeying an Order in Council. Ebden's resolution was defeated, the officials voting solidly against, and then Ebden moved a further resolution, that the Legislative Council considered the introduction of convicts "most injurious to the welfare and interests of this Colony - opposed to the wishes of the people - and calculated to estrange the people from Her Majesty's Government." The resolutions was carried with only Montagu and the Treasurer-General voting against.

1. Gobregts op cit Chapters IV and V passim

2. Ibid p. 24

3. Le Cordeur op cit p. 39 sqq

4. Gobregts op cit p. 50

5. GTJ 7.7.49

6. L.C. 1845-52. p. 386 15.6.49

Montagu immediately answered the allegations laid against him. Golbregts, in his thesis "Die Antie-Bandiete Agitasie" concludes that Montagu reacted the way he did because, as a public servant whose salary had just been increased by £500 he could not afford to oppose the wishes of the Imperial government¹.

Montagu's attitude was typical. He agreed that the Cape was unsuitable as a receiving station for convicts, that as a labour force, this was redundant². But he insisted that since they had arrived, the 300 convicts should have been landed, and he saw in the agitation a measure of defiance, not merely against the convicts, but against the Governor himself.³

At first he did not grasp that he personally would be held responsible for the crisis, for in September 1849 he left Cape Town on a tour of inspection of the Colony's roads.⁴ Between July and the end of the year, the Anti-Convict Association made political capital out of the agitation, both to discredit Smith and the Legislative Council and to force the resignation of the unofficial Councillors⁵. The Colonial press urged men not to accept seats. Still Smith and the Executive Council refused to be bullied by the Association, and made it clear that they would not disobey the Imperial instructions.⁶

1. Golbregts op cit p. 57, ~34

2. If, "he said, " I had been desirous of bringing forward my views ... for the purpose of my own aggrandisement .. to induce him (the Secretary of State) to send British convicts here for me to try and experiment on, I had only to call his lordship's attention to the convict system which I have introduced into this colony, and the results it has produced ... In the most unqualified and emphatic manner, that neither to any Secretary of State, nor to any person in the Secretary of State's department, nor to any person from one end of the earth to the other, have I written either publicly or privately one single word regarding convicts, sent to this colony, from Great Britain or anyone else" GTJ 7.7.49

3. When it was suggested in the L.C. that the Governor should forthwith petition the Home Government for the withdrawal of the "Neptune", Montagu observed: "If you so petition him, petition him also to return his commission as Governor at the same time. Newman op cit pp333,334. See Also CTM 23.6.49

4. Newman op cit p.335

5. Kilpin op cit p. 75.

6. E.C. II, 22.9.49, 11.10.49, 12.10.49, 13.10.49, 18.10.49, 13.12.49.

The powerful pledge of the Association¹ had forced all but one of the unofficial members out of the Council by September. And although Smith did receive Imperial sanction to send the "Neptune" away in February 1850, it was painfully obvious that his reputation and popularity had been irreparably scarred.² The Legislative Council was a body in name only³, and the question of Representative institutions was shelved because Smith could not, with impunity, both to himself and to those he would appoint find men who were prepared to accept seats in the Council.⁴

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1. Montagu was away on his tour of inspection at the time when the Executive Council took up their stand, but he was nevertheless effected by the animosity against those who did not subscribe to the "pledge" of the Association. The Suid-Afrikaan reported that in the course of his tour, Montagu had to stay with a certain Mr de Villiers in the district of Prince Albert. The only hospitality offered him was "het overschot .. van het avondmaal .. en een zoo ellending bed, dat zij .. derhalve verplicht waren zich op eenige stoelen te rust te leggen." Z.A. 1.10.49
 2. The following resolution passed by the Anti-Convict Assoc. on 4 July 1849, had been widely circulated throughout the Colony and received acclamation in most of the colonial press: "The conduct of Sir Henry Smith in refusing to take upon himself the responsibility of suspending the publication of the injurious and degrading measure .. and his determination to carry out the measure in violation of a pledge to the colonists .. and in contempt of an opposition on the part of an injured and insulted people proves that the Government of the Colony as at present administered is wholly in variance with the just and inalienable rights of British subjects." Goebregts op cit p. 92
 3. In consequence of the resignation of all the unofficial members of the Council, except W. Cock, there could be no meeting of the Council, according to the Section of the Royal Instructions to Governor Sir H. G. W. Smith, Bart." L.C. 1845-52. p. 401 13.7.49
 4. P.F. 19.5.51, xxxvii (1362) p. 1 Smith to Grey, No 82 17.5.50.

In March 1850 the Governor announced his intention of completing the Legislative Council¹; Porter was instructed to frame an official notice² designed, with the cooperation of the several municipalities and Road Boards of the Colony, to secure the nomination of members with at least some vestige of popular support. The Notice³ reserved to the Governor the ultimate right to select, from returns of nominations furnished by the Road Boards and municipalities, those men who in his opinion would best serve the several interests of the Colony. The returns were submitted to the Executive Council on the 3rd July⁴

Montagu recommended that, since certain returns⁵ had not yet been received while others⁶ were incomplete, the Council should defer the matter until a complete set of statistics was available. Smith rejected this advice and instructed the Council to nominate to the five vacancies in the Legislative Council. Confronted with no alternative but to accept the analysis of the available returns, Montagu advised the Governor to appoint Messrs Brand, Reitz, Fairbairn, Wicht and Sir Andries Stockenström as the five who had been recommended from the greatest number of places. He added that their nomination would, in his opinion, meet the spirit of the Government Notice of the 6th May. But he was clearly not happy about the appointment of Stockenström, and argued that, since the latter received a government pension, there

1. E.C. II 15.3.50

2. E.C. II 6.5.50

3. P.P. 19.5.51 op cit p. 3 Government Notice d.d 6th May 1850.

4. E.C. II 3.7.50

5. viz those from Municipalities of Green Point, Worcester, Uitenhage and the Divisional Road Boards of Worcester and Malmersbury.

6. viz those of the Divisional Board of George, Somerset, and Beaufort.

was some doubt as to his eligibility.¹

Montagu's advice was over-ruled in the Executive Council. Members pointed out that the Government Notice of the 6th May² under which the "elections" were held, reserved discretionary powers to the Governor; it had been foreseen that in an election where the municipalities and Road Boards of the Colony were called upon to vote, as so many individuals, there was a risk that all the elected might be domiciled either in Cape Town or in Grahamstown, and would thus represent local interests rather than the whole colony. The Governor therefore used his discretion, and on that date appointed Godlonton over the head of Wicht, an action which ill consorts with the alleged reasons for the discretionary power, since Godlonton was 'Grahamstown incarnate'. More. Godlonton not only displaced Wicht whom Montagu had nominated. He displaced Meintjes who was well above Godlonton on the available poll returns. Probably, the explanation for the decision of Sir Harry Smith in this case, lies in two things. Godlonton approved of Smith's frontier policy.³ Per contra, Meintjes, the son-in-law of Stockenstrom, might prove a powerful ally of Stockenstrom in the Council, and Stockenstrom was a fearless, if not always well-advised critic of the government in general; and of Smith in particular, since he blamed Smith rather than Glenelg for the retrocessions of 1835,⁴ and attacked his handling of the Tambookie-Boem questions in the Klaas Smits River area.

Brand, Stockenstrom, Fairbairn, Reitz and Godlonton accepted places on the Legislative Council. Smith's proposed agenda included a discussion of the draft constitutional

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1. He quoted from Lord Normanby's despatch of 31.8.09 in this connection; also from despatch of Lord John Russell, of 27.10.39. This is interesting, because Stockenstrom was clearly a fly in the official ointment at the time. See Duminy A.H.: The Role of Sir Andries Stockenstrom in Cape Politics, 1848-56. M.A. Rhodes 1956. pp 130 sqq. A letter from Montagu to Southey in January 1851, also throws some light on Montagu's possible motives for objecting to Stockenstrom: "I think with you," he said, "that the appointment of Stockenstrom to any post in connection with the war would be attended with much mischief - and I am glad you have written to Garvoek. (Smith's private sec.) on the point. Le Cordeur op cit p. 166
 2. Supra p 197
 3. Le Cordeur op cit p. 37, p. 43.
 4. Vide P.P. 1851.xxviii(1334) Stockenstrom to Montagu 1.7.50

ordinance, as well as the arrears of civil business delayed since 1849. The Council met on September 6th 1850, in an atmosphere of crisis and tension, in part due to the political chaos *bequeathed* by the Anti-Convict agitation which had blurred, without effacing, the so-called party groupings: in part due to the circumstances of the "elections", and Godlonton's nomination. What the so-called popular party sought, was the end of alleged "arbitrary" rule at the Cape. On his way to Cape Town, for instance, Stockenström had intimated, both at Graeff-Reinet and at Beaufort West, that he would exert his "humble power to put an end to the domineering of the trio, Lord Grey, Sir Harry Smith and Mr Montagu," who "had played shuttlecocks with the colony since 1848."¹

Some saw the Colonial government as the tool of the merchants² and looked to constitutional reform as a means to impartial administration. Many were, for the nonce, fundamental radicals.³ Views like this, fully expounded in the Colonial press created the atmosphere in which the Colonial Government was visualised as "the ancien régime", and the proposed constitution as harbinger of a brave new colonial world. For the demand for constitutional reform had been given emotional impetus by the crisis over the convict question: it was to be fanned in 1851 by the Kat River rising. Montagu then came to see in the constitutional reform which at first he had cautiously approved, not merely a threat to the then administration, but a menace to the government itself. It would seem, then, that the apparent contradiction in his views at the beginning of 1850 and on the eve of his departure from the

1. Autobiography of Sir A. Stockenström. Edited by C.W. Hutton. Cape Town 1887. Also Duminy. op cit p. 160

2. Vide CTM 25.5.50, rejoicing that the power which the merchants had enjoyed in the nominated Legislative Council was "about to depart from them for ever."

3. The Cape Town Mail constantly advocated a wide suffrage without property qualification for members of either house. m e.g. CTM 4.8.49, 15.9.49, 16.3.50, 23.3.50. It maintained that "neither poverty nor a dusky skin" should disfranchise any intelligent, honest man. CTM 16.3.50.

colony in 1852 is due mainly to the fact that crises in the Cape swung him from a lukewarm but intelligent protagonist to a reasoned, if ill-advised antagonist.

Smith, full of bristle and optimism, had proposed a comprehensive agenda for the Council when it assembled in September 1850. - much business, such as ordinances for public works, the consideration of the estimates and a Squatter's Bill¹; equally important, and predominant in men's minds, was the new constitution ordinance and the controversial issues of franchise, qualification of members, and the electoral structure. The Council, from which so much was expected, lasted two weeks only, for on September 20th the four so-called popular members, resigned.

At the first meeting, Fairbairn brought up the matter of the appointment of the five members; there were complaints that Meintjies had been overlooked in favour of Godlonton. The four 'populars' viz. Brand, Stockenstrom, Reitz, and Fairbairn, suspected that Godlonton's appointment would wreck the unanimity² of the elected members and destroy the force of their arguments. Stockenstrom moved that the returns of the election be laid on the table at the next meeting, explaining his motive for this in one cogent sentence: "If I am sixth on the list, I shall forthwith walk out of that door and return to my flocks."³

When the returns were laid on the table on the 10th Stockenstrom moved that they be referred to a Select Committee to analyse and report whether in fact the "five most desired men" were returned.⁴ Porter moved and Montagu seconded, that

1. See E.C. II 20.8.50.

2. *Infra* p 202

3. P.P. 19.5.51, xxxvii (1362) p. 21: Proceedings and debates in L.C.

4. L.C. 1845-52, p. 413: See also debates in P.P. 19.5.51 *op cit* p. 27

the Select Committee should consist of the Auditor-General Sir A. Stockenstrom and Mr Brand; the motion was carried and it was decided that the Committee's report should be tabled at the full Legislative meeting on the 18th: Potter gave notice that he would then move "that the appointment of the five new members was done in conformity with the Government Notice of the 6th May, and that each gentleman occupies his seat on the ground of the principles expressed in that Notice"¹

The two main bones of contention were the franchise, and the qualification for membership of the Upper House. Since the British Government had made it clear that it would not sanction any constitution which distinguished between persons of race and colour, the first question turned fundamentally, on a high or low franchise. Porter's motion for a general £25 franchise was carried against Montagu's proposal of a qualification corresponding to the municipal franchise or one based on assessment for Road tax purposes.² On the question of electoral districts there was a crisp battle between Porter and Montagu. Montagu was totally opposed to any scheme based entirely on the principle of wealth. On this issue, too, Montagu was outvoted, but his proposal is worth examining: he favoured single member constituencies based on the size of the smallest existing fiscal division, as the electoral unit. It would have meant, perhaps, too large an assembly, but it had the merit of forcing discussion from abstract to theory, to the consideration of technical problems. Fairbairn's subsequent proposal for proportional representation, based on population was accepted as an interim measure, until such time as accurate population returns could be obtained.⁴

1. Ibid p. 28

2. Supra p 188

3. The colony, he said, would be nothing more than an "Old Sarum", and one-fifth of the Assembly might easily be composed of the inhabitants of Cape Town. P.P. 19.5.51 op cit p. 35

4. Ibid p. 40

The question of membership of the Upper House occasioned sharp divisions. On this point, Montagu's conservatism was bluntly expressed. Montagu would have favoured a nominated Chamber.¹ This was not possible since the Imperial authorities insisted on an elected Upper House, Montagu adamant in his belief that it should be the great bulwark against "popular indiscretion" or "popular torrent"² therefore urged the Council to accept a high property qualification. This, he thought, would secure the presence of men of high standing, stability and experience, remote from "the schemes of unscrupulous political pauper agitators."³ The popular members were opposed to any property qualification: Godlonton and Cock⁴ sided with Montagu and the officials, but on the 13th September, Brand accused the officials of premeditated solidarity on this question. This Montagu denied⁵ and pointed out that, on the contrary the popular members had formed themselves into an anti-government bloc. On the 14th Stockenström, and on the 18th Brand, virtually admitted that Montagu was correct in his accusation: they did have consultations before coming to Council to decide how they should vote.⁶ After a very heated debate Porter's motion, seconded by Godlonton, was carried against the four popular members: it prescribed a qualification for members of the Upper House of unencumbered immovable property to the value of £2,000, or general property to the value of £4,000.⁷

The proceedings of the 18th dealt the popular members

1. *Supra* p. 186

2. ~~*Ibid.* p. 46~~ P.P. 19/5/51. *op cit.* p. 46.

3. *Ibid* p. 47

4. Cock had been appointed to the Legislative Council in 1847, and was the only unofficial member who did not resign at the time of the Anti-Convict Agitation.

5. *Ibid.* p. 45, p. 47

6. *Ibid* p. 50, p. 65

7. *Ibid* p. 157

a blow which decided them to resign from the Council. The returns of the "election" were laid on the table and Porter moved the resolution of which he had given notice on the 10th¹. Speaking on behalf of his colleagues, Rairbairn accused Godlonton of being no more than a direct government nominee² Brand supported him, and bluntly accused the Governor of having destroyed public confidence by not nominating the five at the head of the poll. Montagu spoke in defence of the government. He referred to the opinions he had expressed in the Executive Council on the 3rd July³ and added that "when any question has been discussed and decided in a Cabinet or Executive Council, the minority is bound to yield to the majority."⁴ He now supported Godlonton's nomination on grounds of expediency, and accused the popular members of owing their election "to the ticket system and the exertions and influences of a certain party in Cape Town who distributed these tickets throughout the Colony, and employed active measures to accomplish their object. In my opinion, these four gentlemen would not now have been here as members of the Council but for those tickets and those influences."⁵

Smith substantiated the accusation⁶. He alleged that electoral interests, even in rural districts, were controlled by a party group in Cape Town, assisted by the leaders of the Anti-Convict Agitation in the various districts. "Tickets", he said, had been supplied in advance, by a clique, throughout the colony, and the handwriting on the voting slips or "tickets" was identical in those collected over a wide area.⁷

1. Suprap. 201.

2. L.C. 1845-52, p. 416, 18.9.50

3. Supra p. 197

4. P.P. 19.5.51, op cit p. 68

5. Ibid

6. P.P. 19.5.51 op cit p. 113-117. Smith to Grey No 177 30.11.50

7. P.P. 19.5.51 op cit p. 130. Smith to Grey, No 178, 30.11.50. Smith alleged that the only reason why there was not unanimity for the fifth position, was because "the country constituents were recommended by the Cape Town leaders to nominate Mr W. Fleming of ^{Port Elizabeth} ~~P.E.~~ whose name stands fifth on the ~~list~~ ^{Cape Town} list, and when that gentleman, while the elections were in progress, declined to sit, his name was generally erased from the several lists, and the vacancy filled up according to the caprice of the voter, in consequence of their being unable to obtain, in sufficient time, further instructions from ~~the~~ ^{Cape Town} ~~the~~."

There are no grounds for doubting the statement. But when elections are held, against a background of crisis and propaganda, it would be surprising if electioneering had not taken place. The accusation shows the gulf between the attitude of Montagu and the aspirations of the popular constitutionalists.

Certainly the battle was now forced. On the one hand, Stockenstrom presented a petition, from 225 householders and other inhabitants of Cape Town, on the 20th praying that the Council proceed without delay, to frame the constitutional ordinance. On the other hand, Montagu presented a counter-petition, chiefly sponsored by the merchants of Cape Town, asking the Council to proceed with the ordinary civil business as well.¹ And thus, while the Municipal party and the merchants of Cape Town were contending in the chamber of the Legislative Council, Montagu, having gone far to cut the ground from under the feet of the popular members, sought to out-manoeuvre them. Aware that his opponents had pledged themselves to a discussion of the Constitutional Ordinances only, he decided to test them. He moved the first reading of the Dutch Reformed Church Bill²; this was immediately countered by Stockenstrom who proposed, as an amendment "that this Council do proceed without delay to regulate the arrangements for creating a representative government for this colony; and that no legislative business shall be entertained except questions of privilege and necessary forms of procedure."³ The amendment was lost, Montagu then played his hand. He addressed the Council at some length, pointing out that the popular members were doing much harm to the colony; he accused them of deliberately adopting "party" tactics to frustrate

1. L.C. 1845-52, pp 420-1, 20.9.50. See also P.P. 19.5.51
op cit p. 70

2. Ibid p. 71

3. Ibid

the workings of the Legislative Council at a time when the public was clamouring for government attendance to the public works of the colony.¹ Porter endorsed Montagu's remarks and moved as an amendment to his motion, that it was expedient for the Council to proceed at once to the consideration of the estimates. After a heated debate, Porter's amendment was carried.

That this mode of procedure was premeditated, was made quite clear by Porter when, at a later date in the Legislative Council, he admitted that Montagu had specifically asked him to bring forward in the Legislative Council at the same time as he would propose the first reading of the Dutch Reformed Church Bill the question of the consideration of the estimates, to test the four popular members.² Defeated in the Council, the "popular" members turned to attack the government in general and Montagu in particular³, and having handed in their "eleven" Reasons for Dissent⁴, they resigned their seats, and left the Council⁵.

The warm reception of the popular members by the Cape Town Municipality revived the local struggle between the Cape Town Municipality and the merchant groups, who supported Montagu, and the government. Conflict about the constitution in the meantime, continued. Two separate projects were sponsored. On the one hand, there was the draft constitution

1. Ibid p. 73

2. P.P. 23.12.52, lxvi (1581) p. 116. Reports and debates of L.C. meeting, 10.2.52.

3. In a very heated speech Fairbairn observed that Montagu was "one of the best governors of convicts that has ever exercised power in any country; and for that very reason the worst possible governor of free men"
He accused the government of having been totally "asleep" to the wishes of the inhabitants of the colony. P.P. 19.5.51 op cit pp 80-85. His colleagues agreed with him that they had gradually lost all faith in the intentions of the present L.C.

4. Ibid p. 13.

5. Ibid p. 87 See also L.C. 1845-52, p. 432

prepared by a Commission of the Legislative Council, comprising the remaining seven members. On the other hand there was the "popular" draft, having for its main features a low franchise qualification for both houses, and a clause which ~~denied~~ to officials a vote in either house.¹

It was at this crucial stage that Smith was forced to hurry to the disturbed Eastern frontier which was threatened by the Kat River Rising and the war of 1851. Montagu was left in charge of civil affairs at the Cape and until Smith's recall in January 1852, he took the brunt of political conflict as well as the added administrative burdens which war entailed. In addition, Montagu was confronted with the determination of the popular group to move over the head of the Legislative Council and to appeal for support in Britain for the popular draft of the constitution. It was an intolerable burden, and if Montagu occasionally fumbled, at least he did not flinch. He in part anticipated, in part answered colonial criticism of the policy of the government in the Cape. He cautioned Hawes the Under-Secretary for Colonies, not to pay too much heed to the petitions carried by Fairbairn who had left for England.² He referred to the rejoinder of the official member to the eleven clause of dissent drawn up by the popular members, and to the separate documents from the pens of Godlonton and Cock who supported the government's determination to proceed with ordinary business in the Legislative Council.³ Sir Harry Smith endorsed Montagu's stand. He pointed out that the petitions were rushed through country districts, and that in many cases the number of alleged signatures did not correspond, even roughly, to the number of those present at the public meetings.

1. P.P 19.5.51 op cit p. 18 Smith to Grey No 138, 24.9.50
See also Newman op cit p. 379

2. Ibid p. 96 Montagu to B. Hawes 7.11.50

3. Ibid pp 93-96

As for the activities of the Cape Town Municipality, a powerful foe of the policy and personnel of the government, Smith added: "The signatures ... do not represent public opinion in Cape Town. They have been collected with great trouble the Cape Town Municipal sheet-keeper having been sent from house to house with the petition to obtain signatures; yet out of a population of 30,000, only 966 names have been obtained; amongst them is not one of a single merchant."¹

Meantime, the report of the official commission which had been set up in the Legislative Council, was forwarded to the Governor on the 2nd October 1850,² and ordered to be published. In its subsequent consideration by the Executive Council, Montagu took the chair. There were differences of opinion over the constitution of the Upper House, and the exclusion of officials from both houses; five separate documents outlining alternate plans were consequently compiled by the officials,³ in which they expressed their opinions.⁴

The picture had changed quite considerably. The success which force and stubbornness had brought during the Anti-Convict agitation, was not likely to be repeated now. Because of the unreasonable acts of the popular members there was reaction against the granting of too liberal a constitution to the Cape. All the officials expressed themselves against the granting of an elected Legislative Council⁵. Montagu put his point of view clearly in a letter to Southey at the end of January 1851. "One thing is quite clear, that the people are not fit for those liberal institutions proposed for them - and I believe that they will not be ripe for them for many years to come."⁶ This conviction was developed in

1. Ibid p. 97, Smith to Grey No 176, 30.11.50

2. P.P. 19.5.51 op cit p. 151

3. The number was brought up to 5 because the Auditor-General was co-opted.

4. Ibid p. 132. Smith to Grey No 13, 21.1.51

5. Ibid pp 162-170

6. Le Cordeur op cit p 176. Montagu to Southey 27.1.51.

His Minute on Representative institutions, dated 14 January 1851¹. He observed that the Anti-Convict Association had done much to discredit the government; the worst feature was that, after the agitation had died down the Association had continued its alarmist tactics: the tendency in Cape politics since 1848 had thus gradually forced upon him the conviction that a strong check within the legislative as he thought for instance, a nominated Legislative Council would give, was necessary in the best interests of the Colony. Smith agreed, and was more explicit. The recent agitation over the convict and constitutional questions had, he said, "evoked a strong anti-English feeling, not before known to exist."² With hardly any support left in the West, Montagu and Smith realised that they had to play up to the interests of the East. To separation they could not agree, especially since the Imperial authorities had stated their dislike of separation or partition³. Montagu pushed his bid for a nominated Legislative Council still further, by stressing that only this would safeguard the Coloured people. More. He argued that a nominated as distinct from an elected Legislative Council, would more satisfactorily attend to the interests of the Eastern Districts. This was not illogical, because it was the Eastern, not the Western Province, which was race conscious. Thus a nominated chamber could, in theory foster the economic interests of the East and prevent the influence of the West

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1. P.P. 19.5.51 op cit p. 162 sqq
 2. Ibid p. 132 Smith to Grey No 13 21.1.51. The conduct of the popular members had gradually convinced Smith that their hold over the West which was predominantly Dutch might be uncomfortable for a predominantly English administration. Vide Duminy op cit Chapter III passim. Also Le Cordeur op cit Chapter III passim.
 3. See for instance, the Report of the Board of Trade and Plantations and the Letters Patent of 23 May 1850.

from overriding that of the East in other fields.

There the matter rested, with both sides seeking to convert the Imperial Colonial Office whither the Attorney-General's final draft, on behalf of the Government Commission was despatched in January 1851. But the day to day business of administration, more, not less urgent in time of war, had to be carried on. Smith therefore sought and secured the consent of Earl Grey to carry on the administration with a purely official Council in the interim,¹ as moreover it was difficult for Cock and Godlonton to come down to Cape Town. Grey, despite the protests of Fairbairn in London, supported Smith's proposal that the Constitutional Ordinances be suspended. In view of the condition of the frontier, it is difficult to see what else could have been done, ^{Stockenstrom had} and it left behind him a great following², commonly believed to be so powerful that ~~is to Stockenstrom's credit, that though on political issues the unwillingness of the Burghers to volunteer for military service during the he stood by Fairbairn, in the frontier crisis he was to the Kafir War was ascribed to it.~~ ~~fore in the Burgher Commandos.~~² For to the influence of Stockenstrom, Montagu himself paid tribute.³

Grey's decisions formally drawn up in Additional Instructions, were received with scorn in the Western Cape, and provoked another newspaper fusillade. The Cape Town Mail branded the government "a naked and undisguised despotism"⁴

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1. Vide P.P. 19.5.51 op cit p. 190 Smith to Grey No 32, 19.2.51; p. 203 Grey to Smith, No 627, 13.5.51.
 2. Duminy op cit p. 204 sqq Stockenstrom left the Cape in March 1851 to join Fairbairn in England. ~~Ibid p. 204.~~
 3. Vide Montagu to Smith, 27.2.51, expressing his opinion that "all that you tell me he (Stockenstrom) has said, and the effect produced by expressing those opinions tallies with what I have heard from many quarters. I fear that he has done much harm and has been the cause of many persons otherwise well-disposed, not coming forward to assist their country in the present emergency." This was in reply to a letter earlier received from Smith in which he had laid the blame, for burghers not going up to the front, squarely on the shoulders of Stockenstrom. Duminy op cit p. 211
 4. CTM 19.7.51.

and petitions reached the government almost daily.¹

Nevertheless Montagu was probably right at that point in assuring the Colonial Office that the Additional Instructions had restored "tranquillity, contentment and a feeling of security amongst the respectable and loyal portions of the community."²

It is not wise to repair a house in a hurricane. Delay was not a euphemism for postponement sine die. To the contrary, even at this juncture, Montagu was considering the best tactic to adopt in order to secure the passing of the constitutional ordinance in terms of the Letters Patent of 1850. What his opponent did not grasp was that the fact that Montagu was himself chary of premature constitutional changes, as a loyal public servant he was prepared, as in duty bound, to give effect to policy once decided upon. He might seek to delay: he would not seek to overturn. He entertained the idea of "packing" the Council by securing Western province nominations: alternatively, of summoning the Legislative Council to meet, not in Cape Town but in Grahamstown. Few things better illustrate the practical difficulties caused, on the one hand by the situation in the colony, on the other hand by the delayed communications between Cape Town and Great Britain, than the events of the winter of 1851. While Montagu consulted Smith on the desirability of convening the Council to meet in Grahamstown, nearer Smith's army head quarters, and while the problem of restoring a quota of unofficial members to the Council was being explored³ the Colonial Office had decided, in effect,

1. These were obviously circularised by a central body, for that alone can account for the exact similarity of wording and phraseology. They "prayed for the suspension of the Additional Instruction which will subvert the peace of the colony, will cause universal discontent, will raise throughout the colony the most extreme anxiety lest yet greater injustice be committed towards your subjects" Extract from petition from Municipality of Cape Town 17.7.51: Similar petition from Commissioners of Municipality of Paarl, 28.7.51: from public of Worcester and inhabitants of Koeberg P.P. 3.2.52 xxxiii (1427). pp 3-6.
2. Ibid p. 35 Montagu to Hawes 31.7.51
3. E.C. II 17.2.51.

to modify the Additional Instructions, and officially to press for the reconstitution of the Council and the passing of the constitutional ordinance.¹ This decision² sent in June, 1851 was received only in September. Thus, what looked like a triumph of Fairbairn's influence on the Colonial office, in fact sanctioned moves for which both Montagu and Smith had begun to prepare.³

On the 2nd September 1851, almost a year after the resignation of the four popular members, Smith formally instructed the Executive Council⁴ to select twelve men from the Western Cape and offer seats to four of them.⁵ The four who accepted were Mr W. Hawkins - a wealthy and retired businessman of Cape Town - Mr B. Moodie - a large landed proprietor in Swellendam - Mr C. Arckoll and Mr E. Christian, merchants of Cape Town; these were not, as the press insinuated the nominees of Montagu, but of the Executive Council, but in view of Montagu's stand and influence in the Executive, there is some point in press criticism that Montagu had procured the choice of "gentlemen not likely to thwart his views."⁶ There seems to be no truth, though, in the assertion that they were nonentities, inexperienced and "nominee incapables"⁷ The Graaff-Reinet Courant scathingly referred to the "dummies" in the Legislative Council⁸. More. Since a constitutional ordinance must be passed by a legally constituted council, it is difficult to see how such a council of official and

1. P.P. 3.2.52 op cit p. 63 Grey to Smith, No 650, 30.6.51 Grey transmitted two draft ordinances in September to be passed by the L.C.: they suggested a £25 franchise qualification, and an Upper House, composed of 15 members who had £1000 fixed, or £2000 mixed property, and an Assembly elected on the proportion of 2 members for each of 23 electoral divisions in the Colony. Vide P.P. 3.2.52, p. 73 Grey to Smith No 684, 15.9.51.

2. The precise reasons for the change of view generally ascribed to the rift of Fairbairn and Stockenström, have not been established.

3. E.C. III, 5.6.51, 17.7.51.

4. P.P. 16.2.53, lxvi (130) p.20 Smith to Montagu, 2.9.51

5. The E.C. had already reached a similar decision, under Montagu's guidance, on August 11th, E.C. III 11.8.51.

6. CFT 14.10.51. Also CTM 15.11.51

7. CTM 18.10.51.

8. GRC 17.10.51

unofficial members, could otherwise have been constituted at that juncture. Montagu took his stand on official instructions and practical necessity.¹ His opponents either attacked the personal qualities of the nominees or resorted to the broader bed of vague constitutional theory²

1. In a letter to Darling in April 1852, Montagu observed that: "I had ... received Sir Harry Smith's instructions to place at the head of these twelve names, those of Mr William Hawkins and Captain Arkoll, and to make them the first offer of two of the vacant seats, as nominated by the Governor himself, in consequence of their having come forward in Sept 1850, at a moment of embarrassment and difficulty, to ^{Legislative Council} aid and support the government by their services in the ^{Executive Council} L.C., if required, upon its being rendered incomplete by the sudden resignation of four of the unofficial members, an offer which, at that time, the Governor did not feel it expedient to accept." Mr Moodie and Christian, he said "were unanimously selected by the ^{Legislative Council} L.C." "Of both of these gentlemen my colleagues knew more than I did" He had never before seen Mr Moodie and the only correspondence he had ever had with him had been "upon a land question in which he was interested". And with Mr Hawkins, he had only had official correspondence "when he was Secretary to the Slave Compensation Commissioners." Vide P.P. 16.2.53. op cit p. 14 Montagu to Darling, 26.4.52
2. The press was quite outspoken in their criticism of the new L.C. The Advertiser, considered it "illegal", the Zuid-Afrikaan said that it was "in utter disrepute with the entire colony" and that its proceedings could, therefore, not be looked upon as binding; the Observer complained that the L.C. now had "legally the power of infinite mischief" while the Port Elizabeth Daily Telegraph predicted that "the Cape will have a constitution framed by officials and passed by nominees .. The Cape Town Democratic Party is defeated, but the government is abused still lower by its victory" It went on to say that the government had lost the support of both East and West and that only "the utmost liberality in the Draft Ordinances will restore satisfaction to the West, while the grant of and Resident Government can alone propitiate the East" Only the Cape Monitor established in 1850 as pro Government (Vide P.P. 19.5.51, op cit p. 116. Smith to Grey, No 177 30.11.50. para 33) appealed to "all loyal, patriotic citizens" to acquiesce in giving the L.C. the chance to proceed with the general business of the Colony. (All above extracts are taken from reports published in the British Settler, 18.10.51) The Graaff-Reinet Courant followed up the attack initiated by the British Settler in August, with the comment that "we cannot help concluding that the present Council is intended to last as long as the Colony will submit to being thus legislated for" GRC 24.10.51. It was maintained that the term "conservatism", "was a cunning invention of the Hon Mr Montagu, to class his supporters under the term "Conservatives" and to denounce all his opponents as Democrats and Levellers" It was clear, continued The British Settler, that Montagu's type of conservatism was aimed merely at conserving the old L.C. "If so we all condemn the Conservatives" ³³, 26.8.51. Montagu it maintained had played upon the themes 'Conservative' and 'Democrat' to such an extent that he had divided the people into parties or factions.

They challenged the Council as then constituted, and alleged a conspiracy to perpetuate it in order to thwart the constitutional aspirations of the Colony.¹

The Council met on the 10th October under the most inauspicious conditions. Although the Constitutional Ordinances which were brought up on the 31st October, were deferred to the Council meeting of the 11th November, to enable Cock and Godlonton to be present, Montagu illustrated the government's determination not to be bound by a consideration of the constitutional ordinances, or even to give them priority, by moving the consideration of several items of general legislation;² despite the opposition of Porter and Hawkins, he maintained that their first duty as a Council was to protect the Eastern frontier. Moreover, he was convinced that the fears of the farmers in the Western districts about a probable coloured rising, were groundless. He had the full support of the Easterners, Cock and Godlonton, who claimed that the ^{Squatters'} bill would be "very beneficial" to the Eastern districts in the present disturbed state of the frontier." The bill was then referred to a Committee for evidence.

The Cape Town Mail, ^{which} had, on the 11th October, referred to "the first performance of the new comedy entitled 'The formal and technical Council' " sarcastically praised Montagu, "the principal comedian and stage manager" and charged him with having elicited the aid of the Committee of the Commercial Exchange to fill up the Legislative Council. While not directly accusing this body of making quite a good business out of the duration of the Kaffir War, the Mail put forward a very subtle argument: The Kaffir War, it

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1. The British Settler observed that Montagu deliberately aimed at dividing the people; his policy, it observed centered around the motto: "Split the power of the people, and we can hang round their necks, a government suited to our own views." ^{By Settler} 16.9.51
 2. P.P. 3.2.52 op cit p. 20 sqq. Extract from "Cape Monitor" on debates and proceedings of L.C. 10.10.51.

said, was due to the present system of government and it was therefore the duty of the above Committee, through their "satellites" (the four new members) to exert the influence, which they had with the government, in order to persuade the officials to proceed to the consideration of representative institutions without delay. If the Committee did not do this, the Mail concluded, the people may come to their own conclusions.¹ In November, the Mail, followed up this bit of didactic, with a bitter article on the Legislative Council meeting of the 10th: "Mr Montagu and his board of nominees sat a few hours yesterday and gossiped about the estimates, the Sovereignty, the Squatters Removal Bill ...". This, it concluded, was "a mockery of legislative discussion"²

Smith meanwhile was most optimistic about the "strong and healthy reaction" which had become evident among "the supporters of the government"³. He pointed with scorn at the latest attempts, to discredit the government, and expressed his belief that "Mr Montagu is assured of the support and cooperation, of the best disposed and most influential members of the Western community There is, therefore no reason to doubt that the business of legislation will proceed smoothly."⁴ If he sincerely believed this, he was due to receive a rude shock. The ordinances despatched by Grey in September arrived in Cape Town on the 31st October; Montagu, having had no further direct instruction from the Governor to proceed with the Ordinances, transmitted them to the Governor on the frontier. The news of their arrival had been announced to the Legislative Council, but they were not officially laid before that body until the 21st November, the day after they had arrived back in Cape Town. The Cape Town Mail charged Montagu "the virtual Governor" with wilfully

1. CTM 11.10.51

2. CTM 11.11.51

3. P.P. 3.2.52. op cit p. 19. Smith to Grey No 210, 21.11.51.

4. Ibid

delaying the consideration of the Ordinances, which had been in the colony a month, during which "they might have received the formal enactment which was required and have been ready for transmission to England¹

The ordinances were read a first time on the 28th November, and it was only because the officials voted en bloc that the second reading was scheduled for the 28th January, instead of the 28th February, as suggested by the majority of the unofficial element². As it turned out, the Council only finally reassembled in February 1852³. In the interval between November and February, the Executive Council had to consider the question of the alleged coloured unrest in the Western Province, a factor which was to play an important rôle in the subsequent discussion upon a Constitution for the Cape. As chairman of the Executive Council during this period Montagu was drawn into the whole question, and the outcome was a deeper understanding, on his part, of western opinion. The Squatter's Bill was⁴ referred to a Committee for evidence, and in the Legislative Council on the 19th December 1851 the government decided to withdraw the Bill: the evidence of the Committee had made it quite clear that they could discover no "trace of any conspiracy on the part of the coloured population."⁵ What could not be evaded, was the fact that the Coloureds were suspicious of the present activities of the Legislative Council which, they thought, were designed to suppress them as a class.⁶ At the end of January Montagu told the Executive Council that he would present a memorandum upon the subject at the next meeting.⁷

1. CTH 29.11.51

2. Vide P.P. 3.2.52 op cit p. 31 Smith to Grey, No 221, 16.12.51.

3. It did meet on the 28th January, as scheduled, but was adjourned till the 11th February to enable the Eastern members to be present. Vide P.P. 23.12.52. lxvi(1581)p.96
Montagu to Smith 12.12.52

4. Supra p // 213

5. Vide P.P. 3.2.52 op cit p 41599. Report of Commissioners, d.d. 10.12.51.

6. E.C. III 22.1.52

7. Ibid

This was one of the occasions where Montagu found himself at variance with Sir Harry Smith. Smith, with his penchant for dramatic pronouncements, proposed to issue a proclamation which should announce to the coloured people that they would have nothing to fear under the proposed constitution. Montagu's memorandum¹ was, in part, a reasoned attack on the proposed proclamation. He knew that the farmers, especially those of the Riversdale area, were agitated and excited about the prospects of a coloured insurrection.² Montagu thought that their fears were exaggerated, but pointed out that if the fears, either of the farmers or the coloureds, were mishandled, the situation might, in view of the 1851 war, become dangerous. In the circumstances, to reassure one group, carried the risk of alarming the other.³ Montagu went further. He stated that to tell the coloured classes they had nothing to fear, would not be true: for he pointed out that there was a prevalent opinion among the farmers in the West that "a labouring man ought not to look to get higher than a labourer." He was personally convinced that the farmers in the West had no desire to elevate the coloured classes, that ever since the abolition of slavery they had been desirous of obtaining coloured labour on terms dictated by themselves. He referred to the mass of evidence in the Master and Servants Blue Book of 1849, which pointed to a concerted wish on the part of the farmers for more stringent and coercive laws. As soon as representative institutions became the topic of interest the farmers of the West boasted of the new privileges which would be extended to them and which would allow them

1. Vide P.P. 23.12.52 op cit, pp 105-108

2. eg Capt Rainier, the Resident Magistrate to Civil Commissioner, 24.12.51. "The farmers here are in a great state of excitement about a rising, without the least foundation. They are buying up guns and gunpowder as fast as they can, and nothing I can say will put it out of their minds." P.P. 23.12.52 op cit p. 104

3. He referred to the evidence of Mr Jenkins before the L.C. that the proclamation, instead of allaying tension between coloureds and whites "would have an opposite effect"

to establish vagrancy laws to bring the coloured classes into the required subjection. The coloureds were not impassive under these threats, but became "suspicious and excited" at the prospects of the new constitution.¹ He stressed the importance, to the coloured mind, of wild rumours about the intentions of the future parliament, and pointed out their fears lest with a Vagrancy law should be coupled the additional hardship of the loss of their land.²

In this memorandum, as so often before, Montagu had not pulled his punches. It is one of the most remarkable documents in Cape history, well informed, and a mirror of the working of Montagu's mind. The statement and analysis of fact, the weighing of evidence, the dispassionate but frank approach, were never again to be equalled, save perhaps by Saul Solomon. Equally remarkable was his diagnosis of the tensions in the Western Cape, and his blunt statement that if the coloureds were unduly alarmed, their fears were not groundless, since an elected parliament would never hold itself bound by the proclamation of a precedent governor. Thus an elected parliament, and men should realise it, carried the risks as well as the advantages of constitutional liberty. He did not champion the coloureds. He invited men to face facts and weigh risks. As early as 1850, the Graham's Town

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1. e.g. Petition of Hottentots at Phillipston praying that they might not be removed from under the Queen's government Vide P.P. 19.5.51 op cit p. 138 Montagu quoted from letters from Mr Reid, missionary at Kat River settlement: the coloureds there too, were afraid "that the Queen's government was about to cease in this country, and that they would again be subjected to their former oppressions." P.P. 23.12.52. op cit p. 105. Reid continued: "It was in vain to urge on them the benefits of the low franchise ... They sometimes seemed mad with rage."
 2. When the popular party had sent round petitions against the government, the coloureds believed that the white people were "signing a paper to make slaves of the coloured people" See, e.g. the evidence of the Rev. Stegman before the Commission of inquiry into the alleged threat of a Coloured Rising. P.P. 23.12.52 op cit pp 20.24. Also, a petition from Mr Helm of the Zumbraak institution, d.d. 11.11.51. Ibid p 107

Journal had pointed at the impending evil where "merchants of Graham's Town and landed proprietors of Albany" would vote "side by side with Kat River Hottentots, and equally eligible for members of the Legislature." and had hinted at the "very mediocre class" which would thus be included in the extension of a general franchise¹ The evidence in his memorandum shows the extent to which the alarm had spread by the end of 1851.

When the Legislative Council met again on the 11th February 1852, the political atmosphere was charged with intrigue. Montagu anticipated the dissensions even among the official members, for he reminded the Council that the officials were not pledged or bound to vote together, save on three points. The Letters Patent of 23 May 1850 stipulated a bicameral legislature, that both were to be elective, with the Chief Justice as president of the Upper House. In effect, the Crown had reserved them from the field of political discussion: if discussion arose, officials, who were the servants of the crown, must ex officio, defend them. Other issues, it was understood, were to be treated as open questions, even by the officials.

Conflict began over the question of the franchise. When Montagu moved that the Ordinance be read a second time, Godlonton moved as an amendment³ that the Council should adjourn until the termination of the war in the East, and the panic in the West. The amendment was seconded by Hawkins, who pointed out that under the present circumstances it would be most inopportune to proceed with any constitution which had in it a low £25 franchise; for, if this were passed at

1. GTJ 21.9.50

2. For debates and proceedings of L.C. 11.1.52, see P.P. 23.12.52. p. 108 sqq

3. There is no evidence that Montagu inspired this action, though it is possible.

the present time, fixed property would be jeopardised. The Council was in a quandary: those who had favoured a low franchise could not but see the wisdom of Godlonton's remark that to grant a £25 franchise to the rebel Hottentots, and exclude from the franchise the loyal Fingoes, just because they did not have the value in fixed property, would not be compatible with the principles of justice. Equally, it was subtly pointed out by Arkoll, Hawkins and Christian, that if the Council was forced to proceed with the discussion, it would have to consider, very seriously, the possibility of a higher franchise. All the officials opposed the amendment, and the unofficial members supported it. In the absence of Cock, voting was even, and as Chairman, Montagu was expected to give his casting vote. To vote with the officials was to make for harmony in the administrative hierarchy, but to go against his private judgement, and, of course, against instructions of the Colonial Office. To support the amendment was to range himself with some, at least of the populars against the government: this would jeopardize, in the future, Montagu's chance of official support for a moderating policy. Probably it would have been wiser and more honest to support the issue. In the event, Montagu took evasive action. He suggested that the Council adjourn until the Governor's wish upon the subject be known. The proposal was carried, with the Attorney-General and the Auditor-General voting against. Montagu's action presents a puzzle. It would seem that in spite of the instructions of September 1851 to proceed with the Ordinances, he hoped that procrastination, if not deadlock, would convince the Colonial Office of the need for caution. His own explanation¹ begs the question. "Your instructions," he wrote to Smith, "did not direct their

1. P.P. 23.12.52 op cit. Montagu to Smith, 12.2.52.

(i.e. ordinances) being proceeded with as a government measure, and as such to be supported by the official members. He added that personally, he was in favour of the amendment and might have cast his vote for it had he not realised, at the same time, that by so doing he would have voted against his own motion for a second reading, to which he had pledged himself. He admitted his confusion, and announced his regret that the Ordinances had come up at a stage when "a very general opposition has arisen among the farmers against the £25 franchise." He was, frankly, apprehensive of the anomalies which might, at that time, occur upon "any discussion whatever of the franchise." At the end of his letter, he put his point more clearly, explaining that he could no longer pronounce a "state of tranquillity" in the Western districts and requested that "I may be distinctly informed, that you relieve me from all responsibility of the consequences of proceeding at the present time with the draft of Constitution Ordinances." Few things better illustrate the constitutional ambiguity of Montagu's position. Logically, if he acted in the letter and spirit of his instructions, his course was clear. He acted on instructions, and no exoneration would be, technically, necessary. But in practice, Montagu had long carried responsibilities with a wide margin of discretion, and in the absence of the Governor he had, in fact, though not in theory, acted vice the Governor. Thus he saw himself as having discretion, yet believing he had discretion on this crucial issue he had failed to use it. When the contents of this letter became known at the Cape, Montagu was again attacked by the press. The Zuid-Afrikaan tackled the letter point by point, commenting especially on his assertion that the farmers were generally opposed to the £25 franchise: this, the article maintained, was no less than "a glaring and barefaced misrepresentation of fact," and Montagu was branded "the greatest enemy with whom the colonists have to contend in their struggle

for Representative government; but he is also a dangerous enemy and as such he cannot well remain in his present position.¹ The feeling to which Montagu had adverted, might not have been general, but petitions did come in to that effect, notably from the landowners of Caledon, praying that the constitution be deferred for a few years, or alternatively that the Letters Patent be repealed. The £25 franchise was considered too low, as it would admit "a body of ignorant coloured persons, whose numbers would swamp the wealthy and educated portion of the community" who would "enjoy votes which could be turned to account by political partisans."²

Smith was both surprised and annoyed. He wrote back on the 18th February, calling upon the Legislative Council to proceed immediately to the discussion of the draft Ordinances as a government measure and referred Montagu to his letter of the 11th January in which he had clearly stated that "no obstacle must or shall intervene to prevent the draft ordinances being brought before the Legislative Council."³ When, therefore, the Legislative Council reassembled on the 1st March⁴ Godlonton's amendment was lost. Once again Montagu addressed the Council on the subject of the attitude of the official members. His view was that, because they had less personal stake in the country, while their incomes and pensions were secured, the officials were more likely than the unofficial members to discuss questions on their merits and without prejudice; but in the main they would necessarily be guided as to discussions, by the unofficial members drawn from the public of the colony.⁵ It was at once another attempt at self-vindication, and an explanation of his intended course

1. Z.A. 8.3.52

2. P.P. 23.12.52, op cit p.133. Montagu to Frederick Peel 28.2.52

3. P.P.23.12.52 op cit p. 132

4. L.C. 1845-52 p. 545, 1.3.52

5. P.P. 23.12.52. op cit p. 166

of action. But if Montagu had hoped, by refusing to use his casting vote, to keep the official bloc intact, he was disappointed. The Attorney-General, Porter, the Auditor-General, Hope, and the Collector of Customs, Field, had finally broken with him, on the ground that he was at heart unwilling to proceed with the ordinances at that time. Had he been a politician, Montagu would have resigned: he was not. He was a public servant, but one who shrank from fulfilling a public policy he considered unwise.

The Council adjourned for a few days, without having discussed the Ordinances. This intensified the attacks on the "Montagu parliament", bluntly accused of wilful delay. Thus petitions were addressed direct to the Imperial government, asking that the constitution be implemented without any further reference to the Legislative Council. Montagu once more cautioned the Colonial office not to pay too much heed to the clamours of the Cape Town Municipality, which, he maintained, sponsored active opposition to the government.¹ He claimed that the petitions were scandalously fabricated: at a public meeting in Clanwilliam "only six people were present, yet their names were varied so as to appear to make a large number; Mr Smit became Mr Smith, then G. Smit, Mr Adriaan van Zyl became afterwards A. van Zyl and so on ad infinitum."²

The Council reassembled on the 9th March, and on the 10th it acted as Montagu had foreseen it would. The proposed £25 franchise was abandoned, in spite of the objections of Porter, Field and Hope. In its place, a franchise based on property worth £50, or the receipt of ^{an equal amount in} annual wages, was

1. Ibid p. 167. Montagu to F. Peel 3.3.52

2. Ibid. The Cape Monitor supported this, pointing out that "a certain organization has been in operation in this Colony for some time past, over which the Commissioners of the C.T. municipality exercise absolute control, and by means of which they can at any time command a given number of names to any document, however absurd its contents may be. Cape Monitor 28.1.52.

introduced.¹ For Montagu's point of view, there is a great deal to be said and he argued his case well. During the debate, he reiterated the principles which he had proposed in his original memorandum, of 1848²; he was frankly, in favour of a franchise qualification, which depended on the payment of taxes assessed upon property under the Road or municipal ordinances. But finding no seconder for such an amendment he supported the £50 franchise on grounds of expediency, and similarly, on the 26th, he again supported the unofficial members who proposed a raised franchise qualification for the Upper House.³ But when for the first time in his record as a councillor Montagu had turned, as he did on the 9th and the 10th to make a personal attack on his opponents, he played into the hands of his critics of the press. They had always alleged, often without warrant, that from the beginning the policy of conservatism and delay had been Montagu's. Now the personal replies to Porter, Hope and Field, carried the implication that Montagu regarded their criticism as personal lese-majesté, not political conviction. He sought to malign his colleagues now turned critics.⁴

1. L.C. 1845-52, p. 559. 10.3.52

2. P.P. 23.12.52. op cit p. 236

3. The qualification was raised to £2,000 unencumbered and £4,000 encumbered property.

4. He attacked Porter for alleging that the £25 franchise was the general wish of the colony. "I trust," he said "that I am not likely to be influenced by either the popular view or the unpopular view, or by any remarks, either in this Council or out of doors, to vote for what my conscience tells me is not for the public safety" Ibid p. 230. He charged Hope with having had no right while recruiting Hottentot levies in January 1851, to hold out to them the £25 franchise as a temptation. In March 1852 the Justice of the peace of Caledon informed Montagu that Hope did not sway the Hottentots at Genadendal with the £25 franchise, but virtually forced them to enrol "especially as it was at that time firmly believed by every coloured man in the district, that if they did not volunteer at once, they would be called out by martial law, and so lose the bounty money then proposed." Vide P.P. 23.12.52. op cit p. 294
W. Shaw to Montagu, March 1852.

In return, on March 15th, Hope accused Montagu of direct association with the Monitor, to the extent where government business was announced to the editor, before being proceeded to in Council.¹ In effect Hope was charging Montagu with conduct unbecoming a servant of the Crown. Once again, Montagu was in the eye of a cyclone of controversy. Though he was defended in the Monitor, public opinion was against him.² More. Both Cathcart³ and Lieutenant-Governor Darling⁴ expressed their disapproval at the amendments of the Legislative Council⁵. Some erstwhile critics of Smith, now blamed Montagu for his recall, and held Montagu responsible for Smith's handling of the constitutional question. The Zuid-Afrikaan, remarking that Montagu was Smith's chief "bad-counsellor", continued: "Without respecting any principle himself, it was not to be expected that he would advise the Governor to do so, and at last it came to such a pass that, though with the full concurrence of Sir H. Smith, Mr Montagu was in reality the Governor If then Sir H. Smith is culpable, his Secretary is more culpable. The first is to lay down the reins of government at the bidding of the Queen; is the latter to remain? The Colonists pray Her Majesty that he may not."⁶

1. P.P. 23.12.52 op cit p. 259

2. See e.g. Cape Monitor, 6.3.52

3. Cathcart arrived on the 30th March to replace Smith of whose policy during the Kafir War, the Home Government disapproved. Vide Thesal III op cit p. 101.

4. The Lieutenant-Governorship was created because it was felt that, while the Governor was on the frontier, there should be a permanent civil administrator for the whole Colony, not the Colonial Secretary, in charge in Cape Town. Vide P.P. 3.2.52, xxxiii (1428) p. 257. Grey to Cathcart, No 14, 2.2.52.

5. P.P. 23.12.52 op cit p. 171 Cathcart to Grey, No 1, 31.3.52. p. 174 Darling to Pakington, No 1, 25.4.52.

6. Z.A. 29.3.52

Often in the past, Montagu had stood serene in the thick of controversy in the press. It was probably the tacit withdrawal of official approval¹ which brought criticism to a danger point. The spearhead of the new and final attack was led by the Cape Town Municipality: but it did not stand alone. Old grievances were revived, new ones discovered, and the printed petitions² and replies thereto³ afford interesting material for some future study of political polemics. The more verbose the petitions, the more irresponsible the charges. He was accused of having adopted a policy of deliberate delay; of proposing alterations that would frustrate the constitution and make it totally unsuited to the Cape⁴; of having filled up the vacancies in the Legislative Council with men, unfavourable to the constitution, but over whom he had personal influence; of creating fear and jealousies between the different races of the Colony.⁵ The landed proprietors of Clanwilliam put forward as one of their main charges, his reckless expenditure, for many years, of the public money on such things as "unnecessary roads".⁶

It was in vain that, in what was one of the last of his public statements, Montagu replied seriatim to the petitions and their charges. The Cape Town Municipality, he said had since September 1850, conducted what amounted to a persecution campaign "masked by deception and misrepresentation: in order from time to time, to establish some fictitious grievance, and to attain some political object, by impressing persons at a distance with the belief that a general condemnation of the government exists here; which does not exist in fact,

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1. Supra: the structures of Cathcart and Darling.
 2. Practically a whole Blue Book has been devoted as record of these petitions, See P.P. 16.2.53, lxvi (130)
 3. P.P. 16.2.53 op cit
 4. Ibid p. 7 Petition from the Municipality of Cape Town.
 5. p 8 Petition from inhabitants of Cape Town.
 6. p 10 sqq

but to which the aid of the public press under their influence and employ gives and keeps up an appearance of reality, which has no foundation in truth."¹ His very plea that the attacks on him marked an attack on the government, implied that the government was faulty, and he its scapegoat.

It was probably the Zuid-Afrikaan which put its finger most clearly on the dilemma which had confronted Montagu: "The Cape Town Municipality," it said, "has petitioned Her Majesty for the removal of the Secretary to Government. It is high time that so dangerous a scheme was displaced. However, we do not join in the prayer for his entire dismissal. Let him be made a Civil Commissioner, if through his influence with Dr Innes, he can pass 'the examination' The doctor who has been accustomed to write his despatches will not be too severe on his quondam pupil whose mental calibre he can readily weigh In addition (to his own salary), subtraction (from the revenues of the colony), and multiplication (of his own profits), it is thought he would be found quite proficient Civil Commissioner Montagu would be more respected than Secretary Montagu and there would be ample scope for the exercise of such genius as he possesses, in dealing with refractory field-cornets, or aspiring gaolers. We trust the first vacant post of Civil Commissioner will be conferred on him. Perhaps a new Kaffir district may be created. Under the head of appointments we hope some day to notice something like the following:- ^{Secretary Montagu to be Civil Commissioner of the} ~~AM~~ Amatola, vice Sandilli transferred to the Transkei district. Or - Mr Secretary Montagu, to the 2
Civil Commissionership of the mountains of the Moon, Central Africa."

1. Vide pp 15-19, Montagu to Darling, 26.4.52. Cf letter to Editor of Monitor from M. Metcalf farmer, near Caledon, "I believe that it is generally considered that it is the Municipality of Cape Town that has set many people up against Mr Montagu, because he deprived them of two or three thousand pounds a year, by diminishing the market dues; and many farmers seem too stupid to see that it was done for their own advantage .. In my opinion Mr Montagu has done the best to promote the welfare of this colony, and I defy any man to prove the contrary." Cape Monitor 24.3.52.

2. Z.A. 25.3.52

In April 1852, the Executive granted to Montagu fifteen months leave of absence, in view of his having undertaken, for a long period, "labour, anxieties and responsibilities far exceeding those which normally attach to the office of Colonial Secretary."¹ When the news of his departure was known at the Cape, addresses containing good wishes poured into the Colonial office, and those who had a month previously asked for his dismissal forthwith, now sang his praises. Public bodies, private persons, and municipalities from all over the country paid tribute to his unflagging devotion to public services. The sentiments expressed in the address from Port Elizabeth has been chosen to give an indication of the tenor of the others:

"The thorough and entire devotion you have exhibited to the interests and welfare of this settlement, in the construction and maintenance of roads, in the remodelling of our still very imperfect postal system, and in the formation and superintendence of other works and improvements, tending to develop the hidden resources of this colony, the unflagging zeal and energy with which you have sought out and corrected abuses calculated to clog or fetter that freedom so essential in the prosecution of the objects of commerce, agriculture and industry, and finally the dignified position you have assumed and maintained in a period of great public trial and adversity, and in defiance of the storm of abuse, and opprobrium with which you have been so unsparingly assailed by an ultra-democratic faction of the press and the people all these, and very many other services which we have failed to enumerate, warrant us in regarding you as one of the ablest and most efficient public servants ever appointed to this settlement. The habits of despatch and regularity which you have been the means of introducing into so many branches of the public service, and by which so great a saving of time and expense has accrued to the Colony; the judgement and discretion you have exhibited in husbanding the resources of this valuable dependency of the Crown, contrast most favourably with the imperfect administration of public affairs previous to your arrival in this colony, and present an enduring testimonial to your worth as a public officer and a statesman in quitting this Colony... rest assured, Sir, that you bear with you the esteem, admiration and respect, both for your public and private character, which your integrity and honesty of purpose have merited for you at the hands of the Cape colonists." ²

1. P.P. 16.2.53 op cit p. 31 Darling to Grey, 21.4.52

2. P.P. 16.2.53 op cit p. 28

Yet the only newspaper which paid tribute to him at the time was the Graham's Town Journal. Godlonton, gave a lengthy account of Montagu's services to the Colony, mentioning those aspects of his policy to which he had been faithful right throughout his stay at the Cape.

"It is a simple act of justice to remark of Mr Montagu, that if the Colony should be deprived of his services (if he do not resume his duties in this country) it will lose the ablest administrative officer, take him for all in all, that ever came to it. The monuments of his genius and of his zeal to advance the interests of this country are imperishable. They are carved out of the rugged mountain's side, and they speak to us, as they will to our children and children's children, in language that cannot be misunderstood It may be averred, without fear of contradiction, that up to the convict agitation this colony never made such rapid progress towards substantial prosperity in an equal period of time, as under Mr Montagu's administration. We say his administration, inasmuch he not only originated, but was the directing head of those great improvements which have given an impetus to the industry of this colony, the value of which cannot be estimated. Unfortunately the Anti-Convict Agitation brought into antagonism the Government and the people . . . (but) Mr Montagu as a high officer of the Crown, took his position; maintained it without wavering; steadily upheld the authority of the Government; kept together and brought into exercise the elements of order; peremptorily refused to succumb to popular intimidation, and as the natural result, brought upon himself the odium and uncompromising hostility of those from whose hand he withheld the power at which they grasped, and that could not have been conceded without discredit to the British name, and great detriment to the public interests."¹

Montagu himself could not have given a better elucidation of his policy.

On the 2nd May Montagu embarked with his family for England.² The Constitutional Ordinance, as passed by the Legislative Council had been sent on to the Imperial Government³ where a change of Ministry had taken place in February 1852.⁴ In September Pakington, the Secretary of State for colonies in the Derby ministry informed Cathcart that the British government was desirous of introducing representative institutions at the Cape as soon as possible, but the upset caused

1. By italics. GTJ 1.5.52

2. Newman op cit p 421

3. P.P. 23.12.52. ^{p.174} Darling to Pakington, 25.4.52

4. Theal III op cit p 132. The Earl of Derby succeeded Russell as Prime Minister.

by the Kafir war, and the conflict of opinion over the franchise, made him decide to postpone the grant of constitution pending further information from the Cape.¹ Montagu had arrived in England early in June,² so that as soon as the news of Pakington's despatch was known at the Cape, it was feared by the Western party that he was exerting his influence with the Imperial authorities to delay the constitution, or persuade them to agree to a nominated Legislative Council³ Unfortunately no records have been found of Montagu's official communication with the Imperial Colonial Office while he was in England, but if he did communicate with his superior, it could have been of no avail: The Aberdeen ministry, which was formed upon the retirement of Earl Derby in December 1852, speedily reached a decision. On the 14th March 1853, Newcastle wrote to Cathcart⁴ informing him that the Constitutional Ordinances had been ratified by the Queen in Council, but that Her Majesty's Government had seen fit to alter one of the provisions laid down by the Cape Legislative Council: the franchise was reduced to £25, but the Imperial government gave their assent to the Legislative Council qualification decided on by the Cape Legislature.

It seemed as though, with this concession, hatred for Montagu subsided. He never returned to the Cape for while he was in England he was taken seriously ill and died there on November 4th, 1853⁵. Towards the end of that year Montagu had fully decided on a return to the Cape, and in almost every town and district of the Colony, addresses, and acknowledgements of confidence were prepared in anticipation of his return. Once the constitution struggle had become something

1. P.P. 23.12.52 op cit p. 326 Pakington to Cathcart, 4.9.52

2. Newman op cit p 422

3. Vide Theal III op cit p 127. Also CTM 11.12.52

4. P.P. 31.5.53 lxvi (1636) p 24 Newcastle to Cathcart 14.3.53

5. Newman op cit p 438

of the past, the Colony paid tribute to a great man and public servant, a man of principle and of honour. When the news of his death reached the Cape, the Cape papers were unanimous, and even vied in expression of acknowledgement, that the colony had indeed lost one of its greatest men.¹

Paradoxically it was a newspaper of the Eastern Province, which Montagu had visited only twice during his term of office at the Cape that paid the finest tribute to his services. Montagu might not have had sufficient breadth of vision to be a great statesman; yet he was neither an idealist nor a dreamer: he was rewarded, during his lifetime, only by the knowledge that he had done what he conscientiously believed to be his duty, for his conscience alone "was the rule of his actions"²

"No man, we think, can have known John Montagu without speedily arriving at the conclusion that he was no ordinary man, even when classed with men of liberal endowments and of experience in official life. That he had his opponents - his political adversaries - only goes to show that he was honest in his opinions, and decided in his course of procedure, he had his opinions and he maintained them, and that manfully. This made him unpopular when the current of public opinion ran counter to what he conceived to be inflexible principle, from which he was not to be turned aside by any considerations of expediency we do not affirm that John Montagu was perfect as a public man ... (but) we do not hesitate to declare that he was the ablest administrative officer this colony has ever had. It will not be forgotten that Mr Montagu found this colony a chaos, that he carried reform into every department - that he recruited its finances - relieved it of debt - systematized every branch of the civil service - carried out gigantic public improvements - and raised it to the eminence of a model Colony All have borne testimony to his ability, activity and integrity, - and all, we believe, will feel that the colony has lost in him a master mind, and the Government one of its ablest officers ... He died, it may almost be said, in harness. The Anti-Convict struggle, the Constitution discussions, and the Kaffir war happened almost simultaneously ... and the chief administrative duties devolved upon Mr Montagu ... He died suddenly on the 4th November, a day which will be remembered with sorrow by all acquainted with the deceased, and who, making allowance for human frailty, can estimate the value of an honest and upright man devoting all the energies of his mind and body to the service of his country." ³

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1. See Appendices I, II and III to this Chapter for newspaper reports, addresses prepared in anticipation of his return to the Cape, and official letters at the time of his death.
 2. Extract from speech of Smith to L.C., 20th Sept. 1850
Vide 19.5.51. op cit p. 83
 3. GTJ 27.12.53

APPENDIX NO I TO CHAPTER V

Letter from the Earl of Derby to the Lord Bishop of Cape Town after Montagu's death in November 1853.

Knowsley, November 14, 1853.

My Lord - I have had the honour of receiving your Lordship's letter of the 10th instant, announcing to me the melancholy intelligence of the death of Mr John Montagu. I had already seen the announcement of the event in the daily papers; and I saw it without surprise, though with deep regret, as the last time I saw Mr Montagu last year in Downing street, I feared that his health was irrecoverably broken, and that his life would not be much prolonged..... I can conscientiously say, that I know of no public servant who has more faithfully, or more ably discharged his duties to the Crown, and ~~and~~ having been Colonial Secretary at the time when it was necessary to remove him from Van Dieman's Land, I had great satisfaction in being able to appoint him to a similar situation at the Cape, and watched his course with great interest. I can bear witness, of my own knowledge, to the important services which he rendered to that Colony, especially in bringing to bear the experience of convict management which he had gained in Van Dieman's Land, and opening, through the instrumentality of convict labour, most important lines of internal communication. I believe his services, while acting as de facto Governor at Cape Town, to have been highly valuable, but of them I can speak with less certainty. I always looked upon him as a most able, faithful, and zealous public servant, and deeply regret the state of pecuniary embarrassment in which he had left his family.....

I have the honour to be,

My Lord Bishop,

Your obedient servant,

(signed) DERBY.

(Taken from Newman : Biographical Memoir of John Montagu. -. 594.)

APPENDIX NO II TO CHAPTER V

Opinions of the Cape press on receiving the news of Montagu's death.

Port Elizabeth Telegraph.

"Not one but expresses deep regret that a public servant, so eminently fitted to shine in the service of the Colony, should have been cut off in the prime and vigour of life, and the very moment when his presence seemed most required at the helm of State. While it cannot be denied that the lamented Secretary to Government, had, like all public men, his enemies and detractors, it may be safely affirmed that few men have borne themselves more nobly, through good report and ill report, in the struggle to accomplish, what he considered, most beneficial to that Government, of which he was the honoured servant. The death of Mr Montagu, the ablest Secretary to Government the Colony ever had, is indeed, an in truth, an irreparable loss, and we mourn it with feelings of sorrow, heightened by the recollection of his private worth, and of his unostentatious desire to fulfill his duty, unshaken by the frowns of his opponents, and not too tenacious of smiles of his friends. The late Hon. John Montagu, was, in the noblest sense of the word, an Englishman -- honest, clear-headed, and courageous, he never feared the truth, nor hesitated to declare it. If one fact speaks more than another in favour of the departed, it is that he was respected by the whole body of officials over which he presided; the Civil Service of the Colony, had the best opportunity afforded them of becoming with his private worth, and his singular aptitude for public business. By some it has been objected, that the system which he established was too absolute and despotic; but when it is recollected out of what an abyss of confusion Mr Montagu rescued the administration of the civil affairs of this Colony, we may well afford to be grateful for anything approximating to order and discipline, more especially when, from these, resulted a degree of promptitude and regularity in the public service never known before his time..... The entire public system, of which the late Secretary to Government was the projector and architect survives as an enduring memorial of his unwearied exertions in the service of the Colony. A better public servant, and one more faithful to his charge, this Colony has never had occasion to mourn the loss of."

The Cape Town Mail. 30.12.1853.

"The interest of all other news received yesterday from East and West, was absorbed in the painful feelings produced by the death of Mr Montagu, who expired in London on the 4th November last, in the 57th year of his age. This gentleman's abilities, devotion to the business of his office, and the great services which he rendered to this Colony, in promoting public works of the highest utility, are well known, and sincerely acknowledged by all. Differences of opinion, and political opposition on some affairs of importance, for the last two or three years, caused some estrangement between him and others equally ardent in the maintenance of their own views of public good. But the scene is closed, and every sentiment vanishes but those of respect for the talents and virtues he possessed....."

The Graff-Reinet Herald. 4.1.1854

"Mr Montagu, overwhelmed by the pressure of public duties, which he discharged with an assiduity and ability never before known in a Secretary to Government to this Colony..... had the experience of nine years of official life in this Colony, and this during some of its most momentous periods. He found the affairs of the Colony in a chaotic state; but his ability, activity, and perseverance overcame by Herculean efforts the difficulties of his position, and the financial and other departments of the Government were brought by his skill into a state of order. The labour of the convicts, which he found frittered away in the attendance on the caprice of under officials, was made by him available for the public benefit by a well-ordered system of employment on the public roads. Under his direction gigantic public works were planned and executed, the Colony relieved of an accumulated debt, and the finger of reform touched and benefitted every part of the Civil Department. To lose such a man at so early an age, must be felt as a public calamity, and can be met with calmness only in the hope that another may be raised up to perform the duties he has been called from, and who will be as competent as he was to meet the present exigencies of the Colony."

The Cape Monitor 31.12.1853

"Amongst the events of 1853 in which the Cape is more immediately concerned, the cessation of hostilities with the Kafirs, the introduction of the new Constitution, and the death of Mr Montagu, are by far the most important. As regards the first, we hope the peace which has been proclaimed may be lasting. During the progress of the Constitution we expressed honestly, fearlessly, and independantly, our own sentiments and views, as well as those of a very large proportion of the public, regarding the effects which we conceived its introduction was likely to produce upon this country. The progress of events up to this time has developed nothing to shake the opinions which we so freely expressed while the provisions of that important measure remained open to amendment or improvement. The Constitution, however, such as it is, has become law, and therefore as good citizens and loyal subjects we are bound to carry it out and make the best of it. We have already noticed the death of Mr Montagu, but something more is due to his memory than the passing tribute to which we were limited in our last number, and something more than we can yet accomplish in the present. And here we cannot refrain from remarking, in reference to the Constitution to which we have just alluded, that whatever might have been Mr Montagu's views regarding that measure, or however much he might have been conscientiously opposed to it, so long as opposition could have been of any service in improving it, yet after its final settlement and adoption by the Home Government, no man would have carried it into effect with more honesty, skill, prudence, and ability than himself. Nor would it have been possible to find any statesman more capable for guiding the helm, or in who the public would have placed more confidence, amidst the dangers and difficulties which must be expected under the new form of government - none with so much fertility of resource in adapting our financial affairs to the new burdens which must be laid upon them.

In Van Dieman's Land, where his services are well known, Mr Montagu rose from being Private Secretary to the Governor to Secretary to Government, and was universally respected in that Colony. But in consequence of his suspension from office, - he appealed to the Home Government - the suspension was at once disallowed, - and had he then only consulted the interests of himself and his family he might have returned to that country. But in order to meet the views of the whole Government he consented to come out here to take office. This he did at the particular request of the then Secretary of State for the Colonies, Lord Stanley - now Earl Derby.

Mr Montagu arrived here in 1843 and his career in this country is well known. With the most perfect singleness of purpose - with an honest and ardent desire for the public welfare, and with abilities of this first order, he devoted himself with an energy that never flagged and a public spirit and determination which nothing could damp or subdue, to the highest interests of the Colony. His success was not unworthy of his efforts. Within the short period of 8 or 9 years he accomplished infinitely more than all that had been previously attempted, since the establishment of the Colony.

He reduced our financial affairs to a state of perfect order and simplicity. Without imposing any burdensome taxes, he paid off all the Government debts amounting to not less than £200,000. He reduced unnecessary expenditure, and abolished useless offices to the extent of £10,000 a year, and he increased the revenue by £10,000 a year, without additional taxation. He established institutions for the purpose of making and improving roads, constructing bridges, opening mountain passes, and executing other public works, calculated to open up the resources of the Colony and to improve its physical and moral conditions. This measure alone would have entitled Mr Montagu to the lasting gratitude of the colonists. He established an excellent system of immigration, which was, and might have continued to be, of the greatest utility to the Colony. The convict system introduced by him commands the admiration of all who have observed its working and practical effects.

The great benefit of his admirable postal arrangements, are now enjoyed by the whole mercantile community as well as by every man in business. He projected a breakwater in Table Bay, a work which might now have been in operation, and he suggested and initiated many other harbour improvements. He discovered a method of arresting the drifting sand, and thereby freeing the hard road across the Cape Falts, from an obstruction which previously rendered it all but impassable at certain seasons. The method which he introduced has been found perfectly successful. He improved the judicial system of the Colony, and extended the number of Resident Magistrates in the country districts. He enlarged the liberty of the press, and left it as free as it is in any country in Europe, and he was the author of many other improvements which it would be impossible to enumerate at present. In addition to all this, it must be borne in mind that during Mr Montagu's residence here, he really performed the duties of Governor. In particular for four years - during the disturbances on the Eastern Frontier in 1845, the Kafir War of 1846 and 1847, and again of 1851 and 1852 - and the civil business was left to him by the several Governors under who he acted.

It is impossible, within the compass of an article like this, to give anything like an adequate idea of the prodigious amount of business which he transacted, and of the immensity of labour which he performed in the prosecution of those public works and improvements, as well as in the transaction of the ordinary business of the Colony. To his over exertion in the cause of this country, we must trace the seeds of that disease, or complication of diseases, which cut him off in the midst of a career of usefulness, and long before that measure of life was exhausted, which might have been expected from a constitution like his under proper care. He has, there can be no doubt, fallen a victim to his devotion to the welfare of the colony. The character of Mr Montagu is so admirably and so accurately described in the following words spoken by an eminent statesman of Sir Robert Peel, that we cannot do better than transcribe them here, simply requesting our readers, as they proceed, to substitute the name of Mr Montagu for that of Sir Robert Peel:-

'It is easy to speak of his ability, of his sagacity, of his indefatigable industry; but as great as were the intellectual powers of Sir R. Peel, if you will allow me, as one who may call myself his pupil and his follower in politics, to bear my witness, this I must say, that there was something greater still in Sir Robert Peel, - something yet more admirable than the immense intellectual endowments with which it had pleased the Almighty to give to him - and that was his sense of public virtue - it was his purity of conscience - it was his determination to follow the public good - it was that disposition in him which when he had to choose between personal ease and enjoyment, or again, on the other hand, between political power and distinction, and what he knew to be the welfare of the nation, his choice was made at once; and when his choice was once made, no man ever saw him hesitate, no man ever saw him hold back from that which was necessary to give it effect..... in discharging those functions which appertain to us as citizens, let us discharge them in the spirit of that great man, - the spirit and determination to allow no difficulty, no obstacle, to stand between him and the performance of his duty - relying upon it that duty in this country is the road to fame - that if public men do not reap their reward, as in barbarous times they may have sought it, from immense and extensive possessions measured upon the surface of the earth, they reap it in a form far more precious, when, like Sir Robert Peel, they bequeath a name which is the property not only of their own family, - not only of their own descendants, but of every man who calls himself an Englishman - a part of our common country - something that makes us feel that England is indeed a country that it is a blessing to belong to - a country that it is great and beneficial part to play in the designs of Providence, for the improvement and advancement of mankind.'

In consequence of the pecuniary sacrifices which Mr Montagu made in not returning to Van Dieman's Land, and of his perfect disinterestedness in all that concerned himself personally, it is well known that his affairs were very far from affluent at the time of his death, and that he has left his family in circumstances that cannot be considered otherwise than destitute. A stronger or juster claim upon Her Majesty's Government never existed, than that which the widow and fatherless possess in this instance; and considering the great services rendered, and the sacrifices made by so eminent a public officer as her late husband, considering his

abilities, his disinterestedness, his firmness in the hour of trial, his devotedness to the interests of the service, and to his Queen and country, and taking into account the fatal cause of his untimely end - an exertion beyond his physical strength in the public service - we do hope and trust Her Majesty's Government will mark their sense of what is due to his memory - due to justice - and due to public feeling, in a way at once worthy of themselves, of the services rendered, of the virtue and talent displayed, and of the position and circumstances of his bereaved family.

Mr Montagu himself requires no
"Storied urn or animated bust"
to perpetuate his fame in this country. He will
"A mightier monument command."
The stupendous mountain passes and other great public works throughout that Colony, will bear a nobler testimony to his memory, to the value of his services, and the character of his genius than all that could be accomplished by bronze or marble. But we cannot believe that the claims of those he has left behind will be neglected by Her Majesty's present advisors. If such should unfortunately be the case, we are sure the public will AT ONCE come forward in some way worthy of the subject.

Numerous addresses to Mr Montagu, congratulating him upon his return were, we are informed, in course of signature in many parts of the Colony, when the account of his death reached the Colony by the last steamer. We think it would be well that all these documents should be sent to Cape Town, in order that they might be used, to show the feeling of the public towards Mr Montagu in the country districts, and to strengthen any application which it may be necessary to make to the Home Government on the subject of a suitable provision for his family."

APPENDIX NO III TO CHAPTER V

Copies of addresses prepared in anticipation of Montagu's arrival back in the Colony, after his 15 months' leave of absence.

1. To the Honourable John Montagu, Esq., Secretary to Government etc., etc., etc.

The Address of the Undersigned, Merchants and other Inhabitants of Cape Town, Cape of Good Hope.

Sir, - We have the honour to convey to you our hearty congratulations on your return to this Colony, and we rejoice to learn that your health, which had been so seriously impaired by an unremitting application to the duties of your department, has been benefitted by your visit to England.

When we compare the circumstances of the Colony, at the period of your first arrival in April 1843, with those in which you left it in May 1852, we cannot but feel strongly impressed with the value of your public services. For the improvement in our financial policy, by which a considerable surplus revenue was rendered available for Colonial purposes - for the improved postal arrangements, by which increased facilities of communication have been afforded to all parts of the land, - for the excellent system of discipline and management of the convicts, their humane treatment, their moral and religious instruction, and profitable employment of their labour, - for the formation of roads and bridges, - and for the opening of formidable mountain passes, which have rendered available the productions of so many fertile tracts, which were previously debarred by natural obstacles from access to a market; - for these and other improvements in the Colony whatever share of merit may be justly ascribed to others in rendering them effective, we are sensible, we are mainly indebted to you for their origin.

Feeling grateful to you, Sir, for so many and such important services, we are naturally anxious for the re-establishment of your health, and sincerely hope, by God's blessing, it may be speedily resotred, and that you may be soon enabled to resume the duties of your office, with the same vigour and judgement, which have ever marked your official career.

We have the honour to be,

Sir,

Your obedient humble Servants,

(Signed by 134 of the clergy, merchants, and others, of Cape Town.)

The same address was adopted at Swellendam, Graff-Reinet, Somerset East, Somerset West, and Caledon, and obtained numerous signatures.

2. To the Honourable John Montagu, Esq., Secretary
to Government etc., etc., etc.

The Address of the Undersigned Merchants and other inhabitants of Graham's Town and district of Albany.

Sir, - We beg leave to assure you, that we have been much gratified at hearing that your health, which had been so seriously impaired by your great attention to the duties of your office, has been much improved by your visit to your native country; and we beg to offer you our hearty congratulations upon your return to the Colony.

Feeling grateful to you on account of your past exertions we are naturally anxious for the re-establishment of your health, sincerely hoping that by God's blessing it may be speedily restored, and that you may soon be enabled to resume the duties of your office with the same vigour and judgement which have always marked your official career.

We have the honour to be,

Sir,

Your obedient humble Servants.

(Signed by 60 merchants and others.)

(NEWMAN op cit. p 610)

3. To the Honourable John Montagu, Secretary to
Government.

Port Elizabeth, December 31, 1853.

Sir, - We, the undersigned inhabitants of Port Elizabeth and its vicinity have the honour to present to you our sincere congratulations on your return to this Colony and on your reported restoration to the enjoyment of health, lately so seriously interrupted by your unflagging devotion to the public interests of this settlement. We see foreshadowed in your adherence to the office which you have so long and so honourably filled, the promise that the great public designs embodied by you in your past official career will be carried out to completion. In various portions of this Colony, and at various times, we have had occasion to recognise the salutary influence of your practical talents and skill in adapting the means to the end. One only source of regret is, should from the extent of this Colony, your ability to improve should have been somewhat circumscribed, and that hitherto the Eastern Province should have reaped less than its share of public attention; - still, in all general measures, among which we may class our postal regulations, the discipline and humane management of convicts, and the useful application of their labour to public works, our finances, and the initiation and supervision of all great public improvements, - we recognise a spirit of fairness and enlarged sympathy creditable alike to yourself and conducive to the public benefit. The rumour which fixes on you, Sir, as the future chief representative of Her Majesty in this province, only requires confirmation to secure our hearty approval.

We have long seen the necessity existing for a strong Executive Government in this province, and we shall experience much satisfaction if Her Majesty sees fit to reward your past honourable exertions with so important

a post, and one, in every way so adapted to your talents, as that of Lieutenant-Governor of the East Division.

We beg to re-iterate our congratulations on your return to this Colony, and have the honour to subscribe ourselves your obedient servants.

(Signed by 178 Merchants and others)

(NEWMAN op cit p 611)

4. To the Honourable John Montagu, Esq., Secretary to Government.

George Town, December 20, 1853.

Sir, - We beg to tender you our sincere and heartfelt congratulations on your return to the Colony, after an absence of nearly two years, for the restoration of your health, necessitated by your long and untiring exertions for the public good; trusting that you are so far restored as to be able to continue for many years services which have hitherto proved so eminently beneficial to the community, and for which we feel that the Colony owes you a deep and lasting debt of gratitude.

In resuming the important duties of your office, we trust that it will be a satisfaction to you to have the assurance of our warmest wishes for your health and welfare.

(Signed by 78 clergy, merchants, and others)

(NEWMAN op cit. - 612)

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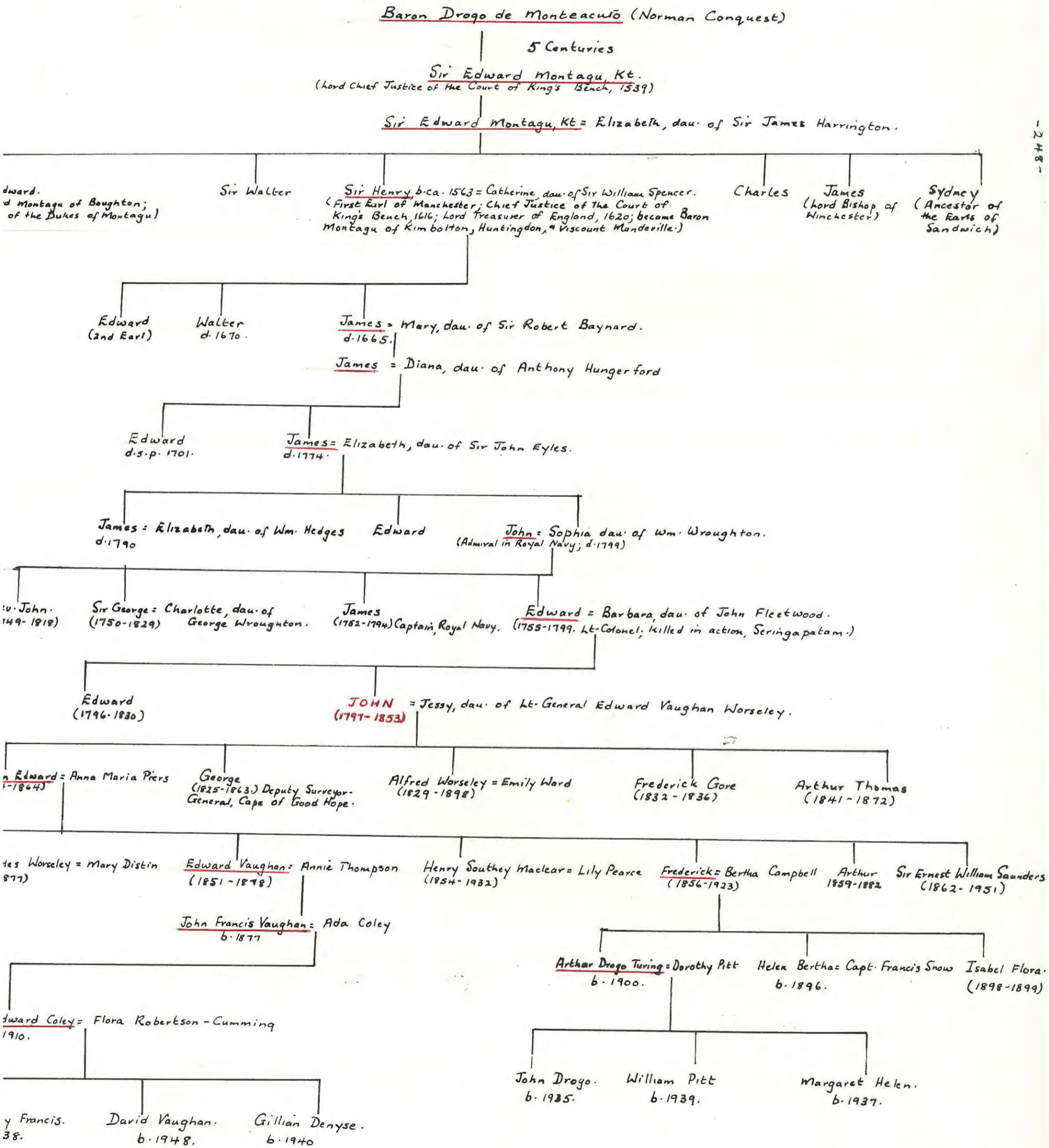
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APPENDIX A.

Genealogical Table of the Montagu Family.



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