

RUM
REBELLION



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H.V.EVATT

A STUDY OF THE OVERTHROW OF
GOVERNOR BLIGH BY JOHN MACARTHUR
AND THE
NEW SOUTH WALES CORPS

FOURTH
EDITION

THE
RIGHT
HON.

H.V.EVATT

K.C.
M.P.

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EPIC OF THE "BOUNTY"

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RUM REBELLION

A Study of the overthrow of Governor Bligh by John Macarthur and the New South Wales Corps

By

THE RT HON. H. V. EVATT,
K.C., M.P.

With a Foreword by C. Hartley
Grattan,

Carnegie Fellow in Australia, 1937-8

Sydney Morning Herald: "In this, as in his other books, Mr Justice Evatt is making perhaps the most important contribution to Australian historical research of this generation. He is laying bare for examination our social foundations as no one has done before."

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The Mail (Adelaide): "Mr Justice Evatt has given us a revolutionary picture of William Bligh which strikes a mortal blow at the generally accepted conception of Bligh as a ruthless and brutal tyrant."

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REBELLION**

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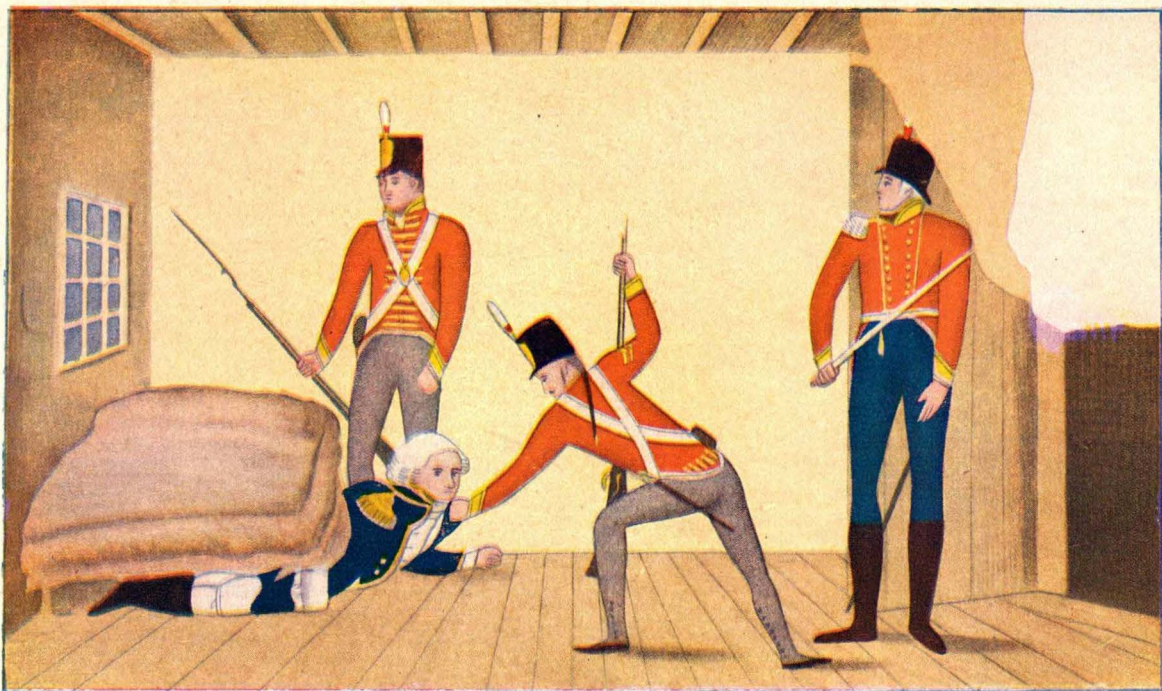
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RUM REBELLION

By the same author

BRITISH DOMINIONS AS MANDATORIES
THE KING AND HIS DOMINION GOVERNORS
INJUSTICE WITHIN THE LAW
AUSTRALIAN LABOUR LEADER



COPY-BOOK TRADITION—"THE ARREST OF BЛИGH"

The above facsimile of a painting exhibited at Sydney shortly after the Rum Rebellion, illustrates the virulence of the anti-Bligh campaign of defamation. The charge of cowardice against Bligh is analysed and refuted in Chapter XXXI.

RUM REBELLION

*A Study of the Overthrow of Governor Bligh
by John Macarthur and the New South Wales
Corps*

INCLUDING THE JOHN MURTAGH MACROSSAN
MEMORIAL LECTURES DELIVERED AT THE
UNIVERSITY OF QUEENSLAND, JUNE 1937

By

THE RIGHT HON. H. V. EVATT, K.C., M.P.

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TO
A. M. S.

FOREWORD

MR JUSTICE EVATT'S study of William Bligh's career in New South Wales is of such a unique character that it would be highly impertinent for any one not equally learned in the law to do more than circle around the fringes of it in a Foreword or elsewhere. This is true, because the core of the book is to be found in the chapters dealing with the various court cases that marked the clash between the embattled monopolists and Governor Bligh who stood as representative of the English Government and the policy it had laid down for him to execute. By thus concentrating upon a section of the story that no mere layman would attempt to expound and judge, Mr Justice Evatt has made a signal contribution to the story of William Bligh and to Australian history.

There is one aspect of the purely legal side of this book which is of the first importance and which can be commented on by a layman. Mr Justice Evatt shows clearly that the law can become a weapon in the social struggle and the courts a battleground of opposing class interests on which justice is weighted in favour of one side. In the immediate instance he asserts that this was inevitable because "the Courts were the true forum of the little colony. . . . There was no legislature, no avowed political association or party, no theatre and no independent press." However, the position Mr Justice Evatt takes up can be given a far wider reference—it has by many thinkers—and it allows one to assert that whenever major social issues are involved, the law of the land is extremely apt to be subverted to the interest of the dominant class in the community. Most of the transactions described in this book took place in New South Wales during the years 1806-9, but Mr Justice Evatt has analysed in his *Injustice Within the Law* an example of the use of the law for class purposes which took place in England in 1834, and the theme is not entirely absent from his masterly work,

The King and His Dominion Governors, where the issues discussed are apparently more completely removed from vulgar economic conflicts.

It will be heartening to those who prefer realism to obfuscation to find a learned judge taking this line toward the law. It is not, as the traditionalists will say, degrading to the law to view it in this fashion. It is simply further evidence of the fact that society is all of a piece and that the law, as a part of the superstructure of society raised on economic foundations which inevitably precipitate social struggles, partakes of the nature of the society of which it is a part. Because of the language employed, and the time-honoured formalities of court procedures, this often escapes the lay observer, and to have examples of it so lucidly analysed is very helpful indeed.

This fascinating book offers an exceptional opportunity, also, to study one of the most complex social struggles that ever took place on so confined a stage, and to reflect upon the natures of two extraordinary individuals who would have been outstanding on any stage, William Bligh and John Macarthur.

William Bligh has captured the world's imagination, not because of what happened in New South Wales, but because he was commander of the *Bounty* against whom the crew mutinied in the South Seas in 1789. For long years he has been condemned for this episode, adjudged a tyrant, and lately, as Mr Justice Evatt says with becoming irony, has suffered "condemnation from Hollywood, the sentences of which have universal jurisdiction." Nevertheless, Bligh's reputation in this regard is slowly being rehabilitated. However that may be, it is well to take note of the fact that the Bligh who was sent to New South Wales in 1806 was the man who had commanded the *Bounty*, and subsequently resolutely carried out the mission on which the *Bounty* was bound, the transfer of breadfruit-trees from Tahiti to the West Indies, in 1791-2, taking in his stride during the voyage an exploratory passage through Torres Strait, fought at Camperdown in 1797, and won Lord Nelson's praise at Copenhagen in 1801. In short, in peaceful and warlike enterprises Bligh had proved his merit. He had also revealed his character.

Bligh's character was—one may as well admit it—of a type that offends the general no matter what the age in which an owner of it appears. It seems to me that too much emphasis has been placed upon the eighteenth century "accident" in which, in Bligh's case, it was wrapped up. Bligh was hot- and short-tempered, violent in language, "rude" in his relations with his associates, unjust in speech (but just in action), a severe disciplinarian, and strongly self-confident and self-righteous. Hardly had he been put in the *Bounty's* launch than he found himself "conscious of (his) own integrity." Never once did he allow himself—in writing at least—the luxury of self-doubt. When given a job he proposed to get it done as efficiently as possible, and being self-disciplined (in all but temper and speech) to an extraordinary degree, he inevitably tried to bend all the human instruments under his charge to his will. But he did not suffer fools gladly and men are apt to be fools. Bligh never learned how to manipulate fools to the end on which his attention was bent. He was not a politician, either in the narrow or the extended sense. He, therefore, could ordinarily command voluntary loyalty only from those whose purposes coincided with the ends he sought. In New South Wales he commanded the loyalty of the small farmers because his job required him to advance their interests. At one and the same time Bligh was the perfect servant and a very bad one. Given the task of upsetting a vicious economic system in New South Wales, he coldly bent his attention on the task and was on the way to success when his failure as a manipulator of men defeated him. In New South Wales a man who *could* successfully manipulate men to his own ends was his opponent and vanquisher.

John Macarthur was very like Bligh in character. He too was of a violent temper, though it was a "cold" temper that found release not in curses that died away as uttered, but in calculated vituperation that lived on. He too was a stern disciplinarian, contemptuous of the whims and weaknesses of ordinary men. He too was self-confident and self-righteous. He too never committed any sincere self-doubts to paper. He too formulated his ends and set about realizing them by bending men to his will. But he differed from William Bligh, one may deduce from the records, in confusing personal advantage with justice, and in knowing how to manipulate

the "fools" among whom he found himself, for his own purposes. His position was strengthened when his ends coincided in part with those of a powerful minority in the community.

When two men so similarly constituted found their interests opposed in New South Wales, there was bound to be a violent collision. That collision is known to Australian history as the "Rum Rebellion" and this book is an admirable account of it.

The social struggle which threw up two such remarkable antagonists as Bligh and Macarthur, and which was, as Mr Justice Evatt demonstrates, carried on most vigorously and viciously in the Courts, neither began nor ended during the administration of Governor Bligh. As Mr Brian Fitzpatrick has shown in a book which is, at the moment of writing, unpublished, the English Government had evolved an economic plan for Australia which was put into operation by Governor Phillip. Briefly, it envisaged the strong establishment of a small-holding peasantry in the country, the bulk of the peasants in any future then visible to be time-expired and emancipated convicts. This scheme which may or may not have been wise—to me it seems merely the projection on virgin Australia of an economic pattern contemporaneously being disrupted in England by the industrial revolution—was destroyed after Governor Phillip's departure from Sydney by the military officers.

During the years that elapsed between Phillip's leaving in December 1792 and Hunter's arrival in September 1795, when the colony was under the control of the military, the officers brought *their* plan into full operation. Briefly, it was a trading monopoly which was combined with land holding on an extensive scale, and the ruthless exploitation of convict labour. Rum became the established medium of exchange, and it was monopolized to raise its price, while its consumption was pushed to the limit, thus allowing the monopolists to make huge profits—hence the defence of the system was the "Rum Rebellion." The struggle over the rum traffic really only symbolized the deeper issue. Under such a scheme the small holders existed only to be exploited and debauched until economically exhausted, and then expropriated through inevitable bankruptcy. Since the officers held in

their hands the military power, as well as such minimum civil power as had been developed, and the Courts—as Mr Justice Evatt insists—the addition of supreme economic power made them masters of the community. They directed it in a fashion that benefited themselves materially, but allowed for no progress. Their programme was retrogressive, not progressive. All critical historians consider that “the brains” of this system was John Macarthur, though he was far from being the sole initiator, beneficiary, or protagonist.

Once established, this method of exploitation was vigorously defended. The monopolists “broke” two governors, Hunter and King, with an entire lack of scruple, and set a pattern for operations against any successor. In the event, the successor of King was William Bligh. He had his orders to break up the monopoly and return the small-holding peasant farmers to the place in the community originally planned for them. Like the good servant of the Government he unquestionably was, Bligh set about executing his orders and naturally fell foul of Macarthur with the consequences set out in this book. Mr Justice Evatt shows that Macarthur and his associates did not stick at treason to retain their power.

Unfortunately for the clarity of the story John Macarthur was also the outstanding—though here again not the sole—proponent of a third economic programme, which subsequently achieved success. This success has blinded many writers to Macarthur’s true position in the collision with Bligh. I refer, of course, to the establishment of the wool industry. Success in this field came after the Bligh episode. It is entirely unhistoric to argue that Macarthur was, in opposing Bligh, looking after the known future of Australia—that he was contending for conditions that would allow the pastoral industry to get on its feet. Like many of the figures in history who are identified with the beginnings of an industry which has subsequently proved a boon to mankind, Macarthur shows no evidence of having been bent on anything else in the immediate instance than defending property and profits. He did not see any contradiction between serving at one and the same time the purely exploitative system of the monopolists, and the industry which, in the event, proved so extraordinarily dynamic, and fraught with such amazing consequences to Australia. Just because he was iden-

tified with the dynamics of Australian development is no reason for believing that everything he did was right. Like the men who made the great fortunes in the United States in the nineteenth century through exploiting the industrialization of the country, Macarthur was also at one with the dynamics of history in his wool experiments. Again, like the Americans who advanced industrialization, Macarthur scrupled not to support retrogressive policies—sabotaging policies—if they fell in with his fundamental aspiration—to get rich. To-day we know that Macarthur was on the side of history, while the policy the English Government was executing through Bligh—the encouragement of small-holding farmers—was doomed to failure, viewed as a means of developing Australia on an extensive scale. Not until many decades had passed, and such things as railways, dry farming, plant experiments, refrigeration, and fast steamships entered the picture, did Australian farming really get on its feet. But neither Bligh nor Macarthur knew anything of this and to impute such wisdom to Macarthur because of the sheep business is to miswrite history.

It has seemed worth while to elaborate this point because of the fact that, by a series of extraordinary accidents fully set out in these pages, Macarthur escaped being branded the traitor he was in the Rum Rebellion, and lived to become a public hero because of his overwhelming success in another direction. He succeeded in reversing the cynical maxim that the good men do is buried with them. It is necessary to see the past in the proper light that the present may be understandable. If it be true, as I believe it is, that the primary purpose of history is to explain “how we got this way,” then in some measure Australia got the way it is because, paradoxically, William Bligh dealt a smashing blow (though not an entirely fatal one as history shows) at the monopoly of which John Macarthur was the outstanding proponent, and also because the same John Macarthur successfully bred fine-woolled sheep under Australian conditions!

C. HARTLEY GRATTAN

(Carnegie Fellow in Australia, 1937-8).

Sydney, N.S.W.,

December 1937.

PREFACE

IN this work I have considerably expanded and developed the lectures on "The Overthrow of Bligh" which were delivered by me in 1937 at the University of Queensland, as J. M. Macrossan lecturer.

As will be gathered, I am of opinion that many of the problems connected with the Rum Rebellion of 1808 are best solved by a thorough analysis of contemporary legal investigations. If I may quote a passage from the body of the work, I would repeat:

At first sight it might seem difficult to understand why mere legal contests should be regarded as having such importance as I ascribe to them. But the key places on the Criminal Court of the colony were occupied by the military officers. . . .

Moreover, the Courts were the true forum of the little colony. They had no competitors as a means of expressing individual or public grievances. There was no legislature, no municipal government, no avowed political association or party, no theatre and no independent press. On the one hand there was the legal dictatorship of the Governor as the sole legislative and executive authority and the final authority in the civil jurisdiction, and this dictatorship was being exercised by Bligh in favour of the agriculturalists and poor settlers and against the wealthy traffickers and monopolists. On the other hand, the military officers had the real control of the criminal judicature, and, as the leading phalanx of the rum traffickers and monopolists, their economic power, previously uncontrolled, was threatened.

Thus there was always a distinct possibility that Bligh's exercise of political power would provoke an open clash solely because it struck at the heart of the military and economic dictatorship which either had to yield or fight. Meanwhile, bitter skirmishes between the opposing interests almost necessarily assumed the form of legal contests.

H. V. E.

CONTENTS

	PAGE
FOREWORD	vii
PREFACE	xv
CHAPTER	
I. COPY-BOOK TRADITION	1
II. A STORY ABOUT SHEEP	10
III. THE COLONY WHICH BLIGH HAD TO GOVERN	15
IV. CURIOUS CORPS	21
V. A GOVERNOR'S TURNIPS	27
VI. A CASE OF HEARSAY EVIDENCE	32
VII. THE AFFAIR OF DR BALMAIN	38
VIII. A CASE OF ASSAULT	42
IX. A DUEL THAT WAS FOUGHT	47
X. THEFT OF A VITAL DISPATCH	50
XI. NECESSITY TURNED TO GAIN	56
XII. THE FALL OF GOVERNOR KING	62
XIII. THE CHARACTER OF BLIGH	68
XIV. BLIGH TAKES OVER	82
XV. BLIGH MAKES PROGRESS	90
XVI. TRAFFICKERS IN TROUBLE	95
XVII. LEGAL FOUNDATIONS OF NEW SOUTH WALES	98
XVIII. THE CASE OF THE PROMISSORY NOTE	106
XIX. THE CASE OF WENTWORTH	110
XX. THE CASE OF THE IMPORTED STILLS	121
XXI. THE CASE OF THE SCHOONER <i>PARRAMATTA</i>	126
XXII. THE CASE OF SEDITION	130
XXIII. WAS MACARTHUR GUILTY OF SEDITION?	133
XXIV. MACARTHUR IN DANGER	141
XXV. MACARTHUR'S FIRST MANOEUVRE	143
XXVI. MACARTHUR'S SECOND MANOEUVRE	146
XXVII. MACARTHUR'S TRIAL OPENS	152

CHAPTER	PAGE
XXVIII. ANOTHER STRANGE TALE - - - - -	156
XXIX. THE NIGHT OF THE TWENTY-FIFTH OF JANUARY	163
XXX. THE ARREST OF BЛИGH - - - - -	166
XXXI. THE CHARGE OF COWARDICE - - - - -	175
XXXII. "JACK BODICE'S TOOL?" - - - - -	180
XXXIII. WAS THE ARREST PRECONCERTED? - - - - -	183
XXXIV. GUILTY OF HIGH TREASON - - - - -	188
XXXV. REBEL LEADER - - - - -	196
XXXVI. MOCK TRIAL - - - - -	199
XXXVII. THE CASE OF OLIVER RUSSELL - - - - -	205
XXXVIII. AFTERMATH OF THE RUSSELL CASE - - - - -	214
XXXIX. THE CASE OF WILLIAM GORE - - - - -	224
XL. THE CASE OF GEORGE SUTTOR - - - - -	232
XLI. FIRST REBEL ADMINISTRATION (JOHNSTON) - - - - -	238
XLII. SECOND REBEL ADMINISTRATION (FOVEAUX) - - - - -	241
XLIII. REBEL PECULATIONS - - - - -	244
XLIV. THIRD REBEL ADMINISTRATION (PATERSON) - - - - -	251
XLV. THE ATTITUDE OF MACQUARIE - - - - -	258
XLVI. COURT MARTIAL MANOEUVRES - - - - -	261
XLVII. THE COURT MARTIAL OF JOHNSTON - - - - -	266
XLVIII. JUDGMENT - - - - -	273
INDEX - - - - -	277

CHAPTER I

COPY-BOOK TRADITION

ON Saturday, 30 January 1808, John Macarthur, chief founder of Australia's merino wool industry, wrote a short but pungent letter to his wife, in the course of which he said:

I have been deeply engaged all this day in contending for the liberties of this unhappy Colony, and I am happy to say I have succeeded beyond what I expected. . . . The Tyrant is now no doubt gnashing his Teeth with vexation at his overthrow.¹

It is with the overthrow of Governor Bligh and the causes and consequences of this Rum Rebellion of 26 January 1808, that this work deals.

Macarthur made the story appear both short and convincing. Right had triumphed over wrong. It is needless to add that Bligh was the tyrant and Macarthur the hero who ended the tyranny. Such has been the tradition handed down from one Australian generation to the next.

But when one closely examines the official historical records, both of New South Wales and of Australia, dogmatic statements and prior assumptions gradually come into question, so that many problems connected with the overthrow of Bligh by the New South Wales Corps and Macarthur are seen to be more difficult of solution than most of the historians have supposed. Unfortunately, except in the case of students specially devoted to research in Australian history, these official documents are not assimilated or sufficiently appreciated. One result is that, in the main, the old tradition has remained unbroken.

In 1931 George Mackaness published his important two-volume life of Bligh, which set forth the principal facts of Bligh's overthrow. Naturally, he made no attempt to pro-

¹ *Early Records of the Macarthurs of Camden*, p. 153.

nounce judgment on the great legal disputes which characterized the rebellion. But, as a result, partly of his important work and partly of the picture film of Bligh and the *Bounty*, fresh interest in Bligh was aroused. The recent books of Geoffrey Rawson, Owen Rutter and H. S. Montgomerie have all helped to a better understanding of this extraordinary man. The present work confines itself, in the main, to the Rum Rebellion against Bligh when Governor of New South Wales. But, in order to trace the causes of the rebellion, it is necessary to travel beyond the short period of seventeen months which elapsed between Bligh's assumption of the governorship on 13 August 1806, and his arrest by the New South Wales Corps on 26 January 1808. At the present time, special interest attaches to Bligh's overthrow because on 26 January 1938 New South Wales commemorated both the one hundred and fiftieth anniversary of the arrival of its first governor—Phillip—and the one hundred and thirtieth anniversary of the rebellion.

The generally accepted version of the case is illustrated by the assertions of Jose, the Australian historian, that it was Bligh's "overbearing conduct"² which in 1789 caused the famous mutiny against him on the *Bounty*, and that, when he was Governor of the colony in 1806-8, "the progress of the colony was not so important as its discipline, and he ruled it as he would a man-of-war."³ Jose gave an inadequate account even of the undisputed facts of the rebellion.⁴ But what did it matter? Everybody knew that Bligh was wrong and Macarthur was right. Even that careful work Haydn's *Dictionary of Dates*⁵ had summed up the history of New South Wales in the year 1810 by the assertion: "Governor Bligh for his tyranny deposed and sent home." And such was the belief which, so to speak, was written in the copy-book of every Australian schoolboy.

The traditional opinion of Bligh's tyranny came to be formed largely because, after the two great setbacks of his life, the mutiny on the *Bounty* and the rebellion in New South Wales, his antagonists either engaged or chanced to have available the advocacy of several persons who had an aptitude for propaganda. For instance, the brother of Fletcher Christian, the leader of the *Bounty* mutiny, who was a

² Jose, A. W., *History of Australasia* (1911), p. 34.

³ *ibid.*, p. 35.

⁴ *ibid.*, p. 36.

⁵ 14th edition (1873), p. 54.

Downing Professor of Law at Cambridge⁶ devoted his undoubted abilities to presenting a case against Bligh which was coloured and greatly weakened by the bias caused by deep brotherly affection. So far as New South Wales was concerned, the defamatory anti-Bligh propaganda commenced even before the rebellion. It will be shown that the officers of the New South Wales Corps and their close associates had long been accustomed to slander all those with whom they happened to come into conflict. Thus, the numerous letters all attacking Bligh dispatched from Sydney to London in October 1807 were probably inspired from a common source. They included letters from Dr Townson,⁷ Gregory Blaxland,⁸ Deputy-Commissary Fitz,⁹ D'Arcy Wentworth,¹⁰ Surgeon Jamison,¹¹ Lieutenant Minchin,¹² and two important letters from Surgeon Harris.¹³ Harris's letters to Bligh's predecessor ex-Governor King and Mrs King approached the very pinnacle of abuse, and are disfigured by express malice. This is not surprising in view of Bligh's having had occasion to dismiss Harris from two important offices in the civil administration of the colony. Therefore Bligh is a "tyrannical villain." One of Harris's letters stated that the writer of "pipes" or lampoons was very busy, one effort suggesting a repetition of the *Bounty* mutiny: "*Oh tempora! Oh mores!* Is there no Christian in New South Wales to put a stop to the tyranny of the Governor?"¹⁴

This organized defamation, commencing before the rebellion, continued for years after Bligh's overthrow. Thus we find the afterwards famous William Charles Wentworth¹⁵ stating in his book on New South Wales which was published in 1819 that Governor Bligh "was a second Draco, who considered the smallest offence deserving of death";¹⁶ a man who

. . . if the colonists had not arrested him in his iniquitous career of vengeance and despotism, would have hurled death and destruction

⁶ Edward Christian was the editor and annotator of Blackstone's famous *Commentaries on the Laws of England*.

⁷ *H.R. of N.S.W.*, vol. vi, p. 299.

⁸ *ibid.*, p. 301

⁹ *ibid.*, p. 305.

¹⁰ *ibid.*, p. 313.

¹¹ *ibid.*, p. 328.

¹² *ibid.*, p. 331.

¹³ *ibid.*, pp. 336, 342.

¹⁴ *ibid.*, p. 339.

¹⁵ He was the son of D'Arcy Wentworth who at the time of the rebellion was a surgeon attached to the New South Wales Corps.

¹⁶ Wentworth, W. C., *A Statistical, Historical and Political Description of New South Wales* (1819), p. 232.

from one end of the colony to the other. Without the circle of his immediate creatures, with the most favored of whom it is well known that he was in a commercial partnership, every individual who either had attained affluence, or was gradually rising to it, was the object of his hatred or envy. The former he detested not more because they had no need of his protection, than from fear they should promulgate to the world his nefarious proceedings; the latter because they were absorbing some portion of that wealth, which he wished should flow wholly into the coffers, the contents of which at the division of the spoil he was to have so large a share of.¹⁷

Wentworth's reference to a "commercial partnership" repeated a false and malicious rumour that Bligh had been engaged with the merchant, Robert Campbell, in commercial speculations. The fact was that Bligh had never engaged in any commercial venture, either with Robert Campbell, against whose integrity hardly any reproach was or could be made,¹⁸ or with any other person. But Wentworth, who was at the time of the publication of his book endeavouring to become Macarthur's son-in-law,¹⁹ was unrestrained in the violence of his language and made many other false assertions against Bligh whom he denounced as a "wretch, whom it would be as superfluous to name as it is needless to hold him up to the execration of posterity,"²⁰ and who, having "goaded into mutiny a crew of noble-minded fellows,"²¹ was undoubtedly a "monster."²² Wentworth also refers to:

The 26th of January, 1808, the memorable day when, by the spontaneous impulse of a united colony, he was arrested; and fortunate for the cause of humanity is it that he was then arrested, for ever in the perpetration of the most atrocious outrages that ever disgraced the representative of a free government, has substantiated his claim to this character beyond the possibility of doubt.²³

Wentworth even had the audacity to attempt a justification for his attacking Bligh so soon after the latter's death, which had taken place in 1817. Wentworth's plea—a defence usually advanced when something particularly mean has been perpetrated—is that he is fulfilling a "sacred duty."²⁴ Otherwise, he argues:

¹⁷ *ibid.*, p. 371.

¹⁸ *Jnl and Proc.*, R.A.H.S., vol. xxiii, p. 1 *et seq.*

¹⁹ Melbourne, Dr A. C. V., *Wentworth* (1934), p. 23.

²⁰ Wentworth, W. C., *A Statistical, Historical and Political Account of New South Wales* (1819), p. 166.

²¹ *ibid.*, p. 168.

²² *ibid.*, p. 169.

²³ *ibid.*, pp. 169-71.

²⁴ *ibid.*, p. 170.

Would not the enormities of the Dionysii, of Caligula, and of Nero, have been long since forgotten? And would not many of those princes who have merited and obtained the appellations of "great," of "good," and of "just," have become as atrocious monsters as *these* were, but from the dread of being held up as objects of similar execration to posterity? The tyrant, indeed, whose conduct I will stamp with merited detestation, moved, fortunately for the interests of mankind, in a humbler sphere, and therefore, his atrocities have a greater tendency to sink into premature oblivion. But is it a less sacred duty to take all such steps as may be calculated to deter his successors from treading in his footsteps; because they will only have *thousands* to trample upon instead of *millions*?²⁵

Wentworth's tremendous invective had a considerable effect both in England and in Australia. During the early part of the nineteenth century, the opinions of the educated classes were greatly influenced by books and reviews. And it is significant that, in an *Edinburgh Review* essay on New South Wales, Sydney Smith accepted Wentworth's allegations against Bligh as substantially correct. Thus the essayist declared that Bligh was not "a man of sense and character,"²⁶ and lavished praise on the character and understanding of Macarthur. A study of the essay demonstrates that the case for Bligh against Macarthur was quite unknown to Sydney Smith.²⁷

Almost irreparable damage having been done to Bligh's reputation by Wentworth's publication, John Dunmore

²⁵ *ibid.*, p. 171n.

²⁶ *Works of Sydney Smith* (1854), p. 259.

²⁷ In John Dunmore Lang's *History of New South Wales*, published in 1852, W. C. Wentworth was treated by Lang as scurvily as Bligh had been treated by Wentworth. And Lang's vituperation is equally fierce. Thus he states: "But now that a large majority of the inhabitants of Sydney consists of reputable free emigrants, who refuse to burn incense to the emancipist idol, and who will not suffer themselves to be tamely cheated out of their rights as British freemen by a mere clique of turn-coats and political swindlers, of whom Mr Wentworth is one, that gentleman treats them with the most opprobrious epithets—gratuitously calling them Communists, Socialists, Democrats, for whom even a twenty pound franchise is a great deal too low! If it is true, as Sir Robert Walpole asserts it is, from his own great experience of human nature, that every man has his price, the present local Government of New South Wales appears to have discovered Mr Wentworth's. But of all political characters, the *liberal* turned *absolute* is the most contemptible." (vol. i, p. 239n.)

Lang also includes a full account of Governor Sir George Gipps's devastating attack upon Wentworth for attempting to appropriate 20,000,000 acres of land in New Zealand under a supposed purchase from Maori chiefs at the price of 400 acres for one penny. (*ibid.*, pp. 337-9n.)

Lang's account of the rebellion, published a generation later, was not a sufficient antidote against so long continued an administration of poison. Further, although Lang endeavoured to attribute the causes of the rebellion to the misconduct of the military and trading groups, he was greatly hindered in stating his case by not possessing the documents with which the historian can, if he wishes, be armed. The pro-Macarthur sentiment was very strong and was further strengthened when, in 1862, Lang's account of the rebellion was attacked by another historian, Roderick Flanagan, as "glaringly partial."²⁸ Flanagan's own version adopted Wentworth's conclusions and, with a somewhat similar show of rhetoric, he said:

The six officers²⁹ re-assembled at ten o'clock in the morning of the 26th January. This was the anniversary of the foundation of the colony, which to-day had completed the twentieth year of its existence. This coincidence, which was to a considerable extent remarkable, must have inspired every reflecting man in the community with a feeling of deep anxiety in reference to the important bearing of the question at issue on the future career of the colony; must have impressed the members of the court with the greatness of the responsibility which rested with them; and must have added to that embarrassment which it is natural to suppose the governor and his advisers experienced. For twenty years the colony had battled with the impediments and difficulties interposed by nature, by circumstance, and by accident; with the insubordination, the violence, and the outrage of those from whom nothing else was to be expected; for twenty years had the men of honour, standing, and education who were found in the colony stood side by side in performing those duties and fulfilling those obligations imposed by the behests of civilization and society, not less than by the commissions of their sovereign and their country. All those difficulties and impediments had been overcome, not as we have seen in the progress of the events narrated in those pages, without great labour, great patience, and great suffering. To-day the colony saw for the first time the King's representative arrayed against those—as represented by one man³⁰—who hitherto had fought the King's battles in the colony, and who by their unremitting struggles had brought New South Wales to that position of independence and comparative prosperity in which it was now found. Thus, as the colony had been founded in a material sense twenty years before, to-day it might be said its political and social foundations were

²⁸ Flanagan, R., *History of New South Wales*, vol. i, preface, p. vi.

²⁹ The Criminal Court of the colony consisted of a permanent judge-advocate sitting together with six naval or military officers. The reference is to the trial of John Macarthur for sedition.

³⁰ John Macarthur, then a civilian, had previously been an officer of the Corps.

to be established, either on the enduring and unchanging basis of justice and freedom, or on the insecure and treacherous basement of corrupt and arbitrary dominion.³¹

Having thus introduced an almost epic theme, the astute reader will easily be able to construct for himself the kind of peroration employed in Flanagan's description of the actual arrest of Bligh by the New South Wales regiment. In such a peroration Magna Charta gains inclusion almost automatically, and the impressionable reader is then carried forward, past the wicked King John and the unselfish barons, until at last he reaches the little colony that has been gallantly won from the desert, and maintained in perfect order and discipline for a period of precisely twenty years!³² Unfortunately for Flanagan's history, the humble facts destroy the accuracy of much of his story.

By the publication of such works, the original legend has still survived, and the editors of the historical records of the colony deal with it very tenderly. Thus, F. M. Bladen, long the editor of the *Historical Records of New South Wales*, though placed for the first time in possession of a great wealth of material dealing with Bligh and Macarthur, never seemed willing to handle it fearlessly, and was never as generous to Bligh as he was generous to Macarthur and the officers of the Corps. For instance, Bladen says of Major Johnston who led the Rum Regiment in its march on Government House: "It is, however, beyond all question that Major Johnston was not personally influenced by them [the wealthy colonists] in the slightest degree. From every quarter evidence is available to prove that Johnston was a mild-mannered, pacific man."³³

Such being the attitude of the official historian, the unofficial writers have been little restrained in their denunciation of Bligh. Very recently Bligh's reputation has been greatly damaged by the acting of Charles Laughton in the picture film of the *Bounty* mutiny. The blurb of the film thus describes Laughton's fascinating, but almost entirely exaggerated or inaccurate representation of the character of Bligh:

³¹ Flanagan, R., *History of New South Wales*, vol. i, pp. 167-8.

³² *ibid.*, pp. 179-80

³³ *H.R. of N.S.W.*, vol vi, intro., p. li.

His very name struck terror in the hearts of all his crew. A sea-going disaster, begotten in a galley, and born under a gun! His hair was rope, his teeth were marlin spikes, and the seamen who dared disobey his mad, ruthless orders, seldom lived to do it twice.

Some of the recent historians not only embrace the legend of Bligh's overthrow, but yield to the temptation of adding to it. Perhaps the best example of this is Dr Norrie. According to him: "Bligh was the type of man who would attain his ends by fair means or foul."³⁴ And he had been appointed to New South Wales solely because the English authorities wanted to get him off their hands.³⁵ Norrie alleges that, at the sale of the King's blood stock at Kew in 1804, Macarthur, who there purchased eight sheep, treated the friendly overtures of Sir Joseph Banks with such coldness that Banks endeavoured to prevent the export of the sheep to Australia. He then states that Banks secured Bligh's appointment to New South Wales in order to seize "a chance to revenge himself on Macarthur for beating him in his sinister move to prevent the departure of the Golden Fleece."³⁶ He also accepts without question the suggestion that Lord Camden had promised Macarthur a grant of 10,000 acres in the Cow-pastures for the purpose of growing fine wool,³⁷ whereupon Bligh received instructions from Banks to hold up any grant in excess of 5000 acres.³⁸ Dr Norrie also accepts as a fact the story that, during the course of his trial on 25 January 1808, Macarthur's life was in danger. Norrie says:

There is also very strong evidence that Bligh not only connived at, but even instigated, a plot to have Macarthur assassinated. Crossley³⁹ was at the bottom of this; and but for the assistance of the gaoler, who warned him and provided him not only with the opportunity to escape, but also with arms to defend himself, Macarthur's death would undoubtedly have been accomplished.⁴⁰

According to this melodrama, Macarthur turned up at the barracks of the New South Wales Corps "just in the nick of time" to join the march against Bligh. This was pure coin-

³⁴ *Jnl and Proc.*, R.A.H.S., vol. xv, p. 208.

³⁶ *ibid*

³⁷ *ibid.*, p. 206.

³⁵ *ibid.*, p. 207

³⁸ *ibid.*, p. 207.

³⁹ Crossley was an ex-attorney of the Court of King's Bench who had been transported to New South Wales and had been emancipated by Governor King. Prior to the rebellion against Bligh, he was acting as unofficial legal adviser to the Governor and Judge-Advocate Atkins who was a layman.

⁴⁰ *Jnl and Proc.*, R.A.H.S., vol. xv, p. 208.

cidence, Macarthur's intention being only to report himself to Major Johnston, the commanding officer.⁴¹ Thereupon, Norrie says, Macarthur composed a memorial urging Johnston to take the momentous step of rebellion against the Governor. The historian adds: "I need not dwell on the remaining details of this historic episode: every schoolboy knows the story."⁴²

Norrie's account is inaccurate or exaggerated at almost every material point. His imputations against Bligh's character will be examined later. It is true that the story of Banks having been coldly greeted by Macarthur at the sale of the stud sheep at Kew has been frequently repeated. But there is little or no corroboration of it, and Governor King in a letter to Banks, written on 21 July 1805, said: "McArthur intends writing you, *and speaks highly of your politeness to him at the sale of the Spanish sheep in England.*"⁴³ The remainder of Norrie's assertions will be dealt with in the course of this work. But here it should be said that the allegation that there was a plot to assassinate Macarthur is not substantiated. That there was no real evidence to support it is proved by the fact that at the Johnston court martial, when everything was dredged up in order to damage Bligh, it was not mentioned. That the suggestion was made at all is a fact telling strongly against the rebels as evidencing an attempt to bolster up a weak case by a piece of reckless propaganda which, though it displayed inventive faculty of an extremely low order, also evidenced great lack of scruple.

⁴¹ *ibid.*, p. 208.

⁴² *ibid.*, p. 209.

⁴³ *H.R. of N.S.W.*, vol. v. p. 674. (*Italics are mine.*)

CHAPTER II

A STORY ABOUT SHEEP

A STRIKING illustration of the process by which the reputation of Bligh has been hurt is the almost universal acceptance of the theory that Bligh's fall was practically caused by his insulting and overbearing language to Macarthur. Bligh is supposed to have said to Macarthur when the latter spoke of his grant of land for pasturing the merino sheep: "What have I to do with your sheep, Sir? What have I to do with your cattle? Are you to have such flocks of sheep and such herds of cattle as no man ever heard of before? No, Sir!" Jose accepts the story.¹ It is blandly repeated in the official Macarthur book,² which says that Bligh added: "I have heard of your concerns, Sir, you have got 5000 acres of land, Sir, in the finest situation in the country, but by G—d you shan't keep it." It is part of the same story that Macarthur very politely reminded Bligh that his 5000 acre grant was made by the Secretary of State³ upon the recommendation of His Majesty's Privy Council. The story proceeds to explain that, in reply to Macarthur's reference to the source of his grant, Bligh said: "D—n the Privy Council, and d—n the Secretary of State, too; he commands at home, I command here."⁴

Historians other than Jose regard this sheep story as true.

¹ Jose, A. W., *History of Australasia* (1911), p. 35.

² *Early Records of the Macarthurs of Camden*, pp. 137-8.

³ If Macarthur made such a statement, he seriously misrepresented the position. The Lords of the Privy Council had recommended only the conditional grant of a sheep walk, and had also recommended that the Governor of the colony should be asked to report as to how the merino wool industry could best be encouraged. The point is of some importance and is discussed later. Macarthur wanted to obtain an unconditional grant, believing strongly in the policy of a famous squatter of later years who, when Lord Stanley suggested that he should be satisfied with a lease rather than an absolute grant, replied:

"My Lord!

It sounds more clever,

To me, and to my heirs for ever."

(Therry: *Reminiscences*, p. 249.)

⁴ *Early Records of the Macarthurs of Camden*, p. 138.

Flanagan tells it with gusto.⁵ Professor Scott regards the allegations as substantiated.⁶ Professor Shann does not question them,⁷ dismissing Bligh with the very insufficient comment that the four naval governors of New South Wales erred because of "their habit of trying to order social and economic relations by the methods of the quarter-deck."⁸ Frank Walker, very prominent in the early activities of the Royal Australian Historical Society, also accepted the correctness of the story.⁹ Even the most recent commentators have fallen under the influence of the propaganda which was deliberately created in order to hurt Bligh and help Macarthur. Accordingly, Geoffrey Rawson does not seriously question the story of "What have I to do with your sheep, Sir?" and "D—n the Privy Council,"¹⁰ and Owen Rutter merely qualifies it by suggesting that Macarthur's account of the interview may have been over-coloured.¹¹

I suppose that it would be intolerable if the judgments of history had to be pronounced by trained lawyers rather than by persons unskilled in the actual science of legal investigation. But the historian who is not trained in such art and science labours under a considerable handicap in reaching sound conclusions upon matters such as we have been discussing. For he is sometimes ready to accept documents at their face value, and to regard them as possessing equal significance. Often he treats the letters of a person, subsequently made available to the public, as providing evidence as much in favour of the writers as against them. On the other hand, the trained legal mind may often be lacking in that quality of imagination which is required in order to understand past events.

But it is essential that such quality should be employed scientifically. The handling of documents for the purpose of ascertaining the facts, of drawing only permissible inferences of fact, is part and parcel of the everyday work of the practising lawyer. Rules and canons of evidence are brought into play for the purpose of avoiding error and ascertaining

⁵ Flanagan, R., *History of New South Wales*, vol. i, p. 155.

⁶ *Cambridge History of the British Empire*, vol. vii, pt. i, p. 100.

⁷ Shann, E. O. G., *Economic History of Australia*, p. 43.

⁸ *ibid.*, p. 47.

⁹ *Jnl and Proc.*, R.A.H.S., vol. i, p. 29.

¹⁰ Rawson, G., *Bligh of the "Bounty"*, p. 192.

¹¹ Rutter, O., *Turbulent Journey*, p. 221.

truth. Thus, it is very wrong to draw an inference without sound justification. But it is equally wrong to refrain from drawing an inference that should logically be drawn. Inductive reasoning has distinct limitations. Yet circumstantial evidence is often quite conclusive. Similarly, the importance of credibility, of general character and of habit and system is increasingly recognized by the Courts. Above all, the legal mind appreciates fully the overwhelming importance that should attach to contemporary legal or quasi-legal investigations where opposing interests are fairly represented before an impartial tribunal and the right of testing evidence by cross-examination is exercised without unreasonable restraint.

These observations may seem abstract, but I hope that their importance will appear during the course of the present work. In particular, the author is of the opinion, contrary to that often expressed previously, that one of the keys to the many problems connected with Bligh's overthrow is to be found in the legal proceedings of the Johnston court martial held in England in 1811.

What is the inference to be drawn as to Macarthur's allegation that Bligh used the abusive language of the famous sheep story? At the court martial of Johnston, Macarthur's account was corroborated by Major Abbott.¹² But, as will appear, Abbott was a vitally interested witness, having been deeply implicated with both Johnston and Macarthur in the rebellion. Further, Bligh was closely cross-examined about his having damned the Privy Council and the Secretary of State. He emphatically denied that he had used the words attributed to him. And when his cross-examination was completed, he made the following statement which was obviously unrehearsed:

I beg leave to state, that although from my line of life, and in the government of such a country, such expressions might be excused, yet I cannot conceive with what view these questions have been put to me; so well known and decidedly loyal a character have I always been, and such a high respect and regard I have ever entertained for the honourable and noble persons who have been alluded to, that I never could utter a word disrespectful to them, and I disavow the charge in the strongest manner. I know nothing of such speeches; it is true I may not have been so smooth at all times in my life, that when a

¹² *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 350.

person has come suddenly upon me with some importunate request, which perhaps he was making without reason, or I had no power to grant, I may not have said, 'Damn it, get out of the way,' or used some such expression; but as to uttering anything disrespectful or in contempt of the Secretary of State or the Privy Council, when I at the same time held a commission under His Majesty's Government, and entertained at all times so high a respect for them, I cannot persuade myself I ever did.¹³

Further, it is to be observed that this allegation of Macarthur was introduced into the court martial of Johnston merely in order to prejudice Bligh in the eyes of the distinguished soldiers who comprised the Court. There is no letter or report written at, or even near, the time of the alleged statements of Bligh, which so much as breathes a hint that any such statement was made. After the rebellion, when *ex parte* charges were hurled by the rebels at Bligh, there was no suggestion by Macarthur that Bligh had spoken in the manner alleged. Further, Bligh's general reputation was not that of a liar. On the issue of credibility, little reliance is to be placed either on Abbott or on Macarthur, as will be illustrated later; and it is impossible to overlook Bligh's spontaneous but convincing explanation as given to the Court Martial. Quite possibly, on some occasion or other, Bligh refused to be importuned by Macarthur, who was often desirous of obtaining such concessions from Government as the allocation of additional convicts to work on his pastures. It is extremely unlikely that Bligh would have insulted the Secretary of State, particularly as, at the material times, he was on the best of terms with the minister and the department.

Nor is it a fact that Bligh was utterly indifferent to the progress of the fine wool industry of New South Wales. In an important dispatch to Windham dated 7 February 1807, Bligh made the following statement which, for some reason or other, was omitted from the *Historical Records of New South Wales*: "Our utmost exertions must likewise be to Agriculture to supply the shipping, and the collateral advantages of a Wool Trade will then be supported by competent means."¹⁴ Bligh was not hostile to the wool industry, but he

¹³ *ibid.*, p. 54.

¹⁴ See dispatch, *H.R. of N.S.W.*, vol. vi, p. 246; *H.R. of A.*, series i, vol. vi, p. 123; Mitchell Library (Banks Papers), letters to Banks of the same day. (Italics are mine.)

preferred that first preference should be given to agriculture. In the circumstances, the proper inference is that the particular charge of Macarthur against Bligh represented by what I call the "sheep story" is inconsistent with all the probabilities, and it should be rejected as false, or, at the very least, as not proved.

Mr Montgomerie, the latest writer to deal with the life of Admiral Bligh, is right in emphasizing the harm done to historical truth by those whom he characterizes as "the copy cats of a century."¹⁵ Yet, in one respect, I think that Mr Montgomerie himself understates the case for Bligh, for he seems to attach little importance to the proceedings at the court martial of Johnston in 1811. He even asserts, I do not know on what authority, that "the fury of the combatants seemed to detract from their skill. Probably Bligh, McArthur, and Johnston interfered with and interrupted their own counsel."¹⁶ At the general court martial of Johnston, Charles Manners Sutton, afterwards Speaker of the House of Commons, acted as Judge-Advocate General, and the proceedings were conducted with dignity and decorum. There, for the first time, Bligh, Macarthur and Johnston, and the other leading figures in the struggle for supremacy in New South Wales were confronted. They were no longer mere propagandists, but witnesses subject to the acid test of skilful cross-examination.

That the historians have greatly erred in not appreciating the significance of this great state trial, for such, in substance, it was, will be frequently illustrated as we proceed to unfold the narrative of the rebellion. The light it throws upon the allegations contained in the sheep story is considerable.

¹⁵ Montgomerie, H. S., *Bligh of the "Bounty,"* p. 263.

¹⁶ *ibid.*, p. 234.

CHAPTER III

THE COLONY WHICH BLIGH HAD TO GOVERN

IN the year 1806, when Bligh arrived to govern the penal colony of New South Wales, Sydney was still a "port without a hinterland,"¹ the western barrier of the Blue Mountains not having been surmounted. The settlement consisted merely of "a strip east and west along the Parramatta, a strip north and south along the Hawkesbury, and a slant strip connecting the two."²

In spite of the rhetoric and rationalizations of later years, no grand imperial design sanctified the setting up of this convict settlement on the eastern shores of Australia. The truth was more brutal. Because of the revolt of the thirteen American colonies, a new outlet had to be found for persons convicted of felony warranting transportation beyond the seas.³ Perhaps the one person who even then possessed a faith in the future destiny of Australia was Sir Joseph Banks, who once declaimed: "I see the future prospect of Empires and dominions which now cannot be disappointed."⁴ It was Banks also, who, even in the midst of Governor Hunter's difficulties, said that the colony was "already a most valuable appendage to Great Britain."⁵ But Hunter was finding himself disillusioned. In his opinion, it would have been much easier for him to have founded an entirely new settlement "than to have attempted the recovery of one so shamefully plunged in Profligacy and Licentiousness . . . a mere sink of every species of infamy."⁶

Several writers have emphasized that the offences in respect of which many of the convicts were transported to New

¹ Shann, E. O. G., *Economic History of Australia*, p. 3.

² Jose, A. W. *History of Australasia* (1911), p. 26.

³ *Cambridge History of the British Empire*, vol. vii, pt i, p. 58.

⁴ Mackaness, G., *Sir Joseph Banks*, p. 44.

⁵ *ibid.*, p. 51.

⁶ *ibid.* p. 45.

South Wales were offences which to-day would either be punished summarily by a magistrate, or, if dealt with on indictment before a jury, would be regarded as coming within the scope of the practice of suspending sentences on condition of good behaviour. After a careful analysis of sentences passed in England, Dr Frederick Watson has estimated that about eighty-three per cent of the first batch of "transportees" should be regarded as minor offenders, and he says:

Does this not largely falsify the illiberal reproaches cast on the beginnings of a nation, unmerited odium given birth to in the eighteenth century and thriving still at the end of the nineteenth. Whatever vices the transportees showed in the new colony must largely have been due, not to any inherent tendencies, but to the hardships endured, the seeming utter hopelessness of their future and consequent abandonment.⁷

A brilliant warning against the dangers of over-generalization was also given by Sydney Smith, who said:

One man is transported for stealing three hams and a pot of sausages; and in the next berth to him on board the transport is a young surgeon, who has been engaged in the mutiny at the Nore; the third man is for extorting money; the fourth was in a respectable situation in life at the time of the Irish Rebellion, and was so illread in history as to imagine that Ireland had been illtreated by England, and so bad a reasoner as to suppose that nine Catholics ought not to pay tithes to one Protestant. Then comes a man who sets his house on fire to cheat the Phoenix Office; and lastly, that most glaring of all human villains, a poacher, driven from Europe, wife and child, by thirty Lords of Manors, at the Quarter Sessions, for killing a partridge. Now all these are crimes, no doubt—particularly the last; but they are surely crimes of very different degrees of intensity to which different degrees of contempt and horror are attached, and from which those who have committed them may, by subsequent morality, emancipate themselves, with different degrees of difficulty, and with more or less of success.⁸

Dr Watson, though he overstates the position to some extent, is right in emphasizing that the conditions in the colony itself contributed as much to its vice and degradation as the character of the colonists. However explained, the situation cannot be explained away. The picture of the colony is an extremely dark one. It became saturated not only with convicts but with the spirit of convictism. There was little leaven, resulting in a great contrast with the system of

⁷ *Beginnings of Government in Australia*, p. 4.

⁸ *Works of Sydney Smith* (1854), p. 370.

transportation to the American plantations, where the convicts

. . . imperceptibly glided into honest habits, and lost not only the tact for pockets but the wish to investigate their contents. But in Botany Bay the felon, as soon as he gets out of the ship, meets with his ancient trull, with the footpad of his heart, the convict of his affections—the man whose hand he has so often met in the same gentleman's pocket. . . . It is impossible that vice should not become more intense in such society.⁹

A large number of convicts were transported to New South Wales for political offences. For instance, in the seventeenthies came the Scottish Martyrs, whose convictions had been obtained by methods which would to-day receive short shrift from most Courts of Appeal. Later, as a result of the 1798, there came a large number of Irish political prisoners. But, whatever English conditions caused or contributed to their degradation, thieves and pickpockets comprised the majority of the transportees. In the prologue attributed to the man who was regarded as the greatest pickpocket of all time, George Barrington (he reformed and became a constable in the colony), the substantial truth of the matter is amusingly conveyed:

From distant climes, o'er widespread seas we come
 (Though not with much éelat or beat of drum);
 True patriots all, for be it understood,
 We left our country for our country's good;
 No private views disgraced our generous zeal,
 What urg'd our travels was our country's weal;
 And none will doubt but that our emigration
 Has proved most useful to the English nation.

On the vessels which transported the convicts to the colony, the conditions were those of the classical thieves' kitchen, and the evidence elicited from the witnesses before the 1812 Select Committee of the House of Commons on Transportation is both revolting and distressing.¹⁰ The shipping contractors were paid by reference to the number of convicts who left England, not those who arrived at Sydney. Therefore, the occurrence of deaths on the long voyage out meant

⁹ *ibid.*, p. 264.

¹⁰ Dr Melbourne quotes a most shocking description of a convict vessel on which D'Arcy Wentworth was the responsible surgeon (*W. C. Wentworth*, 1934, pp. 5-6).

actual gain to the contractors. It is hardly necessary to add that there were very many deaths. Nor is it to be wondered at that many of the convicts who escaped with their lives from the horrors of the voyage out became brutalized and irreclaimable. Governor Hunter, one of the witnesses, described to the committee of 1812 how, on the first expedition to the colony, there were some boys and girls aged only twelve and thirteen years. The convict girls he described as: "many of them very infamous; but while I was there we laid the foundation for a fund for a Female Orphan School which is now completed; I saw this was necessary because as soon as they grew up they were led away and made most infamous characters."¹¹

Bligh, giving evidence to the same committee, said: "From the habits of the people in that colony, prostitution is too common a great deal; it has been dreadfully bad."¹²

As time went on, the moral standard of the convicts, before and after their emancipation, was greatly affected by the character of the women. The House of Commons Committee reported that:

They are aware that the women sent out are of the most abandoned description, and that in many instances they are likely to whet and to encourage the vices of the men, whilst but a small proportion will make any step towards reformation but yet, with all their vices, such women as these were the mothers of a great part of the inhabitants now existing in the Colony, and from this stock only can a reasonable hope be held out of rapid increase to the population; upon which increase, here as in all infant Colonies its growing prosperity in great measure depends. Let it be remembered, too, how much misery and vice are likely to prevail in a Society in which the women bear no proportion to the men; in the Colony at present, the number of men compared to that of women, is as two to one; to this, in great measure, the prevalence of prostitution is reasonably to be attributed.¹³

In 1806 the Reverend Samuel Marsden made a careful report on the moral state of the colony, as at the time when Bligh arrived to take over from Governor King. The report said:

It is to be lamented that since its commencement to the present time there has scarcely appeared a germ of virtue on which to build a

¹¹ *Report of Select Committee on Transportation, 1812, p. 22:* Hunter was over-optimistic about the success of the Orphan School.

¹² *ibid.*, p. 33.

¹³ *ibid.*, p. 12.

hope of the general character changing for the better. The depravity and vice which pervades a large portion of the community does, by its preponderating influence, effect the whole, and gives to the individual habits and manners much to be deplored. Any attentive, humane observer, who might visit the colony, would soon be convinced of the truth of these remarks; and when he beheld a rising generation of several hundreds of fine children exposed to a contamination fatal to body and soul, he would tremble for their danger.¹⁴

Indeed, the plight of the children was almost desperate. Without father or mother, almost entirely dependent upon government intervention for their salvation, they were almost lost creatures. Marsden wanted teachers for them, and we shall see that Bligh was ever concerning himself with the almost insoluble problem of these orphans: "Remote, helpless, distressed, and young, these are truly the children of the State"; but he added that, by a proper system of education, they might "overbalance and root out the vile depravities bequeath'd by their vicious progenitors."¹⁵

Exercising a quasi-censorship which is entirely unnecessary, the official historians of New South Wales and of the Commonwealth have omitted from the official prints of Bligh's official letters all reference to the number of persons described by him as "concubines," and yet there is no indication in such prints that there has been any omission. Other sources show that, of the total number of about 7000 inhabitants of the colony of New South Wales in the year 1807, married women numbered only 395, and concubines not less than 1035; the legitimate children numbered 807 and the illegitimate children 1025.

Another description of the difficulties which faced Bligh upon his arrival in 1806 is contained in one of his early dispatches:

Besides all the attention which is required to the encouragement of agricultural pursuits, and protection of the out-settlements, there is much for me to do in the Police of the country (Magistracy not being arrived to that dignity which it should have been) in its state of defence; in repairs and completion of the public works and churches, which are in a most dilapidated state, in regulating private buildings and schools in the towns, and the watching over the rising generation, and impressing upon their minds, by instruction, what has been entirely neglected by their parents in morals and Christian duties; but there

¹⁴ *H.R. of N.S.W.*, vol. vi, pp. 380-1.

¹⁵ *ibid.*, p. 382.

are a vast number who have no parents, the mother being dead and their fathers having left the country, being either sailors, soldiers or prisoners. In no country could there occur more obstacles in gaining these ends, for besides the natural habits of the prisoners tending to obstruct every attempt, the settlers are by no means of that character which teaches industry and goodwill.¹⁶

¹⁶ Bligh to Banks, 7 February 1807. (Mitchell Library MSS.)

CHAPTER IV

CURIOUS CORPS

It will appear that, in any event, Bligh's task would have been almost insuperable. But, in addition, a permanent hindrance to the peace and good government of the colony was presented by the New South Wales Corps which had been stationed on garrison duty for nearly twenty years. An adequate judgment of the root causes of Bligh's overthrow can only be attempted if we appreciate at the outset the position occupied by this regiment.

The New South Wales Corps was a very specialized unit of the armed forces of His Majesty King George III. Military historians sometimes refer to a "picked corps." Such was the New South Wales Corps, but "in an evil sense."¹ It was described by Governor Hunter as consisting of "soldiers from the Savoy² and other characters who have been considered disgraceful in other regiments in His Majesty's service."³ This comment, if expressed in an exaggerated form, is based on substantial fact. Dr Mackaness rightly says that: "Some of the officers appear to have been of a low and inferior stamp."⁴ One of them purchased his commission from the proceeds of the business of a crimp carried on at Charing Cross. Another, who was very prominent in the agitation against Bligh, was the son-in-law of a conspicuous forger, who, in the words of a contemporary manuscript: "terminated all his temporal prospects by that afforded from the *New Drop* at the *Old Bailey*."⁵ It is very unfair to visit the sins of the father-in-law on the son, and the present narrative seeks to judge the officers "not by their pedigree but by their performances" as

¹ Shann, E. O. G., *Economic History of Australia*, p. 14.

² The military prison of the day.

³ Shann, E. O. G., *Economic History of Australia*, p. 14.

⁴ Mackaness, G., *Life of Vice-Admiral Bligh*, vol. ii, p. 117.

⁵ *ibid.*, pp. 117-18.

a later wit expressed it. But, without doubt, the character and standing of both officers and men was distinctly inferior to that of regiments engaged elsewhere in the King's service.

The explanation of many, if not most, of the difficulties which overwhelmed the three naval governors who succeeded Governor Phillip, viz., Hunter, King and Bligh, lies in the increasing ascendancy of the officers of the Corps. They not only possessed the monopoly of violence, but:

They became an aristocracy. They were allowed to engage in trade and agriculture; gradually, they obtained control of the imports, particularly spirits; and the consequence was that, within twelve months of Phillip's departure, rum became the recognized medium of exchange. So much so that even labour could only be purchased with spirits. Under this system, the officers reaped enormous harvests.⁶

During Hunter's governorship, the officers repeatedly smuggled convicts away from government control so as to use them in private employment, including, of course, that of the officers themselves.⁷ After Phillip's departure, the commanding officer of the regiment, Grose, administered the colony for three years, and he was succeeded by Paterson, the next in command. Under both Grose and Paterson, "convict servants were lavishly bestowed, not only upon commissioned officers of the Corps, but also upon sergeants, corporals and drummers, until scarcely a score of unengaged men remained for any public purpose."⁸

Prior to the first enlistment in England of the Corps, there had been a fairly even balance of authority in the colony between the military and marine detachments, and this was all to the good. Incidentally, the Imperial Statute governing the composition of the local Criminal Court contemplated that naval as well as military officers would be summoned to serve on it, and Phillip's excellent practice was to select three naval and three military officers for each panel. Yet we will see, not only that the Corps came to exercise the monopoly of administering criminal justice, but exercised it to the prejudice of the colony. In the first place, it is necessary to understand how the officers of the Corps came to monopolize the sale both of goods and spirits, because the vested

⁶ *Jnl and Proc.*, R.A.H.S., vol. i, p. 195.

⁷ Mackaness, G., *Sir Joseph Banks*, p. 45

⁸ *Cambridge History of the British Empire*, vol. vii, pt i, p. 72.

interests thereby created became particularly powerful and audacious in a settlement where the attempt to satisfy the instinct of acquisitiveness, though it had led to the punishment and degradation of most of the convicts, also became the impelling motive of the free and the freed.

At the parliamentary investigation of 1812, Palmer, a reliable witness who had been Commissary of the colony, referred to the evils resulting from the traffic in spirits. By an early practice, merchandise sent out by the British Government for distribution amongst all was first offered to and purchased by the officers of the regiment, who gradually asserted as a right a general claim of pre-emption over the imports. In particular the officers gradually obtained the practical monopoly of the sale within the colony of all imported spirits. Palmer explained that "the officers did not exactly sell it themselves, but they kept women, and those women used to dispose of it, which was the same thing. Immense quantities indeed have been sold in that way."⁹

Commenting upon the resulting intemperance of the colony, Jeremy Bentham, the great law reformer, said in 1803: "*Improvvidence—indolence—helplessness—all extensive, as well as intense, to a degree scarce conceivable in this country, were the prominent features of this reformation colony. . . . But of all these weaknesses drunkenness was the principal and perennial source.*"¹⁰

Holt, one of the leaders of the Irish Rebellion of 1798, graphically describes the practical control by the regimental officers of the system of monopoly and barter:

Captain Anthony Fenn Kemp,¹¹ when a soldier came to him for his month's pay, would usually accost him with "well, what do you want?" "I want to be paid, Sir," the soldier would say. "What will you have?" was always Captain Kemp's answer. "I have very good tobacco, ten shillings the pound, and good tea at twenty shillings the pound, prints at eight shillings the yard" and so on. If the poor soldier answered "Sir, I do not want any of your goods," the Captain's comment was "You don't; you are a damned saucy rascal. . . . Begone you damned mutinous scoundrel or I'll send you to the guard house and have you flogged for your impertinence to your officer." The soldier having no

⁹ *Report of Select Committee on Transportation*, 1812, p. 22.

¹⁰ Bentham, "Plea for a Constitution" (1803), *H.R. of A.*, series iv, vol. i, p. 890.

¹¹ Kemp, later a major of the Corps, was one of the officers who took a very prominent part in the overthrow of Governor Bligh and in the subsequent rebel administrations.

redress would take his monthly pay in property which he did not want, and then he would endeavour to dispose of what he had received to some person who had money; generally selling it for less than half the price he was charged by his Captain. . . . It was, I must confess, very provoking to see the officers draw the goods from the public stores, to traffic in them for their own private gain, which goods were sent out for the advantage of the settlers who were compelled to deal with those huxter officers for such articles as they may require, giving them from fifty to five hundred per cent profit, and paying in grain. It would thus happen that one of these monopolizers, who never grew grain, would sometimes have a thousand bushels of wheat to put in the store; and this was the manner in which all those old tailors and shoe-makers, stay-makers, man-milliners, tobacconists and pedlars that were called captains and lieutenants, made their fortunes, by the extortion and the oppression of the soldier, the settler and the poor.¹²

Before the Transportation Committee of 1812, Margarot, one of the Scottish Martyrs, gave the following evidence of the practice of barter:

Do the majority of the officers to whom the Government of the Colony is entrusted embark in trade?—All, to a man.

What is that trade?—It consists first of all of monopoly, then of extortion; it includes all the necessaries of life which are brought to the Colony.

Are not the convicts supplied from a Government store?—They are so.

Then if the convicts are so supplied, how can the officers make a profit of that which belongs to the Government?—The distribution of the stores is very partial; they are allowed from the stores two suits of clothes per annum; they are allowed weekly four pounds of pork, or six or seven pounds of beef; in short, their animal food is scarcely sufficient to keep them alive. Some convicts have been known to eat it before the Wednesday night, and to labour without food till the next Saturday when the ration is distributed. The clothing is not regularly served; it is regularly advertised in the Newspaper, but not regularly distributed to the prisoners. The Newspapers come home, and the prisoners cannot make their voice be heard here. The trade the officers are engaged in is first, the supply of stores, with wheat and pork, sometimes beef and mutton, to the exclusion of the settlers; next, vessels arrive from different parts of Europe, and from India, with such articles as may be deemed luxuries; tea, sugar, rum, wine, little matters for clothing, silk handkerchiefs, etc., a variety of articles, the officers purchase them; and retail them at perhaps 500 per cent profit. There is likewise another monopoly; the government has been very kind to the Colony, and sent out various articles for the use of the settlers and prisoners, such as sieves, hats, clothes, linen, coarse cloth and a thousand other articles; when a ship of that kind has arrived, and the goods have been landed in the King's stores, after a few days

¹² Holt, J., *Memoirs of Joseph Holt*, vol. ii, p. 295.

the stores are opened to the officers, who go in, lay their hands upon every thing of value, and have their names affixed to it as purchasers, and they leave nothing but the refuse for the Colony; having so done by themselves or by their agents, they retail that, as I said before, at 500 per cent profit. I believe I am not out when I say that a sieve to sift meal, which cost them 5s. 9d. has been sold for three guineas, and rum I have known sold at £8 a gallon, which cost 7s. 6d.

Do you mean that civil officers, or military, or both are engaged in this trade?—All of them to a man. In the year 1797 a combination bond was entered into by them, by which they were neither to underbuy nor undersell the one from the other.¹³

How was that known in the Colony?—Because it was offered me to sign, and I refused it, and from thence began my persecution; some of the upper inhabitants had that bond tendered to them to sign; it was brought to me, I refused signing it; there was an *esprit du corps* among them, that although they might jar between one another, if you offended one you offended the whole; and any prisoner that had the misfortune to offend any one officer would be sure to get a flogging from some other.¹⁴

During Hunter's governorship, the Corps came to be dubbed the "Rum Regiment" or the "Rum Puncheon Regiment," and there is much force in the comparison suggested by Montgomerie between the regimental officers in New South Wales and the "racketeering" organizations which came into existence in the United States during the currency of the liquor prohibition laws. Yet, as we will observe, the unusual methods of exploitation adopted by the New South Wales officers gradually became known to many of those who exercised political authority in England. Why were the exploiters allowed to remain undisturbed for so long? According to John Dunmore Lang, Hunter actually succeeded in persuading the English authorities to replace the New South Wales Corps with a body of marines who would be more disposed to co-operate with the naval governor of the colony. Lang also asserts that, during Hunter's governorship, a large detachment of marines was ordered to embark for the colony, but the exigencies of the war with France made it necessary that they should at once be dispatched elsewhere.¹⁵

Except in the case of John Macarthur and a very few

¹³ Margarot's allegations were all corroborated, including that of combining to monopolize.

¹⁴ *Report of Select Committee on Transportation, 1812, p. 53.*

¹⁵ Lang, Rev. J. D., *An Historical and Statistical Account of New South Wales*, vol. i, p. 55.

others, the intellectual standard of the officers was extremely low, so that one naturally recalls Buckle's condemnation of the professional officer:

As society advances, new sources of activity are open, and new professions arise, which, being essentially mental, offer to genius opportunities for success more rapid than any formerly known. The consequence is, that in England, where these opportunities are more numerous than elsewhere, it nearly always happens that if a father has a son whose faculties are remarkable, he brings him up to one of the lay professions, where intellect, when accompanied by industry, is sure to be rewarded. If, however, the inferiority of the boy is obvious, a suitable remedy is at hand: he is made either a soldier or a clergyman; he is sent into the army, or hidden in the church. And this . . . is one of the reasons why, as society advances, the ecclesiastical spirit and the military spirit never fail to decline.¹⁶

But the general validity of this provocative thesis is not here in point, for, as far as the military genius is concerned, it is usually allied to great physical courage and excellent character. On the other hand, the peculiarity of the New South Wales Corps was that it was not enlisted as a fighting unit, and its members were content with mere garrison or police service at a remote corner of the globe when the relationship of England to the future map of Europe was being decided elsewhere, and by force of arms. These facts are part of the justification for Lang's statement that the New South Wales Corps "possessed, only in a very limited degree, that honourable high-mindedness which should ever constitute the proud distinction of the British officer."¹⁷

And the same authority vehemently denounces the officers for

sullyng their hands with the slime of colonial pollution, and banded together, on every suitable occasion, to maintain, by violence or injustice, what they had obtained by the sacrifice of honour . . . the New South Wales Corps was, both in a moral and political sense, the most ill-advised and unfortunate measure that the British Government could possibly have adopted towards their infant settlement on the coast of New Holland; and . . . like the wrath of Achilles to the Greeks, it entailed ten thousand sorrows on the colony of New South Wales.¹⁸

¹⁶ Buckle, H. T., *History of Civilization in England*, vol. i, p. 180

¹⁷ Lang, Rev. J. D., *An Historical and Statistical Account of New South Wales*, vol. i, p. 46.

¹⁸ *ibid*, pp. 46-7.

CHAPTER V

A GOVERNOR'S TURNIPS

It is essential to bring home to the impartial critic a knowledge of the class of men upon whom Bligh had subsequently to wage war. For this purpose, however, I have come to the conclusion that it is not sufficient to present cogent evidence of general character and reputation. It is also necessary that their methods of procedure when engaged in conflicts with their opponents should be illustrated by reference to particular cases. By this means we shall more easily understand how unfair it is to treat Bligh's forcible overthrow in isolation from the practical dismissal of his two predecessors and how closely and causally related are the attacks of Macarthur and the officers against all three governors.

An example of the officers' attempt to sabotage the civil administration occurred in 1796, when Hunter was attempting to rescue the colony from the dictatorship of the military which had been established by Grose and Paterson. The military oligarchy: "Having tasted the sweets of office and of power, they were loth to lose them, and early evinced antagonism to the reformer."¹ One of the officers who was especially chagrined at Hunter's policy was Macarthur, then a captain in the Corps. Previously his powers "had been practically absolute in the district of Parramatta."² But Hunter insisted on the separation of military and civil functions and caused Macarthur to be replaced by Atkins in the position of Inspector of Public Works in the Parramatta district. Macarthur now assumed the leadership of the officers in their endeavour to retain the powers and privileges with which Grose and Paterson had invested them; and he adopted the device of communicating directly with the Colonial Office, thus attacking the Governor behind his back.

Shortly after Macarthur had written to England, a corporal

¹ *H.R. of A.*, series i, vol. ii, intro. p. xi.

² *ibid.*

of the regimental guard at Parramatta was detected stealing some turnips from the Governor's garden. Atkins, acting as civil magistrate for the district, wrote to Macarthur, as officer commanding the Parramatta detachment, described the theft, and added: "This, I must say, has been too much the custom, for no later than two days ago another soldier was detected in the same business."³

On receipt of Atkins's letter, Macarthur replied, peremptorily demanding the name of the soldier thief. Atkins wrote back that he had already informed the soldier that he (Atkins) would not report him, and he now refused to do so unless ordered by Governor Hunter. "If rigid justice," said Atkins, "is the order of the day, the Lord have mercy on us all!"⁴ But the sting of the letter was in the tail:

It is further, sir, necessary for me to inform you that any letters directed to *Mr Richard Atkins* will be returned unopened, as not supposing them intended for, sir,

Your obedient servant,

R. ATKINS⁵

All that Atkins wanted was to be addressed under the courtesy title of "Esquire," being a magistrate in the district. But Macarthur refused to accept the rebuke and, in a letter to the Governor, he complained that Atkins had grossly insulted him in the execution of his duty.⁶ Hunter ordered Atkins to give the name of the offending soldier, but he also rebuked Macarthur for not having addressed Atkins correctly. Macarthur at once displayed venom against the man who had displaced him: "Is it possible," he wrote to Hunter, "that the use of a trifling appellation can produce a change in the public opinion of a man so deeply plunged in infamy?"⁷

In the same letter Macarthur said that Atkins could be proved to be "a public cheater, living in the most boundless dissipation, without any visible means of maintaining it than by imposture on unwary strangers whose business leads them to this settlement."⁸

At this time, David Collins, the first Judge-Advocate⁹ of

³ *ibid.*, p. 102.

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*, p. 101.

⁷ *ibid.*, p. 103.

⁸ *ibid.*, p. 104.

⁹ The position of Judge-Advocate of the colony was an office of the civil administration. The Judge-Advocate was legal adviser to the Governor, official prosecutor for the King, and a judicial officer of the Criminal Court of the colony.

the colony, was still in office. Hunter was desirous that the charges against Atkins should be investigated by Collins, and he insisted that Macarthur should give particulars of them. Macarthur furnished them, stating that he did so under protest and solely in obedience to the Governor's orders. He declined to be placed in the position of a prosecutor who was under any obligation to establish a charge.

As the action of Atkins in connexion with the Bligh rebellion is of great importance, his position in this affair of the stolen turnips should not be misunderstood. Although Macarthur supplied particulars of Atkins's alleged misconduct, yet, as soon as he knew that an investigation would be conducted by the Judge-Advocate, the high pitch of his wrath quickly subsided. Obviously he did not want any further trouble over the affair. But Collins inquired into the matter and reported in favour of Atkins. Subsequently, in August 1796, Atkins wrote to Macarthur the letter from which I now quote. Although it seems to carry vituperation to its limit, Atkins had undoubted cause or excuse for extreme indignation. He said:

The repugnance I feel at descending to an Epistolary or any other Altercation with a Man of your principles can only be surmounted by the gratification that naturally results to a Man of Honour in delineating even by paper the deformity of an opposite Character; and where can I find a subject like yourself?—A Man, the baseness of whose heart even imagination, however warm, can hardly portray. . . . That your charges, or, as you now term them, Assertions, against me were founded upon the most ignoble motives, such as Malice, Revenge, etc., is incontestably proved by your meanly abandoning them, after positively pledging yourself to support them by "Proof oral and written!" . . . The Quibble between charges and assertions is of too flimsy a Texture to require a comment. It is only worthy of a dastardly coward like yourself. . . . Return to your original nothing; we know what you have been, and what you now are; and believe me an honest and industrious Staymaker¹⁰ is a more honourable and more useful Member of Society than such a man as I hold you to be. Let me ask who has been the Incendiary—who has been the promoter of all the Feuds and Animosities between Individuals in this Colony? You, Sir. . . . You who, four years ago, was only a Lieutenant, penniless but by his pay, and is now reputed worth £8000. Let this Colony bear witness where lies the strongest presumption, you or me, being the Oppressor, Peculator or Robber. . . . Can you believe that the man who has been guilty

¹⁰ Macarthur had been engaged in a millinery business before his enlistment with the New South Wales Corps, and so was nicknamed "Jack Bodice."

of such "Enormities as you are daily practising" can but be detested by all mankind who have a spark of Benevolence and Phylanthropy in their composition? . . . The Manners of a Gentleman only causes my subscribing myself,

Your humble Servant,

RICHARD ATKINS.¹¹

Subsequently, when Hunter was about to appoint Atkins as Judge-Advocate, Macarthur requested that he should be permitted to institute a criminal prosecution for libel in respect of the above letter. Hunter had no doubt as to Macarthur's real motive, and reported:

The design of this prosecution of the intended Judge-Advocate is too apparent not to be immediat'ly seen thro'. Your Grace will discover that no Court, civil or criminal, can be held without such an officer at its head. This attempt is therefore in my opinion intended to deprive the service of the assistance of the man, who it is well, and has been long, known was nam'd by his Majesty's authority to do that duty during the absence of the Judge-Advocate, and thereby to embarrass the civil power.¹²

Hunter also reported that Atkins's duties, both as magistrate and as Inspector of Works in the Parramatta district, had been carried out "without the smallest accusation against him," except those made by Macarthur; and these were: "clearly refuted to my satisfaction," the only support coming from worthless convicts who had been tampered with. Hunter was displeas'd at Atkins's letter to Macarthur despite his decision to refuse the application to prosecute. But it is apparent that Hunter thought that, in the circumstances, Atkins's action was excusable, stating: "Altho' I was much displeas'd with this gentleman's conduct in this instance, I cou'd not be surpris'd when I look'd back upon the provocation."¹³

In a dispatch to Whitehall, the Governor also dealt fully with the complaints which Macarthur had preferred against him (Hunter), a copy of Macarthur's list of complaints having been made available. For instance, Macarthur, by way of criticism of Hunter, had emphasized the licentiousness and drunkenness which prevailed throughout the colony. Hunter's reply was withering. The conditions were due to the military oligarchy and to nothing else. The officers had chartered the

¹¹ *H.R. of A.*, series i, vol. vi, pp. 726-7.

¹² *ibid.*, vol. i, p. 672.

¹³ *ibid.*, p. 673.

Britannia, and imported a large quantity of spirits, whereupon

a trade began with the settlers and lower orders of the people, the effects of which will be long felt, and was the ruin of many before industrious people, the destruction of all moral order. And this man so strenuous an advocate for such order and good management was one of the most extensive dealers in the colony. To this unfortunate system, founded upon the ruins of all decency and civil order, all our misfortunes and expenses have been owing.¹⁴

This answering dispatch of Hunter was dated 25 July 1798. As Macarthur's charges against Hunter had been forwarded to Portland on 17 August 1796, they obtained a splendid flying start. Unquestionably Macarthur's denunciations had an effect upon the ultimate decision that Hunter should be recalled.

The bitterness of the dispute between Macarthur and Atkins was aggravated when the contest developed into one between Macarthur and Hunter. The development of so grand a controversy from so trivial a matter as the theft of a few vegetables will not seem so surprising in the light thrown by other disputes upon the methods of Macarthur and the military officers.

¹⁴ *ibid.*, vol. ii, p. 165.

CHAPTER VI

A CASE OF HEARSAY EVIDENCE

THE trial in 1799 of Isaac Nichols well illustrates the difficulties of a governor who dared to oppose the officers of the Corps. Nichols was chief government overseer of the gangs of convicts allocated to labour in and around the town of Sydney. He had been a convict, but became a reformed character, Governor Hunter reporting that: "He was of more advantage to the prompt execution of the different works upon which he was employ'd than any man of his line in the service of Government within this settlement."¹

But Nichols's care in protecting the Government against the unreasonable demands of the military officers and their associates, whose desire to employ free convict labour was insatiable, made him a marked man. Accordingly, a charge was preferred against him before the Criminal Court, it being alleged that he had received a quantity of tobacco knowing it to have been stolen.² The witnesses arrayed against Nichols included several of the most degraded wretches in the colony. For instance, the public executioner was called by the prosecution to prove that he had attended to the place of execution a man who had stolen the tobacco, and that the thief, being at the time both penitent and obliging, told him (the executioner) that Nichols was a party to the theft. Next, a witness named Smith was called. He was allowed by the Court to say that he had met the brother of the thief when the latter was about to be executed, that he (Smith) had advised that brother to find out the truth about the theft, and that subsequently the brother had told him (Smith) prior to the execution that the present accused (Nichols) had received some of the stolen tobacco. By a strange coincidence, the witness Smith happened to be a servant of Macarthur, now

¹ *H.R. of A.*, series i, vol. ii, p. 279.

² By statute the Court of seven consisted of the judge-advocate and six naval or military officers, a majority verdict of four being accepted.

a captain in the Corps. Next, Macarthur himself gave the following extraordinary piece of evidence:

Deposeth that the last witness is his servant, and that he informed him on the evening preceding the execution of Saml. Wright that in a few days he wo'd be made acquainted with a circumstance that would astonish him, and on being interrogated what that circumstance was, he replied that Saml. Wright would confess at the gallows that he had been concerned in the robbery of Captn. Wilkinson, and that Isaac Nicholls had rec'd, or agreed to receive, part of the tobacco stolen from Mrs Mullett's house, the property of Captn. Wilkinson.³

Let us analyse the nature of the evidence which Macarthur was permitted to give. Undoubtedly the tobacco had been stolen, and the thief, who was a notorious criminal, was duly convicted and executed. An important part of the case of the prosecution against Nichols was that, prior to his execution, the thief told his brother that Nichols was implicated in the theft. But the brother was not called as a witness. Even if he had been called as a witness, his evidence would not have been legally receivable. Then Macarthur's servant, Smith, was called as a witness and he said that A (the brother of the thief) had told him (Smith) that B (the thief) had told A (his brother) that Nichols was implicated in the theft. Even a half-wit should have been aware that, at any rate, the evidence of *Smith* was not legally receivable. But the matter was carried even further. Macarthur was permitted to give evidence as to a conversation, not between the thief and his brother (inadmissible), not between the brother and Smith (inadmissible twice removed), but between himself and his servant Smith as to what the brother said to Smith about what the thief had said to his brother.

I do not suppose that in the whole history of any criminal court in the British Empire has similar evidence—hearsay upon hearsay upon hearsay—ever been admitted. And Macarthur must have known that the evidence given by him, although by its superficial appearance it implicated the accused Nichols, was illegally presented to the Court. Thus we find that in his litigation with Robert Campbell Junior during Bligh's governorship, so soon as an attempt is made to tender against Macarthur what he regards as hearsay evidence, he immediately springs to his feet in protest. "I conceive," he says, "that the law requires the best evidence the

³ *H.R. of A.*, series i, vol. ii, p. 294.

case will admit should always be produced." And he adds: "Another reason for my objecting is the dangerous and dreadful consequences to be apprehended (as I conceive) from suffering illegal precedent to be established."⁴

There was no evidence of any value adduced against Nichols, who called some strong evidence to prove his innocence of the charge. Nichols also produced certain letters from the Governor and from Johnston, who was then Hunter's aide-de-camp, in order to prove good general character and exemplary conduct. In spite of this fact, and the fact that, as Hunter reported later, the convicts who gave evidence against Nichols included "the most abandon'd characters in this settlement,"⁵ the accused was convicted by a majority of four to three, the majority consisting of Judge-Advocate Dore and three military officers, one of whom was Bayly.⁶ The minority of three consisted of three naval officers, one of whom was Lieutenant Matthew Flinders, navigator of imperishable fame. In the observations on the case subsequently made by Flinders to the Governor, we have ample proof of the writer's keen mental powers as well as of his essential nobility of character.

It is impossible to quote Flinders's full analysis of the case, but his reference to the hearsay evidence of the executioner was as follows:

In speaking of the evidence of William Johnson, the executioner, I would observe that Samuel Wright must have had great enmity of the prisoner, if we are to believe the evidence for the prosecution; for it should seem he considered Nichols as the principal cause of his untimely end. This being the case, would he not, by deposition before a magistrate, endeavour to gratify his revenge, especially when that and the cause of justice so exactly coincided. But no, a man to whom it would be of little use to tell it—one whom the very situation he holds, in this country at least, stamps as infamous—comes forward and says he told it to *me*! It is to be observed that the clergyman, who is also a magistrate, was with the said Wright after the conversation with the executioner is said to have passed. A confession to this gentleman might have answered his purpose, but he never mentioned the name of Nichols. Can we believe that when he was in a few moments to suffer death, that if he had considered the enormity of Nichols's conduct as the original cause of his unhappy situation, and which at this time must have been very fresh in his memory, that he would not have

⁴ *H.R. of N.S.W.*, vol. vi, p. 334.

⁵ *H.R. of A.*, series i, vol. ii, p. 280.

⁶ Bayly was also a member of the Court which, in 1808, was empanelled to try Macarthur for sedition.

mentioned it? It appeared to me too great an inconsistency at that time, and does so now.⁷

In other reports on the case, Flinders and the two other naval officers show conclusively that there was no justification for the conviction,⁸ and Dore, the Judge-Advocate, was denounced by Hunter in a dispatch to England which asked for the immediate reform of the Courts of the colony

with an upright and independent Judge at its head; for, here, my Lord, the people are extremely bad, so very abandon'd in principle, that if this kind of hearsay evidence is admitted in our Courts for the trial of criminals, or are in any way encourag'd to come forward, there can be nothing so easy as to furnish any number upon any occasion. No virtuous or honest character can feel himself safe; . . . these circumstances demand in the Governor of this colony the most rigid and scrupulous examination of the minutes of every trial, and before he ventures to affix his assent to the verdict he ought to consider the whole evidence and circumstances.⁹

Dore's character is well illustrated by the fact that on one occasion it was discovered that, while acting temporarily as Hunter's private secretary, he had inserted an unauthorized paragraph in an official dispatch of Hunter to England, the paragraph declaring that Hunter was pleased with his (Dore's) services!¹⁰ Later, Dore lent himself, in the official conduct of his office, to the machinations of the monopolists and rum traffickers, described by Hunter as those by

whose monopolys a multitude of conceal'd petty dealers are supplied, who carefully watch the time in which the poor and thoughtless farmer reaps the fruit of his annual labour; being without an opportunity of laying out his little earnings to advantage, they pour in upon him a torrent of useless and often destructive articles, and they receiv'd his crop; thro' this means he is frequently left without bread for his family—ultimately ruin'd, and his person imprisoned at the suit of those petty dealers. This class of people we find have subscribed an artfully drawn up paper, approving of Mr Dore's manner of arrests, because convenient to the ruinous trade they carry on with the farmer, and not less so to the new revenues of the Judge-Advocate's office; but

⁷ *H.R. of A.*, series i, vol. ii, pp. 332-3.

⁸ Professor Scott rightly says of Flinders's memorandum: "It was a skilfully drawn document, and it exhibits Flinders in a light which enhances our respect for him, as the strong champion of an accused man whom he believed to be wronged." (Scott, E., *Life of Matthew Flinders*, p. 158.)

⁹ *H.R. of A.*, series i, vol. ii, pp. 280-1.

¹⁰ *ibid.*, pp. 153, 716.

certainly complete bankruptcy to that description of people who ought to be the support of the colony. This circumstance of itself, my Lord, is so truly insignificant as a defence of that conduct which the other members of the Civil Court have opposed that it cannot appear favourable to Mr Dore.¹¹

Professor Scott's comment on Dore is succinct but justified: "The Judge Advocate was a bitter enemy of the Governor, and the very administration of the law, affecting the liberties of the people, was tainted by these animosities."¹²

Nichols was sentenced by the Court to fourteen years' transportation to Norfolk Island, a punishment then regarded as being worse than death itself. Further, Dore, without waiting for any consideration of the case by Governor Hunter, actually called a special meeting of magistrates for the purpose of accelerating the execution of Nichols's sentence. But Hunter defeated this move by suspending the execution of the sentence pending a decision from England, and he also caused a special Court of Inquiry to be set up to examine Nichols's case. Subsequently, Macarthur again intruded into the affair by visiting another convicted man, and telling him that he understood that he was prepared to make a confession implicating Nichols. This manoeuvre also failed, but it illustrates that Macarthur was not a mere disinterested witness in the case, and that it was regarded as a test battle between the military officers and the civil administration.

The case of Nichols also shows that, when it suited their purposes, the officers of the Corps were ready to employ the tainted evidence of the worst convicts in the settlement. Of course the Corps itself was by no means free from convict taint, Governor King declaring in a dispatch of 1803 that two-thirds of the soldiers in the Corps were originally convicts.¹³

Undoubtedly Hunter's troubles with Macarthur and the officers had originated because the Governor wished to restore the management of the lands, the public stores and convict labour to the civil administration with a view to the encouragement of the small settlers who included a large number of ex-convicts and emancipated convicts. Macarthur took the lead in all the attempts by the military and the other traf-

¹¹ *ibid.*, pp. 246-7.

¹² Scott, E., *Life of Matthew Flinders*, p. 158.

¹³ *H.R. of A.*, series i, vol. iv, p. 174.

fickers to regain by indirect methods, including the control of the Courts, the powers which they had enjoyed during the interregnum between Phillip and Hunter. The latter was particularly vehement against Macarthur, and made a special report on him, asserting:

A person of respectability, now here, assur'd me that he had offered a quantity of grain to the public store during that arbitrary authority over the Commissary Department, and after long solicitation for its being receiv'd he was inform'd that he shou'd have his bill; but the grain cou'd not be receiv'd—it might continue where it was untill wanted. He receiv'd his bill, and the grain continued expos'd to the weather untill it was destroy'd, and that this was the case with some others. These, your Grace will allow, were impositions upon the public purse of a most serious nature, and are not mere assertions, but were it necessary, wou'd be deposed to. My endeavours to put a stop to such shamefull practices, which were probably convenient to many, are the chief cause of those false and ill-founded representations of circumstances which were only known to exist to the public disadvantage during the time in which the original regulations and civil government of the settlement were suspended.¹⁴

Hunter reported to England that he desired to illustrate

in a conspicuous point of view the horrid depravity and wickedness of this man's [Macarthur's] heart. His observation relative to the vice and profligacy of the lower orders of the people I will agree in the truth of, and your Grace will recollect how much I have said upon it in my public correspondence. But let me ask him, under whose authority were the people suffer'd to indulge in licentiousness, drunkenness, and every abominable act of dissipation? When the clergy were allow'd to be insulted in the streets without receiving any kind of redress, and rendered incapable of performing the dutys of their sacred office on the Sabbath Day, from the numbers of drunken soldiers and convicts surrounding the outside of the place of public worship, and often engag'd in card-playing and riot; let me ask this pretended advocate for the moral conduct of the people, what were his answers to the clergyman when he complained to him of such shamefull and unpardonable excesses, and on the spot, too, where his duty lay, and where he commanded? Will he venture to say that such shamefull conduct would have been permitted in my time? No, my Lord, he cannot; he well knows the steps which have been unremittingly pursu'd by me, for suppressing it, and the dangerous trade which occasion'd it, and in which he had no very inconsiderable share. He also knows the good effects of my endeavours to that end; he is cautious to avoid mentioning any act of mine which had for its object the public advantage of the colony; he is carefully silent upon the effects of the civil police establish'd by me, and through which every inhabitant can now sleep in security.¹⁵

¹⁴ *ibid.*, vol ii, p. 168-9.

¹⁵ *ibid.*, pp. 169-70.

CHAPTER VII

THE AFFAIR OF DR BALMAIN

A FURTHER example of the methods employed by Macarthur and his fellow officers to subvert Hunter's government is the strange affair of Dr Balmain. In 1796, a violent attack was made by the soldiers of the Corps on the house of one Baughan who had made himself obnoxious to the officers and their fellow rum traffickers. The attack was so unprovoked that the town became alarmed, and there was a general demand that the wrongdoers should be punished. Chief Surgeon Balmain, in his capacity as civil magistrate, sought to interrogate Baughan, but the latter, frightened of further outrages at the hands of the military, was disinclined to give particulars. Balmain warned him that he must not endeavour to compound the felonies which had undoubtedly been committed. Thereupon, the military officers intervened. Macarthur, writing on their behalf to Balmain, asked (i) whether he (Balmain) had advised Baughan to prosecute the soldiers, and (ii) whether he (Balmain) had threatened Baughan with prosecution unless he gave particulars of the outrage. On 8 February 1796, Balmain replied to Macarthur stating that he had certainly advised Baughan that he must not compound the felonies, and that he had also assured Mrs Baughan, who feared that the soldiers might kill her husband, that he would be properly protected. Thereupon, Balmain received from Macarthur, still acting for the officers, the following communication:

That after a calm and dispassionate consideration of Mr Balmain's conduct, as expressed in his letter to Capt. McArthur, they should be wanting in justice to themselves if they omitted to express their indignation at his shamefully malevolent interference in the affairs of their corps.¹

¹ *H.R. of A.*, series i, vol. ii, p. 176.

Balmain's answer was sent, not to Macarthur, but to the officer commanding. In it he denied that he bore the slightest malevolence towards the Corps as a whole, and added:

that he is fully persuaded that, altho' the whole body of the officers are drawn into this dispute, and that in their name generally they have endeavour'd to heap reproach upon his head, they have been excited thereto by the base insinuation of some particular person who delights in strife, and who wou'd meet from him the chastisement he merits if he cou'd fix on him.²

Balmain received no reply to this letter, so he wrote to Macarthur direct, charging him with being "the chief promoter and principal author of the abuse with which he had that day been loaded."³ Whilst he (Balmain) had esteem for many of the officers, he considered that it was his duty to tell Macarthur that he (Balmain) "considers him a base rascal and an atrocious liar and villain, and says his friend, Mr Palmer, the Commissary, who is the bearer, will receive his answer."⁴

On the next day Balmain received the following communication signed "The Officers of the New South Wales Corps":

That Mr Balmain's letter to Captain McArthur had been read to them, and that they were unanimously of opinion that no other notice cou'd be taken of it by him but that which he did take; that the censure thrown on Mr Balmain was the act of the whole corps; that collectively and individually they consider'd his conduct towards them with the highest degree of contempt and indignation; that his letter to Captain McArthur, instead of lessening that contempt, has serv'd to increase it, as it proves him ignorant of the language of a gentleman, as his language have determined him incapable of sentiments of honour or integrity; that if he is inclin'd to justify himself, or to resent in a proper manner the opinion of the corps towards him, he has nothing more to do than to communicate what his wishes are with them; that if he desires to explain himself individually the corps will point out an officer for that purpose, and if he shou'd fail in giving Mr Balmain the satisfaction requir'd, another and another will be fix'd on untill there is not one left to explain; that it is hop'd Mr B will not understand what has been said as an unmeaning threat, for he may assure himself that they are all earnest for an opportunity of punishing the infamous conduct of the person on whose part Mr Palmer stood there, and that no one will voluntarily resign to the other his right to inflict it.⁵

This amazing document left Balmain without redress, for both the Criminal Court of the colony and any military

² *ibid.*

³ *ibid.*

⁴ *ibid.*, p. 177.

⁵ *ibid.*

Court Martial to which appeal might be made would be under the practical control of Macarthur and his fellow officers. But Governor Hunter was blamed by the Home authorities for failing to punish the perpetration of the original outrage on Baughan, and his excuse as rendered to Portland again reveals Macarthur's capacity for deception:

I acknowledge with concern, my Lord, the justice of your Grace's remarks relative to the lenity I was induc'd to shew to the turbulent and refractory conduct of the military, but I trusted the reasons I gave in my letter on that subject would have proved satisfactory to your Grace. I stated that it was my intention to have instituted a criminal prosecution against the principal parties concerned, and not to have tried them by a Court-martial, and that I actually signed a warrant for the apprehending them, but at the instance of the officers of the corps, the Judge-Advocate, and the injured party, together with the professions of contrition made by the troops, as reported to me by the officer who delivered their different messages, I was prevailed upon to withdraw the warrant, a circumstance which I had too much reason afterwards to consider ill-judged on my part and highly unmerited on theirs, *and I have since been convinced that the messages I received from them by Captn. McArthur were of a more moderate nature than they had authorized him to deliver.*⁶

I regard the Balmain Case as one of great significance. Although the rank and file of the Corps had made an open and most indefensible attack on Baughan's house, they were supported by Macarthur and the officers. First, the injured man and his wife were frightened into silence. Dr Balmain, more public spirited, endeavoured to force an investigation into the affair with a view to the enforcement of the law against the offenders. But Balmain was humiliated and defamed because, through Macarthur's intervention, the dispute was elevated into an affair of the regiment. Balmain, left without any other effective weapon, challenged Macarthur, but was answered by the monstrous proposition that, if he persisted in his challenge, he would not be met in the field by Macarthur, but would be pursued to the death by a band of champions, each in turn chosen to represent the officers in combination.

An analysis of this affair should be of assistance in forming a sound judgment on the subsequent overthrow of Bligh by the military officers. Even in a strict legal investigation it sometimes happens that the Court will allow evidence to be given

⁶ *ibid.*, p. 148. (Italics are mine.)

of similar acts by accused persons in order to afford an explanation of the character of the particular act which is under review. This is done either to negative the ever-ready excuse of accident or mistake, or else to prove the existence of elaborate system or design. For our purposes, the Balmain Case can fairly be used to show Macarthur's *modus operandi* when engaged in fierce controversy with a highly placed officer of the colony. First, he tries to silence his opponent by threats that, unless the opponent yields to Macarthur, unpleasant consequences will ensue. But the opponent proves obdurate, and in his turn threatens to apply force to Macarthur personally. This is countered by Macarthur's rallying to his side the united force of the Corps, not only to protect himself, but to threaten the destruction of his opponent.

When we consider the usual tactics of Macarthur in his disputes with Bligh, we will find that it resembles in several important particulars his dealings with Dr Balmain. Above all, Macarthur will be found able to magnify his personal controversies with Bligh and the civil administration into a struggle between the regiment and the Governor.

CHAPTER VIII

A CASE OF ASSAULT

By tactics such as we have been able to illustrate, Hunter's authority was gradually lessened by the officers of the regiment, of whom Macarthur was generally the chief representative. Next we find that the attacks which Governor King underwent at the hands of the same combination were not dissimilar. Once more Macarthur is the leader in nearly every contest with the Governor, Dr Watson understating the position when he says that: "Macarthur appeared to be the leader of the discontented party."¹ In order to form a judgment of the Rum Rebellion, it is of advantage to follow through a particular instance the *modus operandi* of Macarthur and his fellow officers.

A Lieutenant Marshall was put on his trial before the Criminal Court, charged with having assaulted first Abbott and then Macarthur himself. At this time Major Foveaux was administering Norfolk Island, and Major Johnston was absent in England, so Macarthur was acting as second in command of the regiment, Paterson being in command. Macarthur had made certain charges against Marshall, who in turn insulted Macarthur. Macarthur then challenged Marshall to a duel², but Captain Abbott, who was named as second by the challenger, objected to proceeding with the duel on the ground that Marshall's appointed second, a young shop assistant named Jefferies, was not Abbott's co-equal according to the rules of duelling.³ Marshall protested that the objection was obviously frivolous, and offered that either Macarthur or Abbott should be allowed to name his (Marshall's) second so that the duel might proceed.

Whether there was a misunderstanding of Marshall's offer

¹ *H.R. of A.*, series i, vol. iii, intro. p. xviii.

² *ibid.*, p. 199.

³ *ibid.*, p. 200.

by Macarthur or Abbott, or whether they thought better of it, they failed to turn up at the place and time originally appointed for the duel. Next, Marshall came upon them both, and the result was that Macarthur and Abbott severally prosecuted Marshall for assault. The Court consisted of Atkins as Judge-Advocate, five military officers (including Piper and Paterson) and one naval officer. Marshall objected to the five military officers' hearing the case on the ground that they were so prejudiced against him that he could definitely prove the existence of a combination against him on the part of all the officers of the Corps. His objections were summarily overruled, and Marshall was first convicted of assaulting Abbott. In the case of the prosecution by Macarthur, a special finding was made by the Court to the effect that there had been threatening conduct on Marshall's part. But the Court declined to determine whether such conduct amounted in law to a punishable assault.

Macarthur's address to the Court is noteworthy for the extraordinary combination of skill, exaggeration, malice and grandiloquence which is equally visible in all the speeches which he prepared for consumption by the tribunals of the colony. Referring to Marshall, he said:

Let me intreat you to look upon this Man, view his gigantic Stature, examine his tremendous Club, imagine that you see him advancing (as it has been Sworn to you he did) intoxicated with Fury, breathing Mischief, and looking Destruction to the Object of his Search, and you will be enabled to form *some* Idea of the Danger of my Situation—for I have neither Language or Ability to give you a just or adequate description of it—it is true I was Armed with a Sword to oppose him (a Weapon as appropriate to Me as an Officer, as a Bludgeon was to him as a Ruffian), but what Could a Sword have availed in my Defence if this Monstrous Mass of Matter, this second Goliath had been animated with one Spark of Spirit, with one Atom of Courage? When I saw him hastening towards me with Rapid Strides, . . . his Club grasped firmly and uplifted in readiness to descend on my Head, I must Confess that I for an instant thought I had to encounter a most perilous Adventure; that I had exposed myself by braving his Threats to a most imminent Danger on most unequal Terms. Who is there who saw him advance, armed as he was, and who had witnessed or heard of his Attack upon Capt. Abbott, but supposed I must immediately be Crushed beneath his Arm? Such was my own expectation and great was my Astonishm't to observe my drawn Sword instantly Operating on this ferocious Savage, like the Wand of a Necromancer or the Talisman of a Magician to see it in a Moment taming him from the Excess of Offensive fury into unconditional Surrender and coward like Submission; to find him who

the inst. before stood elate in the Confidence of his Strength, suddenly frightened into the attitude of a Suppliant with his Weapon dropt to ye ground and asking in a tremulous Tone of mingled Terror and Intreaty Whether I would "then run him thro' the Body."⁴

But the retort of Marshall is not unworthy of attention. He said:

I cannot avoid expressing my Astonishment at the Effrontery of Capt. McArthur in my presence, in the presence of any Man of Honor, attempting to justify his late Conduct; he would fain persuade you that I am the Coward; but you know perfectly well from your own and from the world's knowledge of that Man, and the Circumstances which have appeared before you, as well as those upon Record in the History of this Colony which of the two Shrunk from his Engagement—I will say from his Claim, if a Man so acting has any Claim, to Honor.⁵

Having a considerable doubt about this case, Governor King decided to remit the sentence passed on Marshall for assault on Abbott (viz. £50 and one year's imprisonment), conditionally upon Marshall's leaving the colony. Prior to that, he requested Atkins, as Judge-Advocate, to reconvene the Criminal Court for the purpose of considering fresh evidence.⁶ But the Governor received a somewhat curtly worded "protest" from the five military members of the Court. Neither Atkins nor Grant (who was the one naval officer sitting on the Marshall trial) joined in this "protest," which asserted that the seven members of the Criminal Court were "unanimously of opinion" that it was impossible to reopen the case. Thereupon, King forwarded a copy of the protest of the five officers to Atkins and Grant, who both denied that the decision refusing to reopen the case was unanimous. Next, Macarthur, although he had been prosecutor and was the last person who should have interfered, sent an impudent letter to King, insinuating that he and Abbott had taken proceedings against Marshall on the Governor's personal advice.⁷

This attempt of Macarthur to involve the Governor failed, King sending a dry reply denying that he had given Macarthur any such advice. Next, the five military members of the Court wrote to King declaring that the decision not to reopen the case *was* unanimous, and depositions to that

⁴ *ibid.*, pp. 213-14.

⁶ *ibid.*, p. 218.

⁵ *ibid.*, p. 215.

⁷ *ibid.*, pp. 221-2.

effect were sworn by all five. Then Atkins explained that he did not cast any vote on the question because, four members having previously voted, his vote would have made no difference.⁸ Then Macarthur replied to the Governor, gently suggesting that the latter's denial that he had advised Macarthur was probably a lie.⁹ There was further correspondence, and Macarthur had no difficulty in procuring a corroborative statement from Abbott also questioning the Governor's veracity.¹⁰

Because of his part in the Rum Rebellion against Bligh, it is important to estimate Atkins's position in this strange dispute. As Judge-Advocate, he showed weakness in failing to decide, one way or the other, whether the actions of Marshall amounted to an assault on Macarthur. He temporized probably because he disbelieved Macarthur, or considered his evidence greatly exaggerated. Again he showed great weakness in failing to give a vote on the question whether the case should be reopened. Certainly, Atkins was a most vacillating character, and this rendered him susceptible to the great force of Macarthur's personality, despite the latter's having previously made Atkins the victim of reckless and unsubstantiated charges. When Governor King reported on the Marshall trials he referred thus to Atkins:

Respecting the Judge-Advocate, you know he is only acting in the room of Mr Richard Dore, deceased. Of him you also have heard. He [Atkins] is the brother of the late Sir George and of General Bowyer, and is closely connected with Mr Samuel Thornton. He is a man of abilities and exceeding clever, but is, unfortunately, sometimes addicted to liquor. If the salary of that officer is not raised, so as to induce some professional man of rectitude and resolution to undertake it, I do not think a better person can be sent out than Mr Atkins, as I fear few such men of abilities would undertake that situation with the present salary.¹¹

Such was King's view of Atkins in August 1801, and later (in March 1802), he reported that Atkins: "is the only person in the colony any way fit for that office."¹² Yet he added: "As so much information and assistance to the Governor is required of the person who acts in that situation, I humbly suggest to your Grace's consideration the propriety of a person having some general knowledge of the law, and a fair

⁸ *ibid.*, p. 230.

¹¹ *ibid.*, p. 246.

⁹ *ibid.*, p. 234.

¹² *ibid.*, p. 407.

¹⁰ *ibid.*, p. 235.

character, being sent here to fill that important situation as soon as possible."¹³

Unfortunately for Bligh and for New South Wales, the authorities in England let the matter of legal reform drift on.

Reporting on Macarthur's attempt to embroil the Governor in the Marshall affair, King was short and to the point:

One thing I shall remark, that the arts and intrigues of a man you have heard so much about (I mean Captain McArthur) will one day or other sett this colony in a flame. Look at the art contained in his letter to me of the —¹⁴ in the documents and my answer. His intention was to involve me in their dirty dispute.¹⁵

¹³ *ibid.*

¹⁴ Blank in the manuscript. The date was 18 August 1801.

¹⁵ *H.R. of A.*, series i, vol. iii, p. 246.

CHAPTER IX

A DUEL THAT WAS FOUGHT

MACARTHUR deeply resented Governor King's questioning the bona fides of the Marshall prosecution, and set about the task of inducing the officers of the Corps to boycott the Governor. But the commanding officer, Paterson, though prepared to go a great distance with Macarthur, would not join in the combination. Paterson had acted as a member of the Criminal Court, and King subsequently reported:

I freely and fully forgave Col'l Paterson for acting otherways in this dark transaction than as the instrument of one who had a certain point of resentment to obtain. An officer (the Adjutant) no sooner heard that Col'l Paterson and myself intended to dine together, than notice thereof was sent to Capt'n McArthur. This information and much other disapprobation arising in Capt'n McArthur's mind respecting Col'l Paterson's not choosing to set me at defiance, occasioned (as it has since appeared) an exposure of much private correspondence by Capt'n McArthur, very hurtful to Col'l Paterson's feelings.¹

Macarthur turning his resentment against Paterson, the result was a duel between them, Paterson receiving a bad wound. Paterson subsequently excused his duelling by dwelling on Macarthur's "perfidious behaviour towards me," following upon his refusing to join in the combination to insult the Governor. Paterson also stated that if he had brought Macarthur to a court martial for attacking his (Paterson's) character, he "could not expect due candour from those officers under such [Macarthur's] influence."²

Paterson had been deeply mortified by Macarthur's having threatened to disclose certain letters written by him (Paterson) to Marsden and also by: "some occurrences of a private nature, which hurt my feelings as poignantly as those on which I was attacked in my public capacity."³ It appeared

¹ *H.R. of A.*, series i, vol. iii, p. 280.

² *ibid.*, p. 301.

³ *ibid.*, p. 302.

that Macarthur had actually read to several persons a most private letter sent by Mrs Paterson to Mrs Macarthur, "putting the most ungenerous and ungentlemanly interpretations on its contents."⁴ Paterson bitterly complained to King that, although Macarthur was living as a guest in his (Paterson's) house: "he did by agents or otherwise give you such information respecting my letters as he thought would tend as much as possible to create dissention."⁵

King now determined to act with vigour. Piper had acted as Macarthur's second, and King reported:

Captain Piper's conduct in going out with an officer against their commanding officer, and against a man who had always acted towards him as a father and a friend, and departing so much from the rules of propriety (if I may so term it) as allowing Capt'n McArthur to load his own pistols, were circumstances that excited my most serious reprimand, and as he had then nothing to offer in reply I ordered him to return to his confinement, and prepare for being sent to England. Soon after the surgeons reported that Col'l Paterson's life was by no means out of danger. As some restraint on those officers who were concerned in this affair appeared necessary, until a more favourable report could be made, I conceived that by putting them into an arrest in their own houses would be more eligible than placing them in a common jail among the worst of felons.⁶

King perceived that, while Macarthur remained in the colony, justice could not be administered impartially by the members of the regiment whom he was able to influence both by the power of his wealth and the fierce directness of his personality. So the Governor reported:

Throughout the whole of this unfortunate event—nay, from the very first part of this statement—Capt'n McArthur's conduct appeared more than suspicious to me, in advising the officers during Lieut't Marshall's trials. His insinuating artful letter to me of the 18th August, calculated entirely to serve political purposes; his endeavours to persuade the officers not to come near me but on points of duty.⁷

Thus the Governor reached the conclusion that Macarthur must be dealt with outside the colony:

Therefore, as Captain McArthur did not choose to quit his arrest unless tried by a General Court-Martial, nor to give the necessary securities for keeping the peace, I judged it necessary and indispensable

⁴ *ibid.*

⁷ *ibid.*, p. 284.

⁵ *ibid.*, p. 318.

⁶ *ibid.*, p. 281.

for the tranquility of the colony and regiment to direct that officer to be sent to England in the arrest he continued himself under, there to answer for his conduct in the preceding transactions, and more particularly on the representations I have very reluctantly been obliged to make, viz., of his having endeavoured to create a dissention between me and Lieut'-Colonel Paterson.⁸

⁸ *ibid.*, pp. 284 5.

CHAPTER X

THEFT OF A VITAL DISPATCH

HAVING a vivid recollection of Macarthur's successful defiance of Hunter, King was determined that the authorities in England should be made fully aware of Macarthur's attacks, not only against himself, but against his predecessor. He therefore prepared a most elaborate and impressive dispatch, giving the fullest particulars of the Marshall Case and the Paterson duel, and annexing copies of all the material documents.

In a report which accompanied King's dispatch to Portland, Atkins, as Judge-Advocate, stated that Macarthur was responsible for all the feuds and animosities of the colony and that it was notorious to any common observer that, by his "rapacity in accumulating a large fortune in so short a time, his extortions on the industrious and laborious settler,"¹ the colony had been seriously injured. Further, Macarthur had become "a common disturber of the public peace."² The quick amassing of Macarthur's fortune was also stressed by King himself in a private letter to Under-Secretary King which alleged that Macarthur, although an officer on full time, had made £20,000 in ten years. Unfortunately, nearly every step the Governor took: "clashed . . . with the interest of trading individuals, both commissioned as well as uncommissioned, that all set their wits to work, not only to thwart my exertions, but also to use every measure that art, cunning, and fraud could suggest."³ Macarthur, King added, was the principal in many surreptitious dealings in liquor, and it was necessary to protect the inhabitants and the public peace "from the monopolies and extortions that have been so long practised."⁴

¹ *H.R. of A.*, series i, vol. iii, p. 313.

² *ibid.*

³ *ibid.*, p. 323.

⁴ *ibid.*

King furnished a striking picture of the man who was destined to be Bligh's opponent and lifelong enemy:

His employment during the eleven years he has been here has been that of making a large fortune, helping his brother officers to make small ones (mostly at the publick expence), and sowing discord and strife. The points I have brought home to him are such that, if properly investigated, must certainly occasion his quitting the New South Wales Corps and the Army. . . . Experience has convinced every man in this colony that there are no resources which art, cunning, impudence, and a pair of basilisk eyes can afford that he does not put in practice to obtain any point he undertakes. It is to these odds and the independence of his fortune that I have to oppose my exertions for the tranquillity of this colony, the welfare of the publick service, and my own reputation. Had I allowed Capt. McArthur to direct the concerns of this colony, and Col'l Paterson had allowed him to command the regiment, this perturbator would have so far remained in silence as first to turn the surrender to his own advantage, but not without scenting an opportunity to throw the colony into that confusion he has so lately failed in doing. However, as a very different conduct was pursued by me, persecution and opposition became Captain McArthur's system.⁵

King next declared that Macarthur had taken the offensive against all the governors of the colony:

If the records of this colony, now in your office, are examined you will find his name very conspicuous. Many and many instances of his diabolical spirit had shown itself before Gov'r Phillip left this colony, and since, altho' in many instances he has been the master worker of the puppetts he has set in motion. So sensibly wounded were Gov'r Hunter's feelings previous to his leaving this colony that he was obliged to call this perturbator to a private account, which he declined.⁶ The injuries Col'l Paterson received from him have been such as to compel him to that resource; and I can assure you, sir, that nothing but the inevitable confusion and ruin the colony would have fallen into by any accident happening to me has prevented my sacrificing duty and the publick welfare to resenting the injuries I have received. If a Governor—nay, a succession of Governors—are to be thus treated, painful, indeed, will that man's situation be, if the very people who ought to afford him every assistance (in managing such a class as this colony is composed of) are allowed to treat him, his authority (which is the King's), and the necessary discipline of subordination with disrespect and contempt; and if this is allowed with impunity, unhappy must be the lot of both Governor and governed.⁷

⁵ *ibid.*, pp. 321-2.

⁶ It has been said that there is no official record of Hunter's having challenged Macarthur. But it was not likely that Hunter would have officially recorded such an affair. In any event there is evidence that many official documents were destroyed by the rebel administrations of 1808-9.

⁷ *H.R. of A.*, series i, vol. iii, pp. 322-3.

To this portion of his indictment, King added the important reference:

And should any further proofs be wanting of the restless and turbulent conduct of Capt'n Jno. McArthur, beyond what are contained in the preceding statement and proofs, I must require that the evidence of the late Governors Philip and Hunter may be procured, which, with many documents now in the Secretary of State's office, will fully prove that this conduct of Capt'n McArthur's has not been confined to the present moment.⁸

Some historians have asserted that there is no evidence that Phillip had been on anything but the best of terms with Macarthur. But there is such evidence; and it is of a very convincing character. The records show that at his so-called trial on 2 February 1808, after the overthrow of Governor Bligh, Macarthur cross-examined Palmer as follows:

You have sworn that you considered me to have been always a discontented character under every Gov'r;—was I discontented under the government of Gov'r Phillip?—I thought so.

State one particular instance of discontent which you know?—Mr McA. was discontented at Gov'r Phillip not allowing him to keep a cask or two of spirits, which Gov'r Phillip had ordered me to put into the store.

Do you not know that the cask or two of spirits to which you allude was the property of the present L't-Gov. [i.e. Johnston], and purchased from the Royal Admiral for the supply of the regiment, by order of Major Grose?—No, I do not. It is so long ago I cannot speak to it.

When you came to me with a message from Gov'r Phillip, desiring that this cask of spirits might be given up, did I not tell you that I had nothing to do with it; that it was lodged in the regimental store, of which I had the charge; but that I would accompany you to Gov't House and explain the circumstance?—It is so long ago that I cannot recollect.

Did you not accompany me to Gov't House; and when we were introduced to the presence of Gov'r Phillip did he not, in a violent passion, refuse to hear a word, and declare that he would instantly put me into arrest?—I do not recollect, perhaps I might.

Did I not reply: "Sir, you may please yourself. You are the first officer that ever threatened me with an arrest; and I give you my word of honor, if I am put in arrest, I shall require a full and sufficient explanation of the cause before I consent to sit quietly down under such a disgrace"?—I do not recollect being present at such a conversation.

Did I not immediately retire, and having given you the key of the regimental store, did you not cause a legar of brandy to be rolled from thence and put into the public store?—I do not recollect it.

Was not that cask of spirits given up the day after to Major Johnston,

⁸ *ibid.*, p. 285.

the proprietor of it, by order of Governor Phillip?—It might; I cannot say.

Do you not know that from the violent language used to me that night by Gov'r Phillip, I ever after refused to sit at his table?—I have already said I do not recollect being present at any conversation with Mr McA. and Gov'r Phillip.⁹

The answers given by Palmer to Macarthur are of no importance whatever. But Macarthur's questions are of great significance as admissions against himself and conclusively establish King's assertion that there was serious trouble between Phillip and Macarthur.

On the very eve of his departure to England, Macarthur was looking forward to his ultimate return to the colony; so he calculated that even now it would be worth while to enlist the sympathy of the rank and file of the regiment with himself and against Paterson and King. Accordingly, after King's order of 23 September 1801, requiring Macarthur's departure for England, the latter distributed liberal quantities of spirit amongst the members of the regiment who were at Parramatta. The civil magistrates at once ordered the seizure of the spirits, but the soldiers sallied forth with sticks and other weapons to rescue by force the liquor which the constables had lawfully seized. The particular incident did not lead to serious trouble owing to decisive action by two of the officers, but King had to direct Paterson officially that: "Captain McArthur will also be informed that I require he does not give any more spirits to the detachment, or otherwise interfere with any part of it."¹⁰

King's dispatch denouncing Macarthur was dated 5 November 1801, and was a very bulky document. A copy of it fills nearly fifty pages in the printed historical records.¹¹ Dr Watson's account of the fate of these vital documents must be mentioned:

Even before leaving Sydney, rumours of the probable theft of them were prevalent, and King took special precautions. Nevertheless, when the despatch box was opened in London, the despatch and papers had vanished. This theft clearly demonstrated the wish of someone to suppress the early arrival in London of the evidences of guilt.¹²

⁹ *H.R. of N.S.W.*, vol. vi, pp. 499-500.

¹⁰ *H.R. of A.*, series i, vol. iii, p. 300.

¹¹ *ibid.*, pp. 274-321.

¹² *ibid.*, intro. p. xix.

The learned editor of the *Historical Records of Australia* adds:

These despatches were placed on board the brig *Anna Josepha*, in the care of Lieutenant James Grant; but when the despatch-box was opened in London, it was found to be empty. Before the brig sailed, King had been warned that such a theft would be attempted, and the conduct of the master, H. Meehan, fully justified such a warning. In consequence, the box was not sent on board until the brig was under weigh, and Meehan was compelled to give a bond of £500 that neither Lieutenant Grant nor the despatches should be interfered with. The *Anna Josepha* left for the Cape of Good Hope, and at that port Grant transhipped. When he heard of the theft, King severely censured Grant. The theft was evidently instigated by someone who was desirous of suppressing first information of the Macarthur-Paterson-Marshall trouble.¹³

So far as it goes, Dr Watson's conclusion is unanswerable. But the question he leaves unanswered is, who organized the theft? Of course, every one concerned knew that a copy of the document would be retained by King, and that, if subsequently required, it could be sent to England by another vessel. But time was of the essence of the matter. If, on his arrival in England, Macarthur was able to state *his* case against King, with the latter's case quite unheard, the former would be placed, as in fact he was placed, in a position of enormous strategic advantage. All the documents contained in the Governor's dispatch were aimed at Macarthur's exile from the colony. To protect his interests, it was necessary that the receipt of King's dispatch should be postponed for a considerable period of time. The only available method was a theft. The possibility of a theft had already occurred to King. The theft took place.

The combination of all these concurring circumstances, including the circumstance of overwhelmingly powerful motive, shows that the theft of the Governor's dispatch was committed with the sole object of helping Macarthur. The inference is irresistible that either he or some close associate of his arranged that the damning documents should be stolen and destroyed. I can see no other reasonable hypothesis which is consistent with all the facts. Need it be added that in the colony there was no lack of professional men who could efficiently arrange for the destruction of the incriminating

¹³ *ibid.*, pp. 776-7.

documents, even before the vessel cleared the famous Heads of Sydney?

Who would not live a year or two in Sydney,
To get acquaint with all its nonpareils;
To dine with people of a certain kidney,
And bask in all the sunshine of their smiles?
They don't live quiet, as they ought, and hid. Nay,
Proud of expulsion from the British Isles,
Some glory in their shame! *Very strange tales*
*Are told of gentlemen of New South Wales.*¹⁴

Let us picture the position of Macarthur after King's decision to send him to England. For the second time he had set himself openly to defy the Governor of the colony. The case against him was one of discrediting the civil administration so as to obtain effective control of the colony in the interests of himself and the officers of the New South Wales Corps. And when Paterson was not prepared to go to the extreme length of intimidating the Governor, Macarthur brought his own commanding officer within the range of the officers' enmity. At that moment Macarthur's fortune seemed to have deserted him, for, having seriously wounded Paterson in the duel, it seemed impossible that his conduct could be condoned by the Home authorities. Further, being sent home in disgrace, he might even suffer a ruinous sentence at the hands of a general Court Martial.

¹⁴ cf. Lang, Rev. J. D., *An Historical and Statistical Account of New South Wales*, vol. i, p. 137.

CHAPTER XI

NECESSITY TURNED TO GAIN

MACARTHUR sailed home via India, and, through his vessel's seeking shelter at Amboina, he met Sir Robert Farquhar and did him some slight service. Farquhar was the son of Sir Walter Farquhar, physician to the then Prince of Wales, and was closely related to one Watson or Watson Taylor, private secretary to Lord Camden, the Secretary of State for the Colonies. Macarthur soon reached terms of close friendship with the Farquhars, and, through them, with Watson, and, through Watson, he obtained ready access to Lord Camden himself.

These facts help to explain why Macarthur was successful, not only in repelling Governor King's attack, but in advancing his own material interests. He resigned his commission in the Corps, and, when he returned to Sydney in June 1805, together with Davidson, a nephew of Sir Walter Farquhar, he carried an important letter from Camden directing King to make a grant to Macarthur of 5000 acres of pastures, and to Davidson one of 2000 acres, the land of Davidson to be contiguous to that of Macarthur.¹ Undoubtedly, Camden's intervention was partly due to Macarthur's skilful propaganda in England, where he advocated the claims of New South Wales² as a suitable place for the development of the fine wool industry. Even ex-Governor Hunter, his old enemy, was induced by Macarthur to give evidence before the Committee of the Privy Council³ which was summoned to investigate the matter.

By some mysterious means, Hunter must have been molli-

¹ *Early Records of the Macarthurs of Camden*, p. 103.

² Owing to the uncertainty of supplies from Spain, the English manufacturers of cloth were gravely concerned as to their future sources of raw material.

³ *Early Records of the Macarthurs of Camden*, p. 95.

fied, because he said in evidence: "I have no doubt that any offer he [Macarthur] may make will be worth attending to."⁴ In his own evidence, Macarthur naturally emphasized his services as the pioneer of the fine wool industry. He omitted to mention the valuable services of Kent, Waterhouse, Marsden, Cox and Hobby.⁵ When their lordship specifically asked him whether, in case an unconditional grant of land would be deemed objectionable, any other measures could be taken for encouraging the breed of fine-woolled sheep, Macarthur said that he was:

So convinced of the advantage which would result to the country that he should most cheerfully proceed in the business upon receiving a conditional grant of land until Government shall be satisfied of the importance of the measure. If the object should not be found to answer the expectations of Government such grant to be resumable.⁶

The Privy Council, whilst impressed by Macarthur's advocacy, carefully refrained from recommending an unconditional grant of land either to Macarthur or to a joint company or to any other individual "as such Grant might retard, or prevent the other Inhabitants of New South Wales from turning their attention to the growth and improvement of fine wool, or perhaps in other respects counteract improvements of the Colony."⁷

There is a very striking contradiction, which has not been noticed by the historians, between the recommendation of the Privy Council—after hearing sworn evidence and duly noting that Macarthur had practically accepted their suggestions—and the subsequent direction of Lord Camden, after hearing the *ex parte*, but, no doubt, more powerful, persuasion of the Farquhars and the Davidsons through their relative Watson. The Privy Council recommended that the Governor of New South Wales should report as to the best means of encouraging the fine wool industry, and all they would suggest for Macarthur's personal behoof was that a conditional grant might perhaps with safety be given to him for the pasturage of sheep only, the Crown reserving power

⁴ *H.R. of N.S.W.*, vol. v, p. 396.

⁵ For an interesting account of the beginnings of the importation of sheep into the colony see *H.R. of N.S.W.*, vol. vi, p. 700.

⁶ *ibid.*, vol. v, p. 395.

⁷ *Early Records of the Macarthurs of Camden*, p. 95. This view of the matter was adopted, to some extent, by Governor Bligh.

to resume the land subject to its allowing the use by Macarthur of land elsewhere situated.

This carefully guarded recommendation of the Privy Council was probably inspired by Banks who, in a letter dated 31 March 1804, four months before the date of the recommendation, wrote to Macarthur that although he (Banks) was quite aware that the success of the colonial sheep venture would be of infinite importance to the manufacturers of England, the question was whether the adventurers (Macarthur had suggested the formation of a company) would be content with a grant of a large quantity of land: "as sheepwalks only, resumeable by the Government in any parcels in which it shall be found convenient to grant it as private property on condition of an equal quantity of land being granted in recompence as sheepwalks."⁸

Banks gave reasons for his query, saying:

I doubt much the propriety of granting land in perpetuity to a scheme which embraces nothing but the feeding of sheep. The run over land suited for that purpose is all that can be wanted, and as your sheep will retire as the colony increases, no inconvenience can possibly derive from such an arrangement.⁹

Dr Mackaness criticizes Banks's letter as betraying a "lack of foresight insofar as our great pastoral industry is concerned."¹⁰ But I beg leave to doubt the validity of this criticism, for many of the struggles which subsequently developed between pastoralist and agriculturalist might have been avoided if, from the very outset, Banks's general principles had been adopted. Clearly, the Privy Council accepted them. Yet Camden, subject to the powerful private influences I have mentioned, and without expressly justifying such action, deliberately overrode the advice of the only body which had obtained accurate information after holding a full investigation.

Another question arising out of Macarthur's visit to England is this: Why were no steps taken by Camden to investigate the theft of Governor King's earlier dispatch to Portland which was so damning to Macarthur? It seems plain that this omission must have been due, in part at least, to the fact that at the material time Camden's private secretary was

⁸ *H.R. of N.S.W.*, vol. v, p. 365.

¹⁰ Mackaness, G., *Sir Joseph Banks*, p. 100.

⁹ *ibid.*

hand in glove with Macarthur. The book *Some Early Records of the Macarthurs of Camden* discloses considerable evidence of a close association between Macarthur and those in charge of the Colonial Office. We have noticed that Macarthur distributed rum as a farewell present to the common soldiers of the New South Wales Corps. He selected other classes of gifts as a *douceur* to powerful persons in England. For instance, on 7 October 1808, Macarthur received the following note from his son:

The two emues arrived safe, and were presented to Lady Castlereagh, and one swan and a goose lived, which were given to Lady Camden. Mr Watson desired me to say that their ladyships were desirous of having some bronsewing pigeons; but he would not permit me to give the pair I had, because he thought that so many presents at one time would overdo the business. I was enabled to make Mr Watson a very handsome present in the bird way. I have made several to different people, and have not parted with all yet.¹¹

We should not forget that the age, although productive of great genius, was equally characterized by great corruption. Sydney Smith insisted that the period between 1800 and 1825 was

an awful period for those who had the misfortune to entertain liberal opinions, and who were too honest to sell them for the ermine of the Judge or the lawn of the Prelate; a long and hopeless career in your profession, the chuckling grin of noodles, the sarcastic leer of the genuine political rogue. . . . The man who breathed a syllable against the senseless bigotry of the two Georges or hinted at the abominable tyranny and persecution exercised upon Catholic Ireland, was shunned as unfit for the relations of social life. Not a murmur against any abuse was permitted; to say a word against . . . any abuse which a rich man inflicted or a poor man suffered, was treason against the *Plousiocracy*, and was bitterly and steadily resented.¹²

Under such tyranny corruption flourished, and it is notorious that Pitt, Camden and Castlereagh purchased the votes necessary to pass the Act of Union through "corruption; black, hideous, horrible, revolting at any time, atrocious when it is remembered that it was a nation's birthright that was being sold."¹³

With corruption practised on the grand scale, minor im-

¹¹ *Early Records of the Macarthurs of Camden*, pp. 172-3

¹² *Works of Sydney Smith* (1854), preface pp. iv-v.

¹³ Rosebery, Earl of, *Pitt*, p. 189.

proprieties would have passed almost unnoticed. At this time the Secretary of State for the Colonies was also Secretary for War, and, even without influence or pressure, he could hardly be expected to devote unremitting attention to the troubles of a colonial governor in a convict settlement in distant Australia. While it is possible that it was for such a reason that the theft of the vital dispatch was not investigated, it is most significant that Macarthur, in whose interests alone the theft had been committed, had so powerful a friend as Watson in one of the key positions in the Colonial Office.

A great puzzle arises from Macarthur's subsequent allegation that Lord Camden had promised him a grant, not of 5000 acres only, but of 10,000 acres. Asserting that he had a verbal understanding¹⁴ with Camden, and unsupported by a single contemporaneous document, Macarthur obtained an additional grant of 5000 acres at a time when most of those who might have denied or been concerned to deny the accuracy or truthfulness of his recollection were dead. Yet all the official correspondence so far produced is entirely inconsistent with any promise by Camden of the additional grant. Indeed, the documents suggest that it was nearly sixteen years after the date of the alleged promise that Macarthur himself asserted that it had been made.¹⁵

On Macarthur's behalf, a theory has been advanced to the effect that owing to Banks's interference, the amount of land granted was reduced from 10,000 to 5000 acres.¹⁶ But all the established facts tend to negative both the existence of any such promise as Macarthur alleged and the fact that Banks interfered in the way suggested. When, in 1805, Macarthur returned to New South Wales, the only matter he discussed with Governor King was the location of his 5000 acres, the lucky grantee then having it in mind to obtain, and subsequently obtaining, the pick of the land in the colony as it then was known. Before he did so, there was much negotiation with King, who regarded himself as utterly humiliated and defeated by Macarthur's double triumph in avoiding exile and acquiring a most valuable grant.

After his return, Macarthur was outwardly polite to King,

¹⁴ *Early Records of the Macarthurs of Camden*, p. 101.

¹⁵ *ibid.*, p. 333. (Letter dated February 20, 1820.)

¹⁶ *ibid.*, pp. 101, 333.

but his private feelings remained unaltered. Thus we find him writing privately to Under-Secretary Chapman:

I am sure it will give you pleasure to hear that the letter Lord Camden had the goodness to write respecting me has operated like a necromantick spell, and lulled every angry passion to sleep. Peace has succeeded ungovernable rage, and those who were before ready to annihilate each other, are now as friendly in appearance as if their whole lives had been spent in a constant interchange of kind offices.¹⁷

This and other letters of King and Macarthur written at the time,¹⁸ make it plain that, if Macarthur had received from Camden a verbal promise of an additional grant, he decided, for some quite inexplicable reason, not to announce the exciting and interesting information to any of those who should in the ordinary course have been immediately informed of such a promise. It is also to be noted that Macarthur's subsequent allegation was that Lord Camden had promised to grant an additional 5000 acres subject to a condition, viz., that Macarthur was to conduct his merino wool enterprise to complete success. But exactly what this supposed condition meant or implied no one ever stated, still less defined.

It is extremely improbable that, at the very moment of his triumphant return, the Governor having been rebuked by the Colonial Office, Macarthur would have refrained from immediately boasting that he had been promised 5000 acres more. A possible inference is that if an additional 5000 acres was mentioned by Camden, it was merely by way of casual talk; but the more probable inference is that no such promise was ever made. In cases such as these, the failure of a party to assert the existence of a promise at a time when it was to his interest and necessary for his protection to do so, is usually regarded by legal tribunals as being practically decisive against him.

¹⁷ *H.R. of N.S.W.*, vol. v. p. 669

¹⁸ *ibid.*, pp. 669-71.

CHAPTER XII

THE FALL OF GOVERNOR KING

DURING Macarthur's absence in England, Governor King was subjected to further insults by the officers of the Corps, with the leaders of whom Macarthur remained in close touch. First of all, there was a minor dispute in which Piper and Bayly, both very intimate friends of Macarthur, were prosecuted by the Governor before a Court Martial, and, while he was *en route* to England, Macarthur wrote to Piper, asserting that "every person acquainted with our story applauds our conduct and execrates Mr King and his venal associates."¹

Later, after he had made such valuable "contacts" in England, Macarthur, again writing to Piper, and referring to a second dispute between the Governor and an ensign of the Corps, Francis Barrallier, said:

As King appears to be the cause of his (Barrallier's) misfortune I have warmly supported him, and have prevailed upon . . . his friends who by-the-bye are very powerful, to take the field against King. . . . As it appeared King was his enemy, there could not be a stronger inducement to make me his friend.²

Finally the Governor came into ever more serious conflict with the officers. A large number of "pipes" or rhyming lampoons were produced attacking either the Governor himself or the civil officers who supported him. A good specimen was:

EXTEMPORE ALLEGRO

My power to make great
O'er the laws and the State,
Commander-in-Chief I'll assume;
Local rank, I persist,
Is in my own fist,
To doubt it who dare shall presume.

¹ Letter, 8 September 1802. (Mitchell Library MSS.)

² *ibid.*, 9 November 1803.

On Monday keep shop,
 In two hours time stop,
 To relax from such kingly fatigue,
 To pillage the store
 And rob Government more
 Than a host of good thieves—by intrigue.

For infamous acts from my birth I'd an itch,
 My fate I foretold but too sure;
 Tho' a rope I deserved which is justly my due,
 I shall actually die in a ditch—
 And be damned!³

Another "pipe," also directed against the Governor, ran:

The brig be damned, the crew and all the meat,
 Fresh beef and sheep is what I like to eat;
 A royal mandate brings them from Toongabbe,
 Excepting only what are sick and scabby.⁴

A preliminary inquiry conducted by the magistrates revealed the fact that these libels first made their appearance in that portion of the military barracks which was under the control of Captain Kemp. There was evidence that one of the officers, discovering the libellous prints, preferred to distribute them amongst his brother officers rather than make any investigation with a view to punishment. King reported that:

As I saw officers publishing those infamous papers, the duty I owe to His Majesty's Service, the public, and myself, required that I should bring those officers to a public account for having so industriously disseminated those papers, the pernicious tendency of which are obvious.⁵

Accordingly the Governor decided to court-martial three officers, Hobby, Bayly and Kemp. He could not conduct the prosecution in person, so he selected Surgeon Harris to officiate as Deputy Judge-Advocate at a general court martial. First, Hobby was tried, and next Kemp. Before the evidence for the prosecution was concluded in the case against Kemp, Major Johnston, then acting as the officer in command of the regiment,⁶ stopped the proceedings by ordering Harris

³ *H.R. of A.*, series i, vol. iv, p. 167-8.

⁴ *ibid.*, p. 169.

⁵ *ibid.*, p. 160.

⁶ Paterson's health had completely broken down, largely as a result of his duel with Macarthur.

to be arrested for the purpose of his being tried by general court martial.

The charge preferred against Harris by Johnston was one of scandalous behaviour, it being alleged that he had disclosed to other officers of the Corps the votes of two officers who had acted as members of the Court Martial which tried Hobby. Atkins, as Judge-Advocate of the colony, was asked by Governor King whether Johnston could lawfully terminate the proceedings of the court martial by arresting the Judge-Advocate. Atkins's reply—typical of his timidity—was that such a question was purely military in character, and depended upon army practice with which he was not well acquainted! He pointed out that, on a Court Martial, the Judge-Advocate had no voice in the actual judgment of the Court, whereas in the Criminal Court of the colony the Judge-Advocate of the colony was a member of the tribunal itself.

With justification, King regarded the arrest of Harris as a direct personal affront to himself. Undoubtedly it was so intended by Johnston, Harris having become anathema to the officers because he was vindicating King's insulted honour. The Governor formally demanded the production by Johnston of an authenticated copy of the Kemp proceedings. Johnston, in somewhat insolent terms, declined to comply with the request, and added a comment sneering at King's statement that there was no officer in the colony in whose integrity he placed so great confidence as he did in Harris's. The Governor then complained to Johnston that he had misquoted his (King's) letter, adding that:

At present you know, sir, the dark and Concealed Assassins of my Reputation and Character keep themselves equally secure from conviction as they are shielded by darkness impenetrable from the dictates of Honor.⁷

The correspondence continued with increasing bitterness. King refused to appoint a substitute for Harris, and Johnston questioned the legality of King's refusal. Next, Johnston was disinclined to name five officers to serve on the Criminal Court of the colony, although it was urgently necessary to try certain convict runaways. In one of his letters, King suggested to Johnston that it would be very beneficial to

⁷ *H.R. of A.*, series i, vol. iv, p. 185.

the contents of his (King's) writing case if the correspondence might be abridged, if not terminated: "as I fear you will soon oblige me to write on Brown Paper, of which I have but a very small Stock."⁸

So the wrangle continued, and the authors of the libels on King escaped scot-free. Paterson had broken down in health, largely as a result of the wound he had received from Macarthur, and Johnston, unlike Paterson in the affair of Lieutenant Marshall, not only declined to help King against the officers, but actually undermined the Governor's honour and attempts to vindicate his reputation. Finally, King was forced to yield to the overwhelming pressure, and he appointed Atkins to replace Harris as Deputy Judge-Advocate of the court martial proceedings. The inevitable result was the acquittal of the officers concerned, nominally on the ground that the charges were loosely worded.

The charge against Harris of disclosing the votes of members of the Hobby court martial was proceeded with by Major Johnston. The document stating the charge was dated 23 February 1803, and alleged that Harris had made his wrongful disclosure "on Saturday last, the 19th ult'o."⁹ Obviously, the word "ult'o" was used instead of "instant." According to some of Harris's enemies, he made "a clandestine compromise with the person who was to prepare the indictment, for when the Court assembled for his trial, upon his arraignment on reading the indictment an insurmountable legal flaw appeared thereon, for the word "ultimo" [a phrase too loose to be used in any legal document though justly applied and therefore the better applied to Botany Bay jurisprudence] was substituted for 'instant' by which defect the worthy Doctor escaped."¹⁰

This statement is correct so far as it emphasized the error patent on the face of the written charge. But it is incorrect in suggesting that Harris was acquitted. He was convicted by the officer members of the Court Martial. But Governor King at once intervened, declined to approve of the sentence, and released Harris, so that he might resume his duties as medical assistant.¹¹ The action of King was condemned by Sir H. B. Hayes, who wrote to Lord Hobart that:

⁸ *ibid.*, p. 195.

¹⁰ Notes on "Song on New South Wales Rebellion." (Bligh Papers; Mitchell Library MSS.)

⁹ *H.R. of N.S.W.*, vol. v, p. 30.

¹¹ *H.R. of N.S.W.*, vol. v, p. 72.

General contempt and universal hatred had left Gov. King with only one single adherent, Mr Harris, the military surgeon, who, sent here a raw, ignorant boy, is indebted to this colony solely for his learning and accomplishments, and to Governor King for his consequence; and a woe-ful exercise he makes of it over unfortunate wretches here degraded far below the level of human beings. This surgeon has been lately brought to trial here for having divulged the opinions of a General Court-Martial, to which he was appointed by the Governor as Judge-Advocate, and escaped for the present the degradation attendant on such scandalous conduct by an error of dates in the charges.¹²

The same letter of Hayes made charges against King which closely resemble those subsequently employed against Bligh. It said:

He [King] makes a public boast "that he is beyond the laws." I trust His Majesty's Ministers will prove to him that he is within its reach, and, however distant this colony may be, that Government watches over it with paternal solicitude, and have not entirely given it up a prey to any man's rage or folly.¹³

The Governor was next engaged in a violent correspondence with a Captain Colnett of H.M.S. *Glatton*, then at Sydney. A dozen small points aggravated the dispute, the character of which is sufficiently illustrated by the fact that King allowed his secretary, Chapman, to sign an outrageously phrased statement which was duly forwarded to Colnett by the Governor. In the statement, Chapman narrated that he had been informed by the Governor that Colnett had said that he (Chapman) had made an assertion about the date of the *Glatton's* sailing from Sydney; and he continued thus:

I hereby declare that Capt'n Colnett, or any other person who dares to say that ever I gave it out publicly and officially as Secretary to His Excellency Governor King that the *Glatton* was to sail at any particular time, is a liar, a scoundrel, and a vagabond; and that whoever he is, if he has the spirit to come forward, that I will wring his nose and spit in his face.¹⁴

It is reasonably plain that, by the continuous defamation and intimidation of the officers, the Governor was being reduced to a point approaching nervous breakdown.

Towards the end of the year 1803, partly, it is certain, as a result of Macarthur's energetic propaganda in London,

¹² *ibid.*, p. 105.

¹³ *ibid.*, p. 104.

¹⁴ *H.R. of A.*, series i, vol. iv, p. 287.

the Colonial Office authorities decided to inform King that he would be relieved from office in view of: "the unfortunate differences which have so long subsisted between you and the military officers of the colony."¹⁵ The Colonial Secretary added that King would have to remain in the colony until he was replaced by "some person competent to exercise the duties . . . free from the operation of the spirit of party which has reached such an alarming height."¹⁶

But there was very considerable delay before final action was taken, and King was to undergo further anxieties before his final release from insult and humiliation. Indeed; it was not until March 1805 that the English authorities seriously set about the selection of the new Governor of New South Wales.

¹⁵ *ibid.*, p. 428.

¹⁶ *ibid.*

CHAPTER XIII

THE CHARACTER OF BLIGH

NEW SOUTH WALES had now proved to be the graveyard of the ambitions both of Hunter and King. It is a curious fact that, for some reason or other, the governorship of New South Wales has often turned out to be a troublesome post. Even after the establishment of responsible government in the fifties, the governorship never became a sinecure, bitter constitutional disputes arising to plague one governor after another. Accordingly, there is much irony in Belloc's account of the great distress of Lord Lundy when all hopes of his advancement in English politics were frustrated, and he was informed that the final decision was to relegate him to the governorship of New South Wales:

We had intended you to be
The next Prime Minister but three;
The stocks were sold; the Press was squared;
The Middle Class was quite prepared.
But as it is! My language fails!
Go out and govern New South Wales!¹

In solving the problem of appointing a successor to King, the English officials almost inevitably consulted Sir Joseph Banks, who has been described as the father of the colony because of his prominence in Cook's discovery of Botany Bay and his subsequent association with the England end of the government of the penal settlement. Banks knew that both Hunter and King had failed to repel the attacks of the officers and rum traffickers and that the new governor must be a man of sterner fibre. Fortunately, we possess a most striking summary by Banks of the qualifications required for King's successor, viz.:

¹ Belloc, H., *Cautionary Tales for Children*

One who has integrity unimpeached, a mind capable of providing its own resources in difficulties without leaning on others for advice, firm in discipline, civil in deportment and not subject to whimper and whine when severity of discipline is wanted to meet (emergencies).²

Banks's execution of the commission to recommend a suitable person must be carefully taken into account by every one who appreciates the importance of Bligh's general character as a factor in evaluating the motives animating his subsequent conduct. For Sir Joseph Banks's answer to the commission to find the man was:

I immediately answered: As this man must be chosen from among the post captains, I know of no one but Captain Bligh who will suit, but whether it will meet his views is another question.³

On this recommendation, the appointment of Governor was offered to Bligh. This fact rebuts the repeated innuendo that the main object of the English Government was to shelve Bligh. Further, the salary of the governorship was increased from £1000 per annum to £2000 "with the whole of the Government power and stores at your disposal."⁴ Further, the appointment was intended to be a long term one, with the expectation of a retiring pension of £1000 a year. It was also represented to Bligh that, during his governorship, his naval promotion would continue.

Whilst it is outside the scope of this book to investigate the great narrative of Bligh's amazing career, some estimate must be made of the man and his character, for upon a correct understanding of it depend several disputed aspects of the Rum Rebellion of 1808.

Bligh was born in 1754. He was fifty-two when he assumed the governorship of New South Wales, some thirteen years older than his chief antagonist, Macarthur. His mother had died when he was fifteen years of age, his father remarrying very soon afterwards. While still a boy, he was sent away to sea. He served assiduously, and became one of the foremost of England's navigators. He was appointed shipping master under Captain Cook on the latter's third and last voyage, having been selected by Cook for this important duty at the age of twenty-three years.⁵

² Mackaness, G., *Life of Vice-Admiral Bligh*, vol. ii, p. 96.

³ *ibid.*, p. 96.

⁴ *ibid.*

⁵ The last log entry made by Cook before he was killed at Hawaii in 1779 mentions the name of Bligh. Bligh has been described as a worthy connecting link between the great navigators Cook and Flinders.

So far, historians have treated Bligh most unkindly. But a more accurate picture of his character and conduct is gradually being unfolded, and, in this connexion, the names of Mackaness, Rutter, Rawson and Montgomerie all deserve most honourable mention.

In 1788 and 1789 Bligh was in command of the *Bounty* on its voyage to Tahiti to obtain breadfruit-trees for the purpose of their being transplanted to the West Indies. After leaving Tahiti, the main object of the voyage having been attained, the famous mutiny occurred, followed by the equally famous open boat voyage of Bligh to Timor, extending over 3618 miles in forty-one days. After the court martial in 1792 of those mutineers who had been brought back to England on the *Pandora* (not captained by Bligh as the picture film would have us believe, but by a Captain Edwards), Fletcher Christian, the ringleader in the mutiny, who was never brought back for trial, found an enthusiastic if not over-frank advocate in his brother Professor Christian. The latter, aided by several of the mutineers who were fortunate enough to escape punishment and also by one or two of the crew who had not mutinied, advanced the theory that the mutiny was justified, or at any rate excused, by Bligh's cruel and tyrannical conduct towards his crew. Much of the evidentiary material on which this theory is based has come to be suspected of gross partisanship, and it is of significance that it was never put forward in mitigation of the extreme sentences which the Court Martial pronounced upon some of the mutineers.

The shocking ill luck that has dogged the fame of Bligh is illustrated by the fact that comparatively little attention has been paid to the very cruel practices adopted by Captain Edwards in his method of imprisoning the fourteen *Bounty* prisoners on the *Pandora*. These unfortunates were continuously confined in a small enclosure eighteen feet by eleven, with their hands and legs both in irons. It appears that, when the *Pandora* was actually foundering at the entrance to Endeavour Strait, the four *Bounty* prisoners who were drowned were still in irons, the keys being produced too late to release them. As I have mentioned, the picture film of Bligh smooths out all difficulties by falsely depicting Bligh as the captain of the *Pandora*.

Further, the historians have made too little of the violent

characters of the mutineers who, having avoided the punishment of death by following Fletcher Christian to Pitcairn Island with their Tahitian women, proceeded to occupy themselves, not in the mere consideration of murder as a fine art, but in its active practice upon each other. While Captain Edwards and this branch of the *Bounty* mutineers escape just condemnation from history, Bligh's fate has been to suffer condemnation from Hollywood, the sentences of which have universal jurisdiction.

Moreover, Bligh was never charged with any act of misconduct or tyranny in causing or occasioning the mutiny, so that except so far as the court martial of the mutineers is of assistance, the issue of his character and conduct has to be decided in the absence of a complete legal investigation made at the proper time. The argument against Bligh is that nothing could have caused so desperate an act as a mutiny except gross tyranny on the part of the captain.

Those experienced in the administration of the criminal law and in the scientific management of circumstantial evidence, as well as those who are otherwise familiar with the dangers of inductive reasoning, must be dissatisfied with this method of justifying a charge against Bligh because there is available a most reasonable hypothesis that the cause of the mutiny lay elsewhere than in the tyranny of Bligh. It is plain that most of the leaders of the mutiny were desperately anxious to return to Tahiti and to the women with whom they had consorted during the long stay of the *Bounty* in that island. The colour and beauty both of the island and of its women still burn and sing through the paintings of Gauguin even in the prints which alone Australians are permitted to see. We may be sure that in the days before Tahiti received the full blessings of civilization its colours and its beauties would appeal with irresistible force to sailors who had suffered the tremendous hardships of an arduous voyage which included an unsuccessful attempt to round Cape Horn.

It is a most fortunate circumstance that the recent publication by the Golden Cockerel Press of the *Log of the "Bounty"* not only supports the inference that it was this longing to return to Tahiti which inspired the mutineers, but also explains nearly all of Bligh's objects and motives during the voyage. The log shows conclusively that the few disciplinary measures taken by him, though appearing some-

what harsh to the present generation, were not harsh when judged, as they should be, by contemporary standards. The *Log of the "Bounty"* openly reveals Bligh's qualities as master, as navigator, as seaman and as leader of men. He had been given a very important commission to execute and he was inflexibly resolved that it should be executed. Subject to this overriding duty, he made every possible effort to safeguard the health and well-being of all on board. Indeed, Bligh stands out as one of the first great sea captains whose policy it was to obtain results, not by punishment and terror, but by unremitting care and attention to the daily needs of all engaged in a great common enterprise. It is impossible to give an adequate summary of Bligh's log, but it is an inspiration to all who will read it in full.

Bligh regards the sailors as requiring the same care and protection as little children, and makes this entry:

Seamen will seldom attend to themselves in any particular and simply to give directions that they are to keep themselves clean and dry as circumstances will allow, is of little avail, they must be watched like Children, as the most recent danger has little effect to prevent them from the same fate.⁶

Bligh had been instructed to enter the Pacific by rounding Cape Horn. But the winds were most unfavourable, and, again and again, fierce north-westerly gales drove the vessel back. But, again and again, he refused to give up, showing leadership, seamanship and courage of the highest order.⁷ He became nearly exhausted with fatigue but never failed to display consideration for the men who were sharing in the great ordeal of manoeuvring so small a sailing vessel against so turbulent an ocean. Thus the log reads:

My next business was to see after my People who had undergone some fatigue, and to take care that a proper fire was kept in and that no one kept on Wet Cloathes. This being done and seeing them all comfortably dry, I ordered a large quantity of Portable Soop . . . which made a Valuable and good dinner for them.⁸

When Bligh finally gave up his attempt to round the Horn and, turning back, reached the Cape of Good Hope five months out from England, he wrote: "The Grand Object

⁶ *Log of the "Bounty,"* vol. i. p. 219.

⁷ *ibid.*, pp. 129, 159, 163, 169, 173.

⁸ *ibid.*, p. 143.

now became the refreshment of my People, about which I heartily set to Work."⁹

He had taken elaborate precautions against scurvy, following the example of Cook. He had even engaged a fiddler in order that by dancing the men should obtain regular exercise. He insisted on hot breakfasts; he introduced the system of three watches, arguing that it was conducive to health and: "not being Jaded by keeping on Deck every other four hours, it adds much to their Content and Cheerfulness."¹⁰ He insisted upon absolute cleanliness on board. Incidentally, his log shows that the science of discovery was more than his profession, it was his passion. As he approaches an island first described by Captain Cook, though discovered earlier by Captain Wallis, he decides that as both his predecessors had passed the island on the south, he must pass it on the north.¹¹

In the dreadful storms encountered near the Horn, Bligh surrendered his own cabin, to repeat his own words, "to the Use of those poor fellows who had Wet Births."¹² It is impossible to refrain from a reference to Bligh's position when he was faced with the necessity of making a decision either to pursue his attempted westing or to make the Pacific via South Africa. His written account of his reasons is masterly, not only for its inherent logical soundness, but for its magnificent form and style. To quote even a sentence of it would be doing injustice.¹³ His capacity for scenic description is revealed by his log entries while the *Bounty* was at Tahiti, which he called "the Paradise of the World."¹⁴ His account of the islanders' method of using surf boards is most striking.¹⁵ One is continually lost in wonder at the simplicity and eloquence which seem to pervade every reasoned statement he wrote.¹⁶ It is impossible to put the log book down without a deep sense of respect and admiration, even of affection, for the man responsible for it. In my opinion, Bligh's log is a triumphant vindication, not only of his particular actions, but of his general character.

A most important aspect of the log is that it reveals the fact that, upon arrival at Tahiti, no members of the crew were suffering from any venereal disease. Yet, after a short

⁹ *ibid.*, p. 221.

¹² *ibid.*, p. 157.

¹⁵ *ibid.*, p. 408.

¹⁰ *ibid.*, p. 47.

¹³ *ibid.*, p. 177.

¹⁶ *ibid.*, e.g. pp. 384, 395.

¹¹ *ibid.*, p. 369.

¹⁴ *ibid.*, p. 381.

stay, a considerable number, including the leading mutineers, had become infected.

After the departure from Tahiti, nothing was further from Bligh's thoughts than a mutiny. Nothing like it could possibly have been anticipated. No doubt there were one or two incidents, especially the theft of some coco-nuts which upset the hypersensitive Fletcher Christian, who was also on the V.D. list. But I do not think that it is reasonably possible to accept the theory that the mutiny was caused by any tyrannical conduct on Bligh's part.

It has always been stressed that, on occasions, Bligh used very intemperate and violent language. Moreover, it must in fairness be noted that, in 1804, he received a reprimand from a Court Martial which investigated a charge against him of intemperate language while he was commanding H.M.S. *Warrior*. Some of the evidence then tendered against him was open to suspicion, because the court martial followed immediately upon another in which Bligh as captain and prosecutor had proceeded against a Lieutenant Frazier, who in turn organized the collection of evidence to support the charge against Bligh. The Court Martial held the latter charge to have been proved in part, but in part only. It has been stated that, in later years, Frazier was dismissed the Navy.¹⁷

The evidence at the *Warrior* court martial has been carefully collected and examined by Dr Mackaness. In order to show the nature of the language imputed to Bligh, it may be said that Frazier alleged that Bligh addressed him thus:

What, Sir, you damn'd rascal, you damn'd scoundrel, never was a man troubled with such a set of blackguards as I am. Take care, Sir, I am looking out for you.¹⁸

Another witness at the court martial said:

I have heard Captain Bligh call Mr Keltie, the Master, a vile man; a shameful man, Oh, you are a disgrace to the service, damn you, you lubber, laugh at me, and say "There's a pretty master," this was the day we had a Transport brig in tow off Ushant. I have frequently heard him damn Lieutenant Johnson and call out, "Oh, you, Mr Johnson, God damn you Sir, what are you about?" This happened off Rochefort. . . . One day when hoisting a boat in, Captain Bligh . . . called out "God

¹⁷ Mackaness, G., *Life of Vice-Admiral Bligh*, vol. ii, p. 92.

¹⁸ *ibid.*, pp. 76-7.

damn me (or God damn you) Sir!" . . . and shook his fist at me saying, "Why don't you hoist the boat in?"¹⁹

A distinguished New South Wales judge once laid it down that, unless a public man speaks with emphasis approaching exaggeration no one will listen to him. Bligh certainly had a habit of using very colourful language, but its very quality of spectacular violence at once suggests the absence of malice or viciousness, and at times it evidences merely a loathing for laziness and inefficiency. Despite his extremely temperate bodily habits, Bligh at times suffered from agonizing headaches. One of the witnesses called against him at the *Warrior* court martial said that when the ship was busy on duty Bligh was accustomed "to use a great deal of action with his hands, without having any particular meaning in it, but merely a custom without the least intention of insulting anyone."²⁰

Another witness, Lieutenant Johnston, gave evidence to a similar effect.

I think that the essential truth of the matter was candidly stated by Bligh himself in the following address to the Court Martial, which evidences not only his fierce hatred of slipshod seamanship but also his remarkable skill in self-expression:

I candidly and without reserve avow that I am not a tame and indifferent observer of the manner in which Officers placed under my orders conducted themselves in the performance of their several duties; a signal or any communication from a commanding officer have ever been to me an indication for exertion and alacrity to carry into effect the purport thereof, and peradventure I may occasionally have appeared to some of those officers as unnecessarily anxious for its execution by exhibiting any action or gesture peculiar to myself to such . . . acquit me of any apparent impetuosity . . . attributing the warmth of temper, which I may at intervals have discovered, to my zeal for that service in which I have been employed without an imaginary blemish on my character for upwards of 35 years.²¹

After the *Warrior* court martial, Sir Joseph Banks wrote sympathetically to Bligh, who pointed out with some justification that: "we have such a set of low men crept into the service that to govern a ship is now not an easy matter."²² Bligh added: "I defy the world to produce one act of malevolence."²³

¹⁹ *ibid.*, pp. 79-80.

²² *ibid.*, p. 94.

²⁰ *ibid.*, p. 80.

²³ *ibid.*, p. 93.

²¹ *ibid.*, p. 91.

I suggest that before any judgment should be pronounced against Bligh in relation to the *Bounty* mutiny, it may not be safe to make too bold an inference even from the bare objective facts. I do not dispute the necessity of ascertaining such objective facts in order to discard the grosser forms of error. But that may not be enough. Actions must be related to motives, and motives can only be understood through appreciation of general character. The average reader of history is too apt to judge human conduct by the external standard of the reasonably prudent man, and yet we know that such a standard is impossible—there is no such person. Historical research requires many qualities, including the industrious collection of objective facts. But in relating the objective facts to the character of the individuals whose motives are in question, the frequent employment of a sound imagination is equally necessary.

Therefore, I think that while the objective facts of the mutiny of the *Bounty*, when fully investigated, cannot harm Bligh's reputation, I also think that it is Lord Byron who, through his thorough understanding of human ambitions and human weaknesses, has given the soundest judgment on the affair of the *Bounty*. In "The Island," Byron shows that he appreciated the true inwardness of the *Bounty* mutiny and understood something of the true character of Bligh. Byron pictures Bligh on the eve of the mutiny:

The gallant chief within his cabin slept,
 Secure in those by whom the watch was kept:
 His dreams were of Old England's welcome shore,
 Of toils rewarded, and of danger o'er;
 His name was added to the glorious roll
 Of those who searched the storm-surrounded Pole.
 The worst was over, and the rest seem'd sure,
 And why should not his slumber be secure?
 Alas! His deck was trod by unwilling feet,

Young hearts, which languish'd for some sunny isle,
 Where summer years and summer women smile;
 Men without country, who, too long estranged,
 Had found no native home, or found it changed,
 And, half uncivilised, preferr'd the cave
 Of some soft savage to the uncertain wave—
 The gushing fruits that nature gave untill'd;
 The wood without a path but where they will'd.
 . . . the equal land without a lord;
 The wish—which ages have not yet subdued
 In man—to have no master save his mood

Byron pays fitting tribute to Bligh's amazing courage after he had been forced into the *Bounty's* launch:

The savage foe escaped, to seek again
 More hospitable shelter from the main;
 The ghastly spectres which were doom'd at last
 To tell as true a tale of dangers past,
 As ever the dark annals of the deep
 Disclosed for man to dread or woman weep.

An important feature of Bligh's character is the skill of expression which I have already illustrated. Bligh was an assiduous reader and student. Before he accepted the governorship of New South Wales, he made special inquiries as to whether provision for a library could be made.²⁴ After the *Bounty* mutiny, a list was prepared of the books which had been on board. His library included the voyages of Cook, Hawkesworth, Dampier, Anson, Bougainville, Dalrymple and Middleton, Hume's *History of England*, a Latin dictionary, works on mathematics and science, and the great sources of noble language, the English Bible and Prayer Book.²⁵ In his library for New South Wales, Bligh included Dickson's *System of Agriculture* and Malthus's *Essay on the Principle of Population*. Geoffrey Rawson says that Bligh had "an active and enquiring mind."²⁶ He possessed that and something more. It seems almost miraculous that a boy who left school so early should in his manhood have been able to write the beautifully direct, nervous and flowing English which often characterizes Bligh's letters and speeches. But it was an age, not only of genius, but of precocious genius.

In analysing Bligh's character, it must be remembered that he was quite unassisted by influence during the early stages of his career, and his brusque and occasionally rude manner must have hindered his advancement. The tragedy is that such faults of manner are as much calculated to cause disaster to true greatness as more serious blemishes of character. According to Owen Rutter, Bligh was "no genius."²⁷ Let it be so. Everything depends upon the accurate definition of terms. I think that it will be shown that his task in New South Wales would have required something more than

²⁴ Mackaness, G., *Sir Joseph Banks*, pp. 83-4.

²⁵ Rutter, O., *Turbulent Journey*, p. 118.

²⁶ Rawson, G., *Bligh of the "Bounty,"* p. 227.

²⁷ Rutter, O., *Turbulent Journey*, p. 9.

genius. Bligh certainly had an enormous capacity for hard work as his colonial routine was thus described by him:

From eight in the morning till five in the evening I am confined to my office with only my secretary for I have no other to trust to, so that the Cabinet of England are not so secret as we are and has had a wonderful good effect. . . . I should have touched at the settlements coming out and fixed everything as it should have been; but it was impossible to enter on service with him [Short] and I must still defer going until I have everything well regulated here, where my presence is absolutely necessary for some time, everything being so dependent on the Governor.²⁸

Another phase of Bligh's character was his supreme tenacity. John Macarthur was very tenacious—a quality he had sufficiently evidenced in the long struggles which ended in the overthrow of Hunter and King. In the course of those contests Macarthur employed every device he knew—the control by the officers of the administration of criminal justice, the power of wealth, the intimidation of social boycott, the terror of private insult and public defamation. Unlike Macarthur, Hunter and King were not strong enough to fight to the bitter end. But Bligh was far more persistent than his two predecessors. He was incapable of surrendering.

Let us think for a moment of his second expedition to Tahiti in 1791-3 on which his duty was to carry out the very undertaking on which the *Bounty* had been employed. Bligh was determined that the second voyage should be entirely successful. He had to take elaborate precautions at Tahiti, to be patient and considerate to the natives and especially their chiefs, and, finally, to bring back the plants to the West Indies. Success was about to crown his first attempt when the overpowering surprise and shock of the mutiny took place. Cast adrift in a launch, he might easily have surrendered to the overwhelming blow which fate had struck at him. He not only succeeded in piloting the launch on its incredible journey, but he saw to it that as many of the mutineers as possible were brought back to punishment. Finally he sailed forth again, though his first disappointment was enough to make his heart despair. He had to restore the Islanders' confidence in him, to convince the chiefs once again of his power and authority, which must at first have appeared to be finally shattered.

²⁸ Bligh to Banks, 5 November 1807 (Banks Papers: Mitchell Library.)

I doubt whether history provides any more striking evidence of supreme determination and tenacity than that furnished by Bligh's entirely successful *Providence* expedition after the fiasco of the *Bounty* expedition. No doubt Bligh's tenacity was related to his self-confidence. In one of his letters to Banks he said:

Remember my dear Sir I never failed in anything I undertook. Be assured still of my high sense of honour and dignity in the present instance. I think Providence would never have allowed me to have passed so much of time among bad people if it had not been for some good end.²⁹

This statement may appear very self-sufficient, and self-sufficient in many respects Bligh undoubtedly was. At the same time that quality endowed him with great self-confidence and his perseverance and tenacity were related qualities.

It has been said that, on occasions, Bligh was cruel to those under his command. I have already suggested that, regard being had to the standards of the time, there is no substantial evidence which establishes this allegation. At the Nore in 1797 the mutineers made no special complaint against Bligh; the grievances of the men mainly centred around the discipline of the fleet, the famous Manifesto of the Delegates declaring:

You cannot, countrymen, form the most distant idea of the slavery under which we have for many years laboured. Rome had her Neros and Caligulas, but how many characters of their description might we not mention in the British Fleet—men without the least tincture of humanity, without the faintest spark of virtue, education or abilities, exercising the most wanton acts of cruelty over those whom dire misfortune or patriotic zeal may have placed in their power—basking in the sunshine of prosperity, whilst we (need we repeat who we are?) labour under every distress which the breast of inhumanity can suggest.³⁰

At the time of the Nore mutiny and for many years afterwards, the law itself inflicted cruel and barbarous punishments for what would now be regarded as comparatively venial offences. The evidence given in 1812 before the House of Commons Committee on Transportation establishes that, in regard to corporal punishment, Bligh was especially care-

²⁹ *ibid.*, 10 October 1807.

³⁰ Postgate, R. W., *Revolution* (1920 edn.), p. 74.

ful. By comparison with his predecessor as Governor and with other administrators of the colony, Bligh does not suffer, he gains. On one occasion Governor King ordered a convict at Coal River, now Newcastle, to: "receive five hundred Lashes, or as many as he can take without endangering his Life."³¹ At the court martial of Johnston in 1812, Bligh was only charged, and that indirectly, with two instances of cruelty. One case related to a blackguard who had been teacher of the female orphans and who was proved guilty of most infamous seduction. He was sentenced to the pillory and two hundred lashes by the magistrates. Bligh reduced the lashes by one hundred, saying that: "It was my wish and intention as much as possible to dispense with corporal punishment and never, when necessary, to permit it to be too severe."³²

The other instance was a charge by a Lieutenant Kent. Kent was very malicious against Bligh and he had made another charge which had been disproved by the evidence. During Bligh's governorship, instructions from England required that Norfolk Island should be evacuated and all the settlers removed to the Derwent in Van Diemen's Land. Kent's allegation was that Bligh gave him (Kent) verbal orders to communicate with Piper, who was then administering Norfolk Island that, if any of the settlers refused to go, Piper was to outlaw them and have them shot.³³ There is no support, documentary or otherwise, corroborating this foul allegation. Norfolk Island was a dependency where extreme cruelty had been almost a feature of the administration. For instance, Foveaux was Lieutenant-Governor at Norfolk Island until 1806, and J. A. Dowling, who was well informed as to the history of that island, points out that: "acts of revolting cruelty and crime are on record . . . when Major Foveaux of the New South Wales Corps was Lieutenant-Governor."³⁴

Fortunately we have copies of Bligh's written instructions to Piper, and, as with all of Bligh's instructions with regard to administrative work, they are carefully adapted to the purposes in hand. They show consideration for the settlers,

³¹ *H.R. of A.*, series i, vol. v, p. 415.

³² *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 395.

³³ *H.R. of N.S.W.*, vol. vi, p. 284n.

³⁴ *Jnl and Proc.*, R.A.H.S., vol. i, p. 215.

and there is nothing whatever to support the view that Kent's allegation was anything but a desperate invention. Here, again, the failure of the charge only evidences the implacable hatred of Bligh's New South Wales enemies.

Moreover, Bligh's active compassion for those in distress was frequently displayed. His governorship was shadowed by the gradual decline and death of Lieutenant Putland, who was married to Mary, Bligh's favourite daughter. We find Bligh writing to Banks in the most tender terms about these two:

As they were inestimable to me you will feel for the distress we are in besides my apprehension of my daughter's health. She has been a treasure to the few gentlewomen here and to the dignity of Government House.³⁵

Bligh's family and personal relationships appear to have been infused with the deepest love and devotion. His wife, the "Betsy" of his letters, was herself a most remarkable and able woman. Unable to face, owing to her health, the long journey to the colony, she fought courageously to protect Bligh's honour and reputation while he was in New South Wales.

One of the most touching letters which I have ever read was written by Bligh to his wife from Rio in August 1810, when he was on his way home to rejoin her. The original is in the Mitchell Library, and it is set out fully by Dr Mackaness.³⁶ Mrs Bligh died in April 1812, but not before her husband had been vindicated by the verdict of Johnston's court martial.

Of course, there is a type of human being who is kind and compassionate towards his own family and there makes an end of it. It was not so with Bligh. Whilst he was Governor his thoughts continually turned to the unutterable tragedy of the colony's orphan children. He made every endeavour to assist them. Bligh's compassion for the little children sprang from a nature which was religious in the way which often characterizes simple men whose business takes them on great waters.

³⁵ Bligh to Banks, 5 November 1807. (Banks Papers: Mitchell Library.)

³⁶ Mackaness, G., *Life of Vice-Admiral Bligh*, vol. ii, p. 317.

CHAPTER XIV

BLIGH TAKES OVER

It was more than twelve months after Macarthur's triumphant return to the colony when Bligh arrived to take over from King. Macarthur spent the intervening period in consolidating his position. King considered that the Home authorities could not have known that Macarthur and his fidus Achates, Davidson, were intent upon selecting their pastures within the richest lands of the colony, and for some time he was loath to approve of the particular location of the grants which Lord Camden had authorized him to select. However, King was not sufficiently determined to insist upon this objection, and so the formal grants were issued before Bligh's arrival. Macarthur also succeeded—how, it is only possible to guess—in inducing King to grant him a long term building lease within the town of Sydney, an action on King's part which greatly embarrassed his successor and was to be the occasion of a very serious dispute between Bligh and Macarthur shortly before the rebellion of 1808.

A remarkable letter, now in the possession of the Mitchell Library, illustrates not only the character of Macarthur, who was soon to transfer his hostility from King to Bligh, but the practical difficulties which were to confront Bligh as a result of the great Hawkesbury floods of 1806. The letter was written on 5 April 1806, by Macarthur to his friend Piper who had been transferred from Sydney to Norfolk Island. The letter characterized King as "Our Friend":

Our Friend is at last preparing to take flight and his successor Governor Bligh (formerly Captain of the *Bounty*) is daily expected to assume the command of this blessed Colony. Marsden, his wife and family accompany the *ci-devant* King home, and it is also said Harris is to make another of the party—all those who can get off certainly act wisely, for we are now completely overwhelmed with that great distress which has been so often predicted and so much scoffed at and disbelieved. A

tremendous flood has swept away or spoilt almost all the wheat at the Hawkesbury. . . . It is a calamity that threatens the very existence of the Colony and . . . many unhappy families must be ruined. What a scare for a new Governor and what a fine subject for panegyrics on the care, wisdom and foresight of our friend.¹

Macarthur's hatred of King persisted to the very last, and yet, by some miracle, at the very moment when Bligh assumed the government of the colony, both King and his predecessor Hunter were able to submerge their resentment at Macarthur's conduct.

During Bligh's journey to New South Wales a dispute had arisen between him and a Captain Short.² The merits of the dispute are of no relevance, but after his arrival in the colony, Short was sent back to England, Bligh making a report which was very critical of his conduct. Contrary versions of the dispute were sent Home by several persons in Sydney who feared the results of an attempt by Bligh to clean up the rum traffickers. Bligh's wife then reported to him:

The malice and cruelty of the people who were engaged in this business exceeds everything I ever thought men capable of. Kent went down to Ports'h in the same chaise with King, and at Hunter's lodgings with Short planned the business. Foveaux was very active against you.³

This early attempt to injure Bligh is understandable in the case of Kent and Foveaux who were fearful that Bligh might put down the trafficking of the officers in rum and goods. Indeed, Mrs Bligh herself perceived that her husband would be faced with the organized hostility of the Rum Regiment and she very wisely said:

I wish the troops could be changed. Foveaux is very ill disposed to you and I hope you will send him to Norfolk Island. Mr Marsden thinks you will have a great deal to encounter if you oppose the barter of spirits by which everybody about you were making rich.⁴

But what were Hunter and King doing in this particular

¹ Macarthur to Piper, 5 April 1806. (Piper Papers: Mitchell Library.) It will be noted that Macarthur shows no interest or concern in the question—how could the wealthier colonists help their poorer fellows.

² Curiously enough Macarthur, on his first voyage to New South Wales, was also engaged in two bitter personal quarrels, one of which led to a duel.

³ Mackaness, G., *Life of Vice-Admiral Bligh*, vol. ii, p. 107.

⁴ *ibid.*, p. 109.

galley? Each had been recalled to England in something like disgrace owing to the unscrupulous machinations of Macarthur and the other traffickers who were so closely banded together. Yet Hunter not only helped Macarthur at the Privy Council inquiry into the fine wool industry but now joined with King in an unholy combination with the traffickers to humiliate Bligh on the very first occasion when his conduct was being questioned.

On the day of Bligh's arrival in August 1806, the New South Wales Corps and the Sydney Loyal Association turned out to welcome him and all colours of the regiment were flying. Bligh was presented with an address of welcome, signed by Johnston for the military, Atkins for the civil authorities, and Macarthur for the free inhabitants. The address contained the usual platitudes. But the imps of irony must have been listening in, because at the court martial of Johnston in London, all three signatories of the address gave evidence against Bligh.

In his reply, Bligh struck a note which must have sounded unpleasant to the local monopolists. He suggested that, by proper regulations, the industrious settler and merchant should be encouraged to succeed, that religion and morality should be inculcated and that, in order to achieve those great objects, the Governor personally should exercise a close superintendence over the colony.⁵

On the same day a farewell address was presented to Governor King signed by the same three gentlemen. They thanked King for his services in discharging an office: "arduous and difficult beyond what can easily be imagined by any person unacquainted with this peculiar Colony."⁶

Had Bligh been closely attentive, he might also have observed a somewhat threatening tone in this message to King. So far as Johnston and Macarthur are concerned, the encomiums on King reach a new high level of hypocrisy. It is very seldom that intriguers are detected in making statements quite so diametrically opposed as those contained in Macarthur's letter to Piper on 5 April, and the address given to King a short time thereafter. I do not suppose that King was so foolish as to be entirely deceived, for he knew that Macarthur was the main cause of his failure; so that

⁵ O'Hara, J., *History of New South Wales*, p. 288.

⁶ *ibid.*, p. 287.

this and other circumstances rather suggest the possibility that something more than a truce had been arranged between the two men. King's health was broken, and he died in London in September 1808.

On King's departure from the colony, Bligh set to work with energy and enthusiasm. Griffin replaced Blaxcell as secretary of the colony, and measures for the relief of the poor settlers were at once begun. The government offered to grind corn for individuals, provided that every eleventh bushel was paid into the public stores for the relief of the distressed settlers at the Hawkesbury. These settlers responded at once to Bligh's determined support of the farming interest. Immediately there occurred a curious incident which demonstrated the clash of economic and class forces which was to play a large part in Bligh's subsequent overthrow. The free settlers, both of Sydney and of the Hawkesbury, presented Bligh with a separate congratulatory address in the course of which they complained that John Macarthur, in purporting to sign the previous address on behalf of the free inhabitants, had acted entirely without their authority. They declared that Macarthur would have been the last person they would have chosen for such a duty:

We beg to observe that had we deputed anyone, John McArthur would not have been chosen by us, we considering him an unfit person to step forward upon such an occasion, as we may chiefly attribute the rise in the price of mutton to his withholding the large flock of wethers he now has to make such price as he may choose to demand.⁷

The address of the Sydney free settlers was signed by 135 persons, and that of the Hawkesbury settlers by no less than 234. The Hawkesbury settlers complained bitterly of the policy of monopoly which had practically caused the general ruin of the colony. They set forth what may fairly be called their Bill of Rights. They wanted freedom of trade. They wanted the right to buy and sell commodities on an open market. They wanted Bligh to suppress the existing combinations and end their extortions. They wanted justice to be administered by the free inhabitants, not only by the military class. They wanted all debts to be made payable solely in a stable currency, whether constituted by coins or orders on Government, which would be legally recognized at

⁷ *H.R. of N.S.W.*, vol. vi, p. 189.

its full nominal value in the sale and purchase of every article of merchandise.⁸

These were the first demands of the Hawkesbury settlers who comprised freed as well as free. A few months later, in January 1807, they tendered to Bligh their warmest thanks for having rescued them from "the dreadful crisis of general calamity" which had existed on his arrival.⁹

This later address is of great significance. The settlers assured Bligh that "under a just and benign Government, we will be ready at all times, at the risk of our lives and properties, to support the same."¹⁰ Further they said that: "We have subscribed all the grain we conveniently can spare from our own support to be carried to the public stores at your stipulated price, rejecting far greater prices in money which we could receive at the present market sale."¹¹ They emphasized their desire that Bligh should be furnished by the colony itself with sufficient supplies to avoid the necessity of importing foodstuffs. They promised the Governor that in case of any deficiency of supplies at the next harvest, they would be equally ready to supply to Government such quantities as might be required at the price fixed by Bligh.

Although Bligh's policy was similar to that which the English Government had endeavoured to carry out through Hunter and King, his energy was making the policy effective. Writing to Banks in February 1807, he gave an interesting account of his work. A good harvest of maize was coming in but there would be a definite scarcity until 1808 owing to the great floods having done injury to the soil. Bligh gave elaborate details of the acreage under agriculture, saying: "We must therefore struggle through until next harvest which will teach the settlers to be more provident and industrious than any admonition whatever."¹² Bligh explained to Banks that he had fixed 14s. 9d. per bushel as the government price to those who would supply wheat, allowing a credit of 15s. for such wheat as might be returned into store in payment of government debts. He added that the wheat brought to open market was selling at from 20s. to 24s. per bushel. Incidentally, he pointed out that the location of

⁸ *ibid.*, p. 191.

⁹ O'Hara, J., *History of New South Wales*, p. 297.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² Bligh to Banks, 7 February 1807. (Banks Papers: Mitchell Library.)

Macarthur's 5000 acre grant was not satisfactory because of its proximity to the rich lands over which the Government's wild cattle were ranging. Bligh was determined to protect the agriculturalist against the attempt of the pastoralists and officers to monopolize the labour of the convicts, saying that:

Hedsmen are scarce and if a few individuals were to have all the servants they pretended should be allowed them for this pursuit (sheep raising) the agriculturalist would want his laborers, and the inhabitants grain for their common consumption.¹³

Other features of this very important policy letter of Bligh were: (i) the need for reform in the magistracy and police; (ii) the need for repairing and completing public works and churches which were in a very dilapidated state; (iii) the need for regulating private buildings in the towns; (iv) educational and religious facilities for the children; (v) the need for the encouragement of marriage; (vi) a rigorous prohibition of the rum trade.

The rum traffic was operating with ruinous effect. Bligh said that:

Its being used as an article of barter had added to its pernicious effects more than by the quantity imported, beyond all conception. . . . The regulation respecting spirits has been by permit from the Governor to individuals to receive certain quantities when a ship arrived at the market price (about eight or nine shillings per gallon) and allows it to be bartered away at twenty shillings per gallon by general orders; but such various means are adopted that the holder enhances its value from three to five pounds, and even eight pounds have been given by unfortunate people who will not do without it. A sawyer will cut one hundred feet of timber for a bottle of spirits, value 2/6d., which he drinks in a few hours; when for the same labour he would charge two bushels of wheat which would furnish bread for him for two months; hence those who have got no liquor to pay their laborers with, are ruined by paying more than they can profitably afford for any kind of labor which they are compelled to hire men to execute, while those who have liquor gain an immense advantage. At harvest, or shortly after, those who have got spirits go or send their agents to purchase wheat, and frequently take from the thoughtless settler two and three bushels of wheat for a bottle of spirits (which costs the proprietors only half a crown), and in the same proportion for any part of his stock. On this account principally it is that the farmers are involved in debt, and either ruined by the high price of spirits or the high price of labor which is regulated thereby; while the unprincipled holder of spirits has work done at a cheap rate and amasses considerable property.¹⁴

¹³ *ibid.*

¹⁴ *ibid.*

Clause eight of Bligh's Instructions had enjoined him, on pain of the King's utmost displeasure, to order that no spirits should be landed in the colony without his consent, and to take the most effective measures to secure that all his orders in relation to such importation should be obeyed.¹⁵ It will be noted that the Instructions did not refer specifically to the general regulation of the barter or sale of spirits within the colony. The New South Wales historian, Roderick Flanagan, has stressed the absence of such reference, and deduces therefrom that Bligh's authority was confined to preventing the landing of spirits without express consent, adding: "It does not appear, from first to last, that any occasion arose to carry into effect this order."¹⁶

Although the Royal Instructions to Bligh did not in terms cover the regulation of trafficking within the colony, Bligh was also bound by his commission to carry out any particular instructions which he might receive from time to time. And Flanagan's point is completely answered by the fact that, on 7 February 1807, Bligh, in an official dispatch to Windham, then Colonial Secretary, fully described his policy and programme in relation to spirits. The points of his rum policy were, first, that the internal barter of spirits must not be carried on in any way whatever, this being: "absolutely necessary . . . to bring labour to a due value and support the farming interest."¹⁷ Second, that importation should be restricted so as to prevent undue increase of consumption, public house licences being kept under strict control; and third, to prohibit all distillation within the colony. Bligh said in his dispatch: "I am aware that prohibiting the barter of spirits will meet with the marked opposition of those few who have so materially enriched themselves by it."¹⁸

This anti-rum policy of Bligh, so carefully reported by him to the Home authorities, was fully endorsed. On 31 December 1807, Castlereagh, who had succeeded Windham after the fall of Grenville's "Ministry of all the Talents," instructed Bligh that the King had approved of his determination: "to put an end to the barter of spirits which appears to have been abused to the great injury of the morals of the colony."¹⁹

¹⁵ *H.R. of N.S.W.*, vol. v, p. 637.

¹⁶ Flanagan, R., *History of New South Wales*, vol. i, p. 173.

¹⁷ *H.R. of N.S.W.*, vol. vi, p. 250.

¹⁸ *ibid.*, p. 251.

¹⁹ *ibid.*, p. 400.

Thus Bligh was authorized to prevent free importation, to preserve the trade under his entire control, to enforce all penalties against illegal import, and to establish regulations at his discretion for the sale of spirits.²⁰ Although this dispatch of Castlereagh was not received in the colony until after Bligh's overthrow, it disposes entirely of Flanagan's theory that Bligh's legal authority was confined to the mere control of importation.

²⁰ *ibid.*

CHAPTER XV

BLIGH MAKES PROGRESS

MEANWHILE Bligh was proceeding vigorously with the carrying out of his general policy and programme. We may take the story on to October 1807, when he sent further and more elaborate reports to England, both officially to the Office of the Colonies and unofficially to Sir Joseph Banks. In the previous February his opinions, though clearly and firmly expressed, had necessarily been in some respects tentative. Now, in October, only eight months afterwards, he had become supremely confident of success, telling Banks: "I can give you every assurance of the Colony's now raising its head to my utmost expectation."¹ The buildings have been improved, the town is looking better, the settlers are exerting themselves and, to use his own words: "the discontented are checked in their machinations, whilst the honest settler feels himself secure and the idler [receives] no encouragement."²

Bligh's chief anxiety was in connexion with the administration of justice, because: "the officers are so connected by property and intercourse with the emancipated convicts both of men and women that their influence affects public justice."³ Bligh therefore recommended to the Colonial Office that the method of administering both criminal and civil justice should be altered and assimilated to that of England. There should be a judge, an attorney-general and a solicitor. In this October report Bligh shows great dissatisfaction at the weaknesses of Atkins, whom he describes as a "disgrace to human jurisprudence." So far as the New South Wales Corps is concerned, Bligh urges their removal from the colony, suggesting that: "whatever soldiers are to be here, let them be soldiers, and not those who are without exception ingrafted with convicts."⁴

¹ Bligh to Banks 10 October 1808. (Banks Papers: Mitchell Library.)

² *ibid.*

³ *ibid.*

⁴ *ibid.*

Late in October Bligh sent a very comprehensive report to Windham, carrying out a previous promise to furnish a full description of the colony. The question of allocation of convict labour is discussed, improvements in existing farming practice are suggested, and the general scientific outlook is well worthy of the Fellow of the Royal Society who wrote it. Undoubtedly this document affords evidence that Bligh possessed not only courage and character, but an unusual amount of constructive statesmanship. It is unnecessary to deal with all aspects of the report, but several points must be mentioned. First, the barter of rum has been successfully prohibited, and the currency has been re-established in sterling, so that all future notes of hand must be made payable solely in sterling. The result has been to help the merchant and honest man and to hinder the knave. Second, many of the emancipated convicts, though they have attained to some degree of wealth, remain quite unreformed and unprincipled, so that "not until the next or after generations can be expected any considerable advance in morality and virtue."⁵ Third, there is an improvement in the conditions of the small agriculturalists who are becoming more prudent in their husbandry and far less inclined to resort to liquor. Fourth, the administration of justice is still unsatisfactory owing to the poor quality of the Judge-Advocate and the control of the Courts by the military officers. Bligh specifies Atkins's two great faults as his excessive drinking and his ignorance of the law. He recommends that Atkins should be replaced by an honourable and judicious lawyer at a good salary.

The last reports of Bligh to England prior to the rebellion are dated 5 November 1807.⁶ For present purposes, the important aspects of the reports are:

(1) Bligh reports that the industrious settler farmers are raising their heads and becoming independent of their creditors.⁷

(2) Bligh declares that he is: "polite and attentive to everyone and gratifying them by every consistent means in my power."⁸ At present everything in the colony seems propitious.

(3) The two Blaxlands who had recently arrived as immigrants promise to become unsatisfactory settlers, being far

⁵ *H.R. of N.S.W.*, vol. vi, p. 353.

⁶ *ibid.*, p. 378. (Also Banks Papers: Mitchell Library.)

⁷ *H.R. of N.S.W.*, vol. vi, p. 378.

⁸ *ibid.*

too closely associated with Simeon Lord "who has hitherto ruined every person he has been connected with."⁹ Bligh is especially angered because one of the Blaxlands has had the amazing effrontery to offer to Bligh a partnership with them in the carrying on of a distillery business in the colony."¹⁰

(4) Bligh confides to Banks that:

This sink of iniquity Sydney, is improving in its manners and its concerns. Government is securing a substantive dignity and producing in consequence good effects on the whole.¹¹

In his reports of October and November, Bligh referred to a determined attempt on the part of the rum traffickers and some of the regiment to ruin Gore, the Provost-Marshal who, as civil officer in charge of the constabulary, frequently had occasion to enforce the Governor's regulations against the traffickers. Up to a point, the attempt to destroy Gore by prosecuting him on a false charge resembled the attempt made during Hunter's governorship to ruin Isaac Nichols.

The importance of the prosecution of Gore has been overlooked by the historians. Bligh, however, fully realized its implications as Gore was faithfully carrying out the Governor's policy. Gore was undoubtedly a very efficient chief of the constabulary. Despite occasional aspersions, there is no reliable evidence that he was anything but an honest, as well as a courageous man. Now, in accordance with the *modus operandi* designed against civil officers, the military officers commenced their attack on Gore by attempts to sabotage his control and by insulting him. When the first attempt failed, they tried to induce Gore to become a member of the combination against which Bligh was contending. This attempt also failed.

Finally, the leaders of the anti-Bligh forces, themselves keeping in the background, caused Gore to be prosecuted on two charges: (i) uttering a forged note of hand of the face value of fifteen shillings, and (ii) stealing a trifling ornament not worth sixpence. One McKay, the keeper of the Sydney jail, who was under Gore's control, was threatened by him with dismissal because of his notorious profligacy and also his brutality as jailer. Then McKay's mistress was persuaded to prosecute Gore for the theft of the worthless ornament.

⁹ Bligh to Banks. (Banks Papers: Mitchell Library.)

¹⁰ *ibid.*

¹¹ *ibid.*

On the day of the trial the woman did not appear, but Jamison, principal surgeon and a member of the military combination, signed a certificate stating that the woman was in the actual throes of childbirth and could not attend the trial. This certificate appears to have been quite false.¹² During the previous August, Underwood, a partner of Simeon Lord, who had been a very prominent trafficker in rum, was committed by the magistrates to the Sydney jail for one month for having written an insolent letter to the Governor.¹³ Accordingly, Underwood was persuaded to come forward to prosecute Gore on the second charge relating to the forged note of hand which Gore was alleged to have uttered.

Both charges completely broke down before the Criminal Court, and it is evident that there never should have been a committal. There would not have been a committal but for two facts: first, the great weakness of Atkins, the Judge-Advocate; and, second, the strong influence exerted against Gore by Johnston, the officer commanding the Corps, who was also a magistrate. In September 1807, mainly as a result of his having given the false certificate in the Gore Case, Jamison, the principal surgeon and an associate of Macarthur, was dismissed by Bligh from the position of magistrate.¹⁴ At the same time Johnston came into open conflict with Bligh on an issue which was soon to have far-reaching consequences, i.e. the composition of the Criminal Court. In his November letter to Banks, Bligh reported:

I found that Major Johnston was much against Gore and improperly warned the officers who were to sit to take care what they were about, and to my surprise called on me with a Magistrate, in a very questionable shape, to tell me I had taken the command of the Regiment by my not leaving the nomination of the members to him, who were to sit on the trial, and that he would complain to the Commander-in-Chief. In answer I politely requested he would do so and wished him a good morning, as I would not allow any questions to be put to me in my official situation.¹⁵

In order to enable Gore to put forward an effective defence, one George Crossley, ex-Attorney of the Court of King's Bench, who had been transported for perjury and pardoned

¹² *H.R. of N.S.W.*, vol. vi, pp. 374-5.

¹³ *ibid.*, p. 278.

¹⁴ *ibid.*, p. 519.

¹⁵ Bligh to Banks, 5 November 1807. (Banks Papers: Mitchell Library.)

by Governor King, was allowed to sit with him (Gore) in Court. Fitz, the Deputy Commissary, who was extremely friendly with the rum traffickers and who, after the rebellion, took a prominent part in the rebels' malversation of government property, wrote a very malicious letter to England attacking Bligh's conduct in relation to the Gore Case, complaining that Crossley had been allowed to assist in the defence and also that the six officers who served on the Criminal Court had been selected by Bligh instead of by Johnston, the commanding officer. Fitz's reckless untruthfulness is evidenced by his wild and absurd charges against Robert Campbell.¹⁶

By this time, not only Fitz, but Surgeon Harris had joined the ranks of the malcontents who were combining to oppose the liquor reforms of the Governor. Harris had been worsted by the military group when he remained friendly with Governor King, and he was now determined not to repeat his proofs of loyalty. In October 1807, he sent letters to ex-Governor King and his wife which, though written in an amusingly abusive style, are utterly unreliable as evidence, except so far as they contain admissions against the writer and his new associates.¹⁷ The malice of Harris appears expressly from the letters; but, in addition, Bligh had had occasion to dismiss him from the post of naval officer.

Harris had a flair for invective; Bligh is a "tyrannical villain," a "reptile." Harris assures King that Bligh wore the mask until King departed, but, as it is: "Caligula himself never reigned with more despotic sway than he does."¹⁸

The Harris letters contain the very important admission that Bligh had been remarkably successful in suppressing the traffic in spirits.¹⁹ Harris bitterly complains to King that "Campbell is everything with the Governor,"²⁰ that "little Jack" Palmer, the Commissary, is also loyal to the Governor, and that McKay, the jailer, has been dismissed by Gore and replaced by a settler named Reily who, as it turned out, was favourably disposed to Macarthur and, at a critical moment before the actual rebellion, showed his gratitude to Macarthur for favours previously conferred.

¹⁶ *H.R. of N.S.W.*, vol. vi, p. 306.

¹⁸ *ibid.*, p. 344.

¹⁹ *ibid.*, p. 337.

¹⁷ *ibid.*, pp. 336-49.

²⁰ *ibid.*, p. 339.

CHAPTER XVI

TRAFFICKERS IN TROUBLE

THUS, towards the end of 1807, Bligh was succeeding in carrying out important features of his policy, a fact which was sufficiently proved by the fierce, almost desperate, clamour of the rum traffickers. Moreover, his efforts were meeting with the approval of Whitehall. In dispatches prepared at Downing Street to be forwarded by Castlereagh himself, and by his very powerful Under-Secretary Cooke, whom Macarthur both disliked and feared, Bligh was being assured of the English Government's full support of his executive and legislative measures.

Castlereagh's dispatch¹ expressly approved of Bligh's policy of suppressing the rum traffic. In a separate dispatch,² Cooke stated the Government's "full approbation of the measures you are taking to prevent the barter of spirits."³ It also appears that, towards the end of 1807, the question which Bligh had raised in the previous February as to the permanent location of Macarthur's 5000 acre grant was being regarded with some concern by the Colonial Office, and it seemed by no means impossible that the Government would require Macarthur to select his land elsewhere in the colony in substitution for the "peacocked" land in the Cowpastures. This shows that, even in what was a minor aspect of general policy rather than an essential part of his fighting programme, Bligh was about to receive the endorsement of the Government. As late as 25 August 1808, Banks wrote to Bligh: "All I hear in Lord Castlereagh's office, however, is in your favour; your talents, your perseverance, and your spirited conduct are spoken of in terms of praise, which flatter me, you may be sure, as much as they can do you."⁴

If Bligh's stock was high, how was Macarthur faring

¹ *H.R. of N.S.W.*, vol. vi, p. 400.

² *ibid.*, p. 399.

³ *ibid.*

⁴ *ibid.*, p. 706.

towards the end of 1807? There is extant a letter from him to Piper, dated 11 October 1807. It is short and to the point. From Macarthur's point of view, New South Wales

is now become a perfect hell, at least this part of the territory. The Corps is galloping into a state of warfare with the Governor, and in my opinion they are most wretchedly circumstanced among themselves. Peter I think is at the old game, yet he appears to enjoy the confidence of Johnston.⁵

A very curious feature of the *Historical Records of New South Wales* is that the direct evidence of dissension amongst the officers of the Corps is extremely small in quantity. Macarthur's "Peter" possibly refers to Captain Kemp who, with several officers, seems to have kept aloof from Johnston, Macarthur and their associates, who wanted to injure Gore. That Macarthur's statement to Piper of internal bickering among the military officers was correct is evidenced by the fact that, in his letter to ex-Governor King, Surgeon Harris bitterly attacked Kemp, saying "he is anybody's body."⁶ The probabilities are that, in proportion as Bligh displayed vigour and relentlessness in his curbing of the rum and goods traffickers, a number of them, becoming concerned about the danger to themselves, were disinclined to antagonize him further, and shrank from further combination.

Between the month of October 1807, when he wrote to Piper, and the end of that year, Macarthur had placed himself in open antagonism to Bligh. Ultimately he stood committed to take his trial before the Criminal Court of the colony on charges of sedition. The manner by which Macarthur found himself in this dangerous situation is best understood by an analysis of the five leading cases which preceded Bligh's overthrow by Macarthur and the officers of the Corps. They may be called:

- (1) The Case of the Promissory Note;
- (2) the Case of D'Arcy Wentworth;
- (3) the Case of the Imported Stills;
- (4) the Case of the Schooner *Parramatta*, and
- (5) the Case of Sedition.

At first sight it might seem difficult to understand why

⁵ Macarthur to Piper, 11 October 1807. (Piper Papers: Mitchell Library.)

⁶ *H.R. of N.S.W.*, vol. vi, p. 341.

mere legal contests should be regarded as having such importance as I ascribe to them. But the key places on the Criminal Court of the colony were occupied by the military officers. Through the adroit if unscrupulous handling both of the Criminal Court and the military Courts Martial, Macarthur, whilst an officer of the Corps, had succeeded in discrediting both Hunter and King. He had not lost his skilfulness in employing such instruments.

Moreover, the Courts were the true forum of the little colony. They had no competitors as a means of expressing individual or public grievances. There was no legislature, no municipal government, no avowed political association or party, no theatre and no independent press. On the one hand there was the legal dictatorship of the Governor as the sole legislative and executive authority and the final authority in the civil jurisdiction, and this dictatorship was being exercised by Bligh in favour of the agriculturalists and poor settlers and against the wealthy traffickers and monopolists. On the other hand, the military officers had the real control of the criminal judicature, and, as the leading phalanx of the rum traffickers and monopolists, their economic power, previously uncontrolled, was threatened.

Thus there was always a distinct possibility that Bligh's exercise of political power would provoke an open clash solely because it struck at the heart of the military and economic dictatorship which either had to yield or fight. Meanwhile, bitter skirmishes between the opposing interests almost necessarily assumed the form of legal contests, because they could not be fought elsewhere.

CHAPTER XVII

LEGAL FOUNDATIONS OF NEW SOUTH WALES

BEFORE proceeding to an analysis of the five great cases which both evidenced and accentuated the economic struggle, it is necessary to refer to several preliminary legal questions which are of considerable importance to a proper understanding of the Rum Rebellion.

The people of Australia have been told that they should "recognize with pride and gratitude the precision and foresight, whereby the founders [of Australia] laid the keystones for all the diverse interests, which now form the fabric of civilization in this young nation."¹ But there was no great precision and foresight displayed in laying the legal and constitutional foundations of the colony. The Regulations promulgated by the governors dealt not merely with matters of Court procedure but with substantive legal rights. They governed matters such as customs, police, prices of commodities, the use of and payment for labour. As all the governors who preceded Bligh issued such Regulations, he cannot be subjected to valid criticism for failing to question the legal authority which warranted his elaborate rules and orders. Of course it was impossible to expect these early governors—quite untrained in legal matters—to call into question the validity of orders and directions which bore, directly or indirectly, the imprimatur of the Colonial Office.² As was said by a great law reformer:

This assumption of power, how shall it be accounted for? On the part of the Governor there can be little difficulty. Whatsoever were given to him for law, by his superiors at the Council Board, or the Secretary of State's Office, would naturally enough, one may almost say unavoidably, be taken by this *sea captain* for law. By this sea captain; for such has

¹ *Beginnings of Government*, Preface by Frederick Watson.

² Phillips, M., *Colonial Autocracy*, p. 54.

been the profession and rank, of every gentleman who has ever as yet been invested with this important office.³

But the question remains—what was the constitutional basis for the enforcement of law in the penal settlement of New South Wales during the governorship of Bligh and his predecessors? The statutory authority can be shortly described. By an Imperial Act of 1784 (24 Geo. III, c. 56), the King was empowered to appoint places to which felons might lawfully be transported. By Order in Council dated 6 December 1786, the eastern coast of New South Wales was declared to be a place within the meaning of the Statute. In 1787 two letters patent passed the Great Seal, purporting to establish for the colony, first, a Vice-Admiralty Court, and second, a Court of Civil Jurisdiction. As to the letters patent creating a Court of Civil Jurisdiction Jeremy Bentham, the great law reformer in a monograph called "A Plea for a Constitution of New South Wales,"⁴ argued plausibly and with much rhetorical dogmatism that the colony needed something akin to a constitutional charter, and that so far as the Governor's Orders and Regulations restricting civil rights failed to conform to the existing law of England, they were void and of no effect.

The theory implicit in Bentham's argument is that, both inevitably and automatically, the common and statute law of England is carried to any new colony settled by Englishmen, so that, to use Bladen's sonorous phrase: "the free inhabitants of the colony, who, under King and Bligh, were assuming considerable importance—were not less entitled to the rights and liberties of Englishmen, than those who dwelt under the shadow of St Paul's."⁵ Bladen also emphasizes Macarthur's claim that the Governor of the colony could not validly make general orders so as to bind the free population, and, following Bentham, he adds, "no doubt he was correct."⁶

Prior to the governorship of Bligh, Macarthur never seriously raised such an argument of invalidity, because to do so would often have imperilled his interests. So long as Macarthur received benefits under the Governor's Orders and

³ Bentham, "Plea for a Constitution," *H.R. of A.*, series iv, vol. i, p. 884.

⁴ Bentham, J., *Works*, vol. iv, p. 250; *H.R. of A.*, series iv, vol. i, p. 883.

⁵ *H.R. of N.S.W.*, vol. vi, intro. p. xliii.

⁶ *ibid.*, p. xlii.

Regulations he remained perfectly acquiescent. When Grose and Paterson ruled the colony solely in the interests of Macarthur and his fellow officers, no doubt was suggested as to the validity of the General Orders of the Lieutenant-Governor. During the course of his struggle with Hunter and King, Macarthur chose to remain silent on the great constitutional point, although towards the end of King's term of office, after he had been outmanoeuvred by Macarthur, the Governor reported:

In a conversation between Mr McArthur and myself respecting the free introduction and sale of spirits, which he defended the legality of, and which from experience and a thorough knowledge of the baneful effects of a small quantity being allowed to be landed while its influence lasted, I objected to in the most decided manner. He introduced the subject of some counsel's opinion of the illegality of all local Regulations, and that no Order or Regulation given by a Governor could be binding or legal unless sanctioned by an Act of Parliament.⁷

Later, however, when Bligh proceeded to exercise powers and authorities in the same way as all his predecessors, carrying out the English policy of assisting the small settler in a way which was greatly resented by Macarthur, the latter suddenly discovered that great constitutional issues were involved. Where he derived the notion that the Governor's Regulations might be invalid is not easy to say. But it is probable that he was made aware of Bentham's monograph which was published in 1803. Even then, although Macarthur mentioned these grave constitutional matters on one or two occasions, he never pressed them to a final issue. Next, after the rebellion, Macarthur became Colonial Secretary to Johnston, and no one was more insistent than he upon the enforcement of the orders, directions and regulations of the "Lieutenant-Governor." Finally, after his arrival in England in 1809, Macarthur hinted to his correspondents that he was proposing to bring actions against Bligh with damages laid in almost astronomical figures, but he soon received better advice and the great writ was never forthcoming.

In a proper examination of the constitutional foundations of New South Wales it is dangerous to reason from the legal position created upon the establishment of an ordinary

⁷ *H.R. of A.*, series iv, vol. i, pp. 43-4.

English settled colony to the legal position obtaining under the extraordinary conditions of a penal settlement. For this reason, Bladen's contention cannot be supported in its unqualified form, and Webb is clearly right in stating that the principles governing the application to settled colonies of the common law, did not necessarily apply in relation to the original occupation of New South Wales by Phillip.⁸

From Phillip's governorship in 1788 and during that of Bligh, what was the position in relation to the main body of the non-criminal law of England? In actual fact, New South Wales was long regarded as the precise equivalent of a penitentiary, except that it was situated, not in England itself, but overseas. In his monograph Bentham admitted the fact, but he hardly seems to have realized all its implication. Thus he described New South Wales as: "this immense, yet too real, because uninspectable Bastile."⁹ In 1806, Governor King drew an important series of inferences from this fact, saying:

If it is urged that the laws of England are sufficient for the government of this colony, experience has fully shown the fallacy of such reasoning. Were the generality of the inhabitants of that mixed description that composes society in an English town and county, such reasoning might be allowed; but when it is considered that three-fourths of the inhabitants have been spared from an ignominious death by the humanity of the laws of England, and that the greater part of that number are so rooted in wickedness and vice, which can never be changed by any time or place (at least as far as respects the present generation), joined to the very little amendment that is seen in those who have either expiated their crimes, either by having served their terms or become emancipated—the necessity of these restrictive local Regulations must be visible to everyone who is, or ever has been, acquainted with the depravity of those which they govern in.¹⁰

Bentham certainly admitted that, of necessity, the Governor of such a place as New South Wales possessed a large power of legislation in respect of all officers and privates in the land or naval branches of the King's military service, and, of course, all convicts still in a state of legal bondage. But he contended that over all other persons within the colony the

⁸ Webb, T. P., *Compendium of Imperial Law*, p. 8.

⁹ Bentham, "Plea for a Constitution," *H.R. of A.*, series iv, vol i, p. 900. Presumably Bentham would have liked to invent a new panopticon from which all the convicts in New South Wales could be inspected from one central point, e.g. London.

¹⁰ *H.R. of A.*, series iv, vol. i, pp. 44-5.

Governor's authority was not legislative in character, but was limited to the natural influence which sprang from the ownership of the stores, and the lands, and did not extend to restrictions imposed without the specific consent of the persons affected.

It is obvious that it was from Bentham that Bladen derived his contention that the general law of England governed the free settlers "at least," impliedly admitting that it did not govern the officers, civil and military, and the convicts. But it is impossible to apply such a distinction without realizing its absurdity. For instance, if a General Order of the Governor fixed a price to be paid for wheat, or if the Governor made an order by which a settler was bound to provide rations in return for the grant to him of convict labour, or was bound to grant some allowance to a convict with a ticket of leave, how was it possible for such orders to be binding legally on one party to the transaction but not on the other? Therefore, it may well be the position that the Regulations of the Governor, so far as they dealt with civil or quasi-criminal matters had to be recognized as binding, not only on the military and civil establishments and the convicts,¹¹ but also on all persons remaining within the confines of the curiously spread out penitentiary. If, as Bentham asserts, the Governor's Regulations were binding on the military officers, were the children of the officers entitled to disregard the same regulations? In truth, the convicts under servitude had to submit, and all others chose to submit, to the discipline of the head jailer.

It is on this footing that the Governor's Regulations are best regarded, and his system of control or government—it begs the question to call it "legislative power"—was *sui generis*. If the civil law of the penal settlement can thus be rationalized and justified, the Court of Civil Jurisdiction is to be regarded as a special local tribunal for executing the disciplinary orders of the Governor even although such orders were inconsistent with English law. Bentham's attack on the legality of the Civil Court overlooks the special position of the penal settlement and the extensive character of the Royal prerogative, as delegated to the early governors. In any event, no fault is to be imputed to Bligh for con-

¹¹ "In the beginning, the population of New South Wales was entirely official or criminal." (Melbourne, Dr A. C. V., *W. C. Wentworth*, p. 9.)

tinuing the system which had been established for nearly twenty years.¹²

Fortunately, the legal basis of the criminal law of the colony was more secure. Before Governor Phillip founded the first settlement, in January 1788, a special Imperial Statute (27 Geo. III, c. 2) was passed. It provided that the King might, by his Commission appointing the Governor, authorize the latter to convene a Court of Judicature "for the trial and punishment of all such outrages and misbehaviours as, if committed within the realm, would be deemed and taken, according to the laws of this realm, to be treason or misprision thereof, felony or misdemeanour."

The same Act provided that the Court: "shall consist of a Judge-Advocate, to be appointed in and for such place, together with six officers of His Majesty's forces, by sea or land."

The material provisions of this Imperial Statute are perfectly clear. They made "misbehaviours" in the colony criminal offences triable by the local Criminal Court, providing that such "misbehaviours" would have been punishable by the Criminal Courts of England if committed in England. Two illustrations will show the operation of this Statute. First, the combination of Macarthur and the officers to arrest Governor Bligh and the forcible overthrow of his lawful government would, if similar acts had been performed in England, have constituted "conspiracy and high misdemeanour."¹³ This description of their offence was suggested by the law officers of England; and I shall show later that it under-estimates its gravity. But reserving that matter for the present, it is plain that, at the very least, the Criminal Court of the colony had ample jurisdiction to convict all persons concerned of an unlawful conspiracy. Second, it will subsequently be shown that each of the three charges which were preferred against Macarthur on 25 January 1808—the day before the rebellion—was in respect of conduct which, under similar circumstances, would have been punishable in

¹² The legality of the Civil Courts' jurisdiction and the validity of the Governor's orders are fully discussed by the author in *Australian Law Journal*, January 1938: "Proceedings of the Australian Law Convention."

¹³ *H.R. of N.S.W.*, vol. vii, p. 229.

England as a common law misdemeanour. Therefore, the Criminal Court of the colony consisting of the Judge-Advocate and six officers duly nominated, had ample jurisdiction to try and punish Macarthur in respect of the matters charged against him.

These two illustrations are given to demonstrate the point that the Imperial Statute 27 Geo. III, c. 2, not only invested the local Criminal Court with a jurisdiction as extensive as that of the superior Courts in England, but impliedly introduced into the colony the whole body of the English law of treason, felony and misdemeanour as existing at the time of the commission in the colony of the acts alleged to be criminal and there punishable. This Statute, therefore, brought into effective operation in the colony the whole body of the criminal law of England so far as it could be enforced by prosecution or indictment.

Under the same Imperial Statute, the Criminal Court of the colony had to be convened by the Governor; and it was legally the function of the Governor, and not of the officer commanding the New South Wales Corps, to nominate the six officers who were to sit with the Judge-Advocate of the Criminal Court so as to make up the statutory tribunal of seven persons. Some of Bligh's critics have contended that he adopted an illegal practice in naming the officers who were to sit, and that he was bound to leave the selection to the officer commanding. Nothing could be more absurd. The Statute contemplated that, on occasions, the six officers nominated might be all naval officers. It was for the Governor to choose how the officers were to be distributed between navy and army, and of necessity he had to nominate who were to sit.¹⁴ Phillip had suggested the excellent practice of choosing whenever possible three naval and three military officers, but of course this practice was also entirely a matter for the Governor's discretion. After the departure from the colony of the original detachment of marines, the military

¹⁴ During Phillip's governorship, Major Ross argued that, when summoned, the officers were not legally bound to sit upon the Criminal Court of the Colony. But the English law officers (one of them later becoming Lord Eldon) ruled that a refusal to obey the Governor's summons, backed as it was by Statute and valid letters patent, amounted to a common law misdemeanour. (*H.R. of A.*, series i, vol. i, p. 35; and *Australian Law Journal*, January 1938.)

officers usually comprised the whole panel of six, but this was due to the fact that, except when a vessel of war was in Sydney, naval officers were seldom available.

These preliminary matters of law having been discussed, I proceed to an examination of the first of the five legal disputes which contributed in part to Bligh's overthrow.

CHAPTER XVIII

THE CASE OF THE PROMISSORY NOTE

BEFORE the Hawkesbury floods of March 1806, grain was plentiful, and nearly all money bargains made with the settlers were calculated by reference to the existing value of a bushel of wheat as determined by the recognized government store price for wheat. Prior to the floods, wheat was seldom more than 7s. 6d. per bushel, but, by July 1807, it had risen to over 20s. By a general order of November 1806, Bligh directed that, for the future, all promissory notes must be expressed solely in terms of sterling money. But this did not set at rest old disputes, for many promissory notes had already been given which mentioned quantities of wheat and not a few were still unpaid.

In July 1807 a public discussion of the legal problem involved was initiated in the *Sydney Gazette*, and the rights and wrongs of debtor and creditor were vehemently debated. For instance, on 12 July 1807, the debtor's argument was that:

In cases respecting wheat-notes, wherein the present holder is not the person to whom a note was originally granted, is it not an insult to common justice that he should require a greater consideration for it than he had himself allowed? This question is suggested in the idea that if A received from B a note of hand (drawn payable to the latter by C) for twenty bushels of wheat—it then being 8s.—he must of consequence have taken such note in consideration of the sterling sum of £8 at the most. Then, if A retain possession of the note until wheat became five times as valuable as it was when he received it, and then insists upon the sum of twenty bushels, whether does he sue for—£8 or £40, and if any sum that exceeds his first and only equitable claim, upon what principle of equity can he pretend to justify?¹

On the other side, the argument was that: "the literal

¹ *H.R. of N.S.W.*, vol. vi, p. 486.

tenor of every engagement ought to be fulfilled, and . . . specific contracts must be sacred and binding."²

These opposing views were inspired on the one side by the Hawkesbury settlers, and on the other by Macarthur's group of traders. The matter came to a head when Macarthur himself brought suit against Andrew Thompson, a Hawkesbury settler who had acted as bailiff for Bligh, claiming a sum of money representing the present value of the particular number of bushels of wheat which had been mentioned in a promissory note made by Thompson. Thompson had not made the note in Macarthur's favour, but the latter had obtained it from the original holder. From his later manoeuvres in connexion with a bill drawn by Judge-Advocate Atkins, it would seem that Macarthur made a practice of securing from third parties bills or notes of persons who were, or were likely to become, his opponents.

On this occasion Thompson flatly refused to pay Macarthur more than the face value of the note as expressed in pounds, but Macarthur insisted upon payment, not as at its face value, but as at the increased value based on the value of each bushel of wheat at its scarcity price. The Civil Court of first instance decided against Macarthur, but the latter appealed to Bligh himself sitting as a Court of Civil Appeals. Bligh made short work of the case and dismissed Macarthur's appeal out of hand.³

If one can believe some of the statements extracted from witnesses called during the "mock trial" of Macarthur (held after the rebellion during February 1808) Bligh acted hastily in refusing to listen at any length to Macarthur's arguments.⁴ But the statements then made by witnesses were extracted during a time of great terror. Moreover, there seems to be no real substance in the charge that Bligh acted disgracefully or even discourteously, because, after Macarthur's mock trial, nothing more was heard of the matter, and Johnston did not refer to it during the London court martial in 1811.

After the dismissal of his appeal by Bligh, Macarthur at once ceased to visit Government House, and he was not to be seen when Bligh visited his house to return a call by Mrs Macarthur at Government House.⁵

Flanagan, in his discussion of the law applicable to the

² *ibid.*, p. 487.

³ *ibid.*, p. 485.

⁴ *ibid.*

⁵ Flanagan, R., *History of New South Wales*, vol. i, p. 155.

case of the promissory note, asserts that: "it was never pretended that the governor in the matter acted according to law."⁶ His conclusion on the case is that: "The colony, moreover, was sufficiently old to have formed a commercial code . . . and, according to every rule recognized by commercial men, the contract between Mr Macarthur and Thompson was such as ought to be fulfilled."⁷

John Dunmore Lang seems to take the view that according to Bligh a broad principle of equity was involved, and, on that ground, he was possibly justified in his decision.⁸ Bladen's opinion seems to be that Bligh's decision was justifiable solely as an extreme exercise of a summary jurisdiction of an equitable nature.⁹ But he also states that: "there can, however, be little doubt that in an English Court an action for specific performance would have succeeded."¹⁰

This last suggestion of Bladen is quite untenable. No court of equity would have dreamed of ordering Thompson to hand over to Macarthur the quantity of wheat specified in the note. Equity would have left the parties to their remedy at common law. The difficulty in pronouncing on the case lies in the failure of the records to tell us the precise form in which Thompson signed the note. But, on the whole, this difficulty can be surmounted. That the document took the form of a promissory note is clearly implied in all the contemporary references to the dispute. As Macarthur had no personal transaction with Thompson he could only have become its true owner and entitled to sue Thompson direct if the document was a promissory note transferable by hand to hand. Therefore, we must take it that the document embodied a promise to pay in pounds and was signed by Thompson as and for a promissory note. Further, the face value of the note as at the time it was made was also expressed in bushels of wheat as at the existing value of wheat.

On these facts, the proper conclusion is that the reference to the wheat should be treated as a mere statement of the mode by which the debt would be or might be discharged by the maker of the note. Further, the reference to the wheat would probably have been regarded by a court of law as a

⁶ *ibid.*, p. 173.

⁷ *ibid.*, p. 174

⁸ Lang, Rev. J. D., *Historical and Statistical Account of N.S.W.*, vol. i, p. 96.

⁹ *H.R. of N.S.W.*, vol. vi., intro, p. liv.

¹⁰ *ibid.*

mere excrescence upon the main promise to pay the face value in money, which is of course the very essence of every bill of exchange or promissory note. So regarding the matter, a court of law would have permitted the maker of the note to discharge his debt in money upon a demand by the holder.

And this is exactly what Bligh decided, although of course his reasons were those of natural justice and morality and not mere reasons of law. Moreover, if Macarthur's claim assumed the form of a petition for the specific performance of a contract to deliver bushels of wheat, the Civil Court in the first instance, and Bligh on appeal, was justified in dismissing the claim out of hand. In the circumstances, so far as it is possible to reconstruct them, Macarthur was legally wrong and Bligh was legally right.

The importance of this apparently trifling dispute is that the judgment of Bligh was a distinct setback to those who had taken advantage of the scarcity to press unexpectedly onerous demands upon the small settler. Further, the case revealed Macarthur as the open defender of the harsh creditor and Bligh as the opponent of the bartering group who acted through Macarthur. For the first time the two men appear before the colonists as direct opponents. And the antagonism was accentuated so soon as it was known that Macarthur had displayed personal resentment against Bligh's decision.

It is not impossible that Macarthur deliberately brought the case in order to test Bligh's courage and tenacity; and that Macarthur hoped that Bligh would seize the opportunity of conciliating the leaders of the trading group. Bligh's decision showed that the traders and traffickers could not expect that he would relent in the carrying out of England's policy of assisting the small settler.

CHAPTER XIX

THE CASE OF WENTWORTH

THIS case is of great importance for a variety of reasons. After the rebellion, Bligh's supposed ill treatment of Wentworth was relied on by Johnston and Macarthur as providing evidence of great tyranny. Further, some of the historians have pronounced an inaccurate judgment on the affair. Thus Marion Phillips stated that Wentworth, "an assistant surgeon on the staff, but a man of wealth and influence . . . had been suspended without cause shown and with a lack of justice which the Minister himself censured."¹

Bligh's suspension of Wentworth occurred soon after his decision in the case of the promissory note. The first phase of the Wentworth affair is that he was tried by a general Court Martial in July 1807, Major Johnston, the officer commanding, acting as president of the Court Martial, and Atkins as Deputy Judge-Advocate. The charge preferred against Wentworth was prosecuted by Captain Abbott who alleged that Wentworth had disobeyed his (Abbott's) orders to admit two convicts into the Government Hospital at Parramatta. Wentworth, as assistant surgeon, was in charge of the hospital. It appeared that the superintendent who was in control of the convict labourers at Castle Hill sent the two convicts to Captain Abbott, reporting that they were too ill to be capable of labour. Abbott gave evidence that he directed the constable supervising the two convicts to take them to Wentworth to be received into hospital, but that the constable had brought back two messages from Wentworth refusing to admit them.

In cross-examination Wentworth made the point that the message had been sent to him verbally, and by an ex-convict; but Abbott replied that Governor King had frequently sent

¹ Phillips, M., *A Colonial Autocracy*, p. 22.

messages by the mouth of ex-convicts and that most officers in the colony did likewise. The constable who took the two convicts to Wentworth gave direct evidence that Wentworth refused to receive them without an order either from Governor Bligh, or from Jamison, the chief surgeon.

So far, this seems to be a trivial sort of dispute. But its inwardness began to appear so soon as Wentworth urged that, with a number of other convicts, the two men in question had been ordered by Governor Bligh to leave the hospital so as to be available for labouring under the government supervisor. Wentworth's alleged justification for refusing admission was not that the men were well, for he "admitted" that they were ill and quite proper subjects for hospital treatment. But he deliberately took up the line that, because Bligh had ordered convicts to leave the hospital, he (Wentworth) would not take them back "unless the Gov'r satisfied him [Wentworth] for what cause he had so taken them away."²

In his defence to the charge of refusing to obey Abbott's order, Wentworth was allowed by the members of the Court Martial to call Oakes, chief constable at Parramatta, in order to prove that Bligh had ordered all the convalescent patients attached to Wentworth's hospital, but employed for Wentworth's own purposes, to be returned to Government for assignment or allocation elsewhere. Wentworth next called Jamison, the principal surgeon, to prove—and again the officers of the Court Martial allowed him to prove—that he (Jamison) was quite unaware of Bligh's order for the removal of the men from Wentworth's hospital. Wentworth also called an assistant surgeon and asked him this question: "Did the Gov'r during the period of your charge at Parramatta as surgeon of the hospital there, discharge any patients out of the hospital without your consent or approbation, or even communicating with you on the subject?"³

At long last the Court intervened and disallowed the question as being highly disrespectful to the Governor as military commander-in-chief. It may be noted that three of the six officers who served on this Court Martial were also on the panel of the Criminal Court at Macarthur's trial on 25 January.

What was the true significance of Wentworth's most

² *H.R. of N.S.W.*, vol. vi, p. 318.

³ *ibid.*, p. 321.

curious defence? Disobedience of Abbott's order was the only charge. The charge was proved up to the hilt. Indeed it was admitted by Wentworth in his defence. He attempted to justify his conduct by proving that, while he was absent at Sydney, he received information from Parramatta that Bligh had ordered convicts whom Wentworth was retaining at the hospital to be sent to labour under the government supervisor. Wentworth was permitted to prove that he had complained to Jamison about Bligh, and that Jamison had said he knew nothing of the matter, and Bligh would not at the moment discuss it. At one point of the case Wentworth faintly contended that Abbott had no authority over him and that he should only obey the orders of Jamison, but this contention does not seem to have been a genuine one, because later he fully acknowledged the authority of Abbott as his superior officer.

The verdict of the Court Martial was that by disobeying Abbott, Wentworth was guilty of a breach of one of the articles of war, and he was sentenced to be publicly reprimanded. Bligh approved of the sentence of the Court Martial, and directed that Johnston, at the head of the troops on parade, should inform Wentworth of the Governor's high displeasure at his conduct.

In the memorial subsequently forwarded by Wentworth to the Colonial Office he said that he: "only declined to comply with such orders because they appeared to him to be in direct opposition to orders previously given by His Excellency Governor Bligh, and because your memorialist dreaded that he should expose himself to censure from the Governor."⁴

Next, Wentworth was ordered by Major Johnston to return to duty at Parramatta. On 25 July Bligh suspended Wentworth from his position as assistant surgeon until the King's pleasure was known.⁵ Wentworth inquired from Jamison whether any fresh charges had been brought forward, but Jamison replied that Bligh had declined to give an official answer to the question except to state that he disapproved of Wentworth's conduct. Wentworth applied to be allowed to return to England, but Bligh refused permission.

What was Bligh's reason for his drastic action in suspending Wentworth pending a decision of the Home authorities? Such action supports the view, which I hold

⁴ *ibid.*, p. 314.

⁵ *ibid.*, p. 326.

strongly, that the case was regarded by Bligh as of great importance. It had been elicited during the evidence at the court martial that when Abbott sent the order to Wentworth to receive back the two convicts into the hospital, Abbott was at the home of Macarthur near Parramatta. The fact at once suggests that on this occasion Macarthur was playing the role of principal adviser while endeavouring to remain in the background. It is plain that Bligh was quite satisfied that Wentworth, for his private profit, had been improperly using the labour of the convicts who were admittedly quite able to work, and who therefore should not have been kept in hospital.

Next, the evidence indicates that there was the closest and most friendly collaboration between Abbott, the prosecutor, and Wentworth, the accused, although, if the case had been genuine and above-board, Abbott should have been extremely indignant at a flagrant disobedience of a lawful order. Further, Wentworth acted in very close association with Harris, who was also an assistant surgeon and whose malice towards Bligh has already been noted.⁶ Wentworth knew quite well that Bligh had ordered the discharge of the patients from the hospital because he (Wentworth) was defying the authority of the civil administration as the legal controllers of convict labour and was improperly retaining convicts on the hospital books for the purpose of personal advantage.

In the circumstances, Wentworth's defence was to be regarded not only as insulting to Bligh, but as deliberately intended to be so. And Abbott, the prosecutor, instead of protesting against the admission of the irrelevant evidence which was damaging to Bligh, actually encouraged its admission. Therefore, the officers of the Court Martial, including Johnston, took little pains to prevent Bligh's name from being unwarrantably dragged into the dispute. It is not possible to believe that Wentworth, who was not inclined to be turbulent, would have acted as defiantly as he did except at the instigation of the military and trading group, relying on the promise of future support from the same group.

Bligh's dispatch to Windham, dated 31 October 1807, stated that Wentworth had been guilty of employing convicts for

⁶ *ibid.*, pp. 336 *et seq.*

private labour after receiving them into the hospital at Parramatta as sick men. He said that:

Instead of the hospital being an assylum for sick men, and as soon as they recovered to be returned to Government labour, or to the poor settlers from whom they came, it has been a practice to allow them to remain victualled as hospital patients requiring care, applying their use to private advantage.⁷

On 23 July, prior to Wentworth's suspension, Atkins as Judge-Advocate was directed by Bligh to conduct an *ex parte* investigation into Wentworth's conduct. Oakes, the chief constable at Parramatta, gave evidence in reference to the convicts who were on the books of Wentworth's hospital that one man had been working solely at Wentworth's farm for sixteen weeks, another for four weeks, a third for ten days, and a fourth for no less than six months. A fifth man was also working at Wentworth's garden. In addition, two able men allocated by Government to work in Wentworth's garden were usually found working at Wentworth's farm. The informant stated that, in these matters, Wentworth was only acting in accordance with the usual practice of the colony.

After the rebellion, Bligh's confidential report on Wentworth's conduct, which had been sent to the Colonial Office, was made available to Wentworth by the rebel committee who seized all the documents at Government House. Next, a bogus "Court Martial" was convened under the supposed authority of Johnston as "Lieutenant-Governor" (Grimes acting as Deputy Judge-Advocate) in order to investigate the subject matter of Bligh's report. Bligh, who was still under arrest, properly refused to recognize the legality of the court martial, and declined to act as prosecutor, though Bligh's secretary, Griffin, was compelled to testify and authenticate Bligh's secret dispatch to England. Oakes, chief constable at Parramatta, who was also called, was obviously under the influence of terror. Next, Wentworth himself declaimed that it was: "with unspeakable pleasure that I am this day allowed to vindicate my conduct before a court of honourable men, who I am confident will decide upon my case with impartiality and justice."⁸

There is no danger in being eloquent before a Court if you know that you are absolutely certain to win.

⁷ *ibid.*, pp. 368-9.

⁸ *ibid.*, p. 525.

After this rhetorical preliminary, Wentworth called Jamison who was also one of the rebel group. The tribunal allowed him to say that, in April 1807, Bligh refused Wentworth the right to have two government servants allowed him "off the stores."⁹ Wentworth's real defence to Bligh's allegation was that because it was a hardship for him to be deprived by Bligh of free convict labour, he was justified in obtaining such labour by fraud. Next, Atkins was called in order to prove the *ex parte* manner in which Bligh caused the depositions to be taken prior to his suspending Wentworth.¹⁰ This evidence had nothing to do with the charge, which was that Wentworth had been cheating the Government; the question whether Bligh had fairly investigated the charge before suspending Wentworth was quite irrelevant. Atkins, who by this time had been furnished with a copy of Bligh's dispatch calling him "a disgrace to human jurisprudence," was very willing to oblige Wentworth by saying that he was a good medical man, a question which was also irrelevant to the charge.

But what did it matter? Wentworth was going to be acquitted, all the members of the tribunal were friendly, and Bligh was a prisoner at Government House. Therefore, as soon as Bligh had been sufficiently insulted, the pretended Court Martial returned a verdict of "Not Guilty," presumably on the principle that it is a good defence if an accused is able to prove that many other persons have been guilty of similar offences. This is practically admitted by Bladen, who states that: "the employment of convalescent hospital patients by the Medical Staff on their private account was general and recognized."¹¹

On 15 May 1809, Castlereagh, who had already decided that Bligh should be recalled to England, pointed out in a dispatch that, as the charge against Wentworth was one of retaining convicts on the hospital lists with a view to his own benefit, it "ought to have been immediately brought forward before the tribunal of the colony, where alone Mr Wentworth could have had an opportunity of defending himself."¹² In this respect, according to Castlereagh, the treatment of Wentworth was "not reconcilable with the principles of British justice."¹³ Castlereagh added that, but

⁹ *ibid.*

¹⁰ *ibid.*, p. 527.

¹¹ *ibid.*, p. 369.

¹² *ibid.*, vol. vii, p. 149.

¹³ *ibid.*

for the occurrence of the rebellion, the Governor would have been ordered by the Colonial Office to restore Wentworth to the situation from which he had been suspended.¹⁴

At the court martial of Johnston a great deal was made of the case of Wentworth in order to injure Bligh. Atkins gave evidence that he had objected to Bligh's suspending Wentworth, saying:

I stated to him [Bligh] that I conceived it was improper, because he had already undergone the sentence of the Court, and that I did conceive it was contrary to law, that a man should be punished a second time.¹⁵

This kind of statement shows clearly that Atkins was so little versed in law as to suppose that Bligh had suspended Wentworth in relation to the charge on which he had been convicted by the all too friendly Court Martial and duly punished. But the charges were entirely different. The Court Martial was concerned only with the disobedience of a lawful order of Abbott, and Wentworth had introduced the extraneous matter in order to upbraid and humiliate Bligh. But the ground of the subsequent suspension was that Wentworth was improperly using convict labour at Parramatta in circumstances which amounted to defrauding the Government. If Atkins ever warned Bligh that "it was contrary to law that a man should be punished a second time," the objection was so absurd that Bligh would have been justified in ridiculing it.

But it is reasonably plain that Atkins's evidence on this matter was unreliable. On 17 February 1808, at the mock court martial of Wentworth when Atkins was extremely willing to testify against Bligh, he merely stated that Bligh had enjoined him to secrecy as to the inquiry. Atkins did not suggest for a moment that he had made any protest against suspension on the ground that Wentworth might be subjected to a double penalty.

At Johnston's court martial, Atkins gave evidence in examination in chief that Bligh had answered his (Atkins's) protests against a double punishment by saying: "The law, sir, damn the law, my will is the law, and woe unto the man that dares to disobey it." To the question by Johnston:

¹⁴ *ibid.*

¹⁵ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 160.

"Were similar declarations made by him on other occasions?" Atkins replied: "No, sir, never but once to my knowledge."¹⁶

Previously, during the cross-examination of Bligh by Johnston the latter had used an extract from Bligh's confidential reports to the Secretary of State criticizing Atkins, whereupon a member of the Court Martial said: "There has been a breach of trust somewhere," and Bligh stated:

Yes, sir, sent by me to the Secretary of State, and a copy of it remained in my letter book which contained various things I had been commanded to enquire about; which book with all my other books and papers, public and private, I was robbed of by order of the prisoner, and which were used by Mr Macarthur in public courts, taking out such paragraphs as he thought would suit his purposes on certain trials.¹⁷

As a result of this disclosure, the Court paid special attention to Atkins's evidence. We see that, even in his examination in chief, Atkins had refused to acquiesce in Johnston's suggestion that Bligh had attempted to influence him to give a decision one way or the other.¹⁸ But evidence was elicited from Atkins in his cross-examination which is extremely favourable to Bligh:

I would wish to know if Gov. Bligh conducted himself during his Government, as an honourable, upright and honest man?—As an honourable, honest man, sir; upon my word, I believe he did.

And distributed justice uprightly?—There was very little fell to the lot of Gov. Bligh in the way of distributing justice, that was the business of the Court, sir, any further than approving of the decision of the Courts; it was not in the power of the Governor to alter the decision of the Courts.

But I wish to know whether, on the whole of his character, he acted as an honest and upright man, or not?—Why, yes, sir, I should suppose so upon the whole of it; I believe his character was such; I can only give my opinion. Then your opinion is asked?—That is my opinion; taking from the first day that Gov. Bligh assumed the Government to the last day when it concluded, I have no reason to think otherwise.¹⁹

The case of D'Arcy Wentworth, when closely analysed, affords strong evidence of Bligh's determination to assist the poorer settler and to prevent the abuse of their privileged position by the officers of the New South Wales Corps. It would have been much easier for Bligh to have winked his eye at the misuse of convict labour by Wentworth and the

¹⁶ *ibid.*, p. 160.

¹⁷ *ibid.*, p. 60.

¹⁸ *ibid.*, p. 160.

¹⁹ *ibid.*, p. 174.

other officers, including the medical staff. He was not prepared to do so.

The action of Bligh in suspending Wentworth without a hearing pending a decision from England has been denounced as improper. But it was only so because Bligh failed to give Wentworth an opportunity of justifying his conduct. Yet the hearing before the mock Court Martial incidentally if unintentionally revealed the fact that Wentworth had no real defence, his only justification being that "everybody's doing it." Castlereagh's platitude about the principles of British justice must leave one cold.²⁰ He had already decided on grounds of mere convenience that Bligh should not remain in the colony. His ruling was therefore of little importance. His passion for the forms of British justice seems to have been so suddenly acquired that, if Shelley had read the case, he would have extended considerably the verses which begin:

I met Murder on the way
 He had a mask like Castlereagh;
 Very smooth he looked, yet grim,
 Seven bloodhounds followed him.

Even technically, Bligh was not guilty of actual illegality. Wentworth was a servant of the Crown, subject to suspension or even dismissal at its pleasure. The Courts have laid it down that, in such circumstances, and in the absence of a countervailing Statute, the servant has no right to be heard in his "defence" as a condition of his lawful suspension or dismissal. The principle suggested by Castlereagh embodies a just working practice, especially under normal conditions of Crown service. But the conditions in the penal settlement of New South Wales were abnormal, and this Bligh realized quite well. Further, if Bligh had notified Wentworth of the charge, a proper investigation would have led to Wentworth's condemnation.

The Wentworth Case has often been fastened on to bring

²⁰ Despite Castlereagh's subsequent success in the conduct of foreign policy, "To the Irish he was always the younger Robert Stewart, the one-time reformer, whose subtle mind was responsible for the blood-thirsty provocation which drove both the men of 1798 and Robert Emmet to their ruin. It was known that he more than any one else was responsible for the direction and organization of the Castle's terror, and popular opinion both in Dublin and London fastened upon him the guilt of the half-hangings, floggings and deaths of '98." (Postgate, *Robert Emmet*, 1931 edn, p. 105.)

home to Bligh at least one tyrannical action. But why was it tyrannical? After all, Bligh was the person on the spot. It is quite absurd to suggest, as Castlereagh subsequently did from his arm chair in Downing Street, that Wentworth should have been charged with fraud before the Criminal Court of the colony. If that had been done, or another military Court Martial had been convened, the officers would have acquitted Wentworth. They were all tarred with the same brush; so much so that the defence of Wentworth was, not that his hands were clean, but that the hands of everybody were dirty. No doubt it would have been more prudent for Bligh to have proceeded in a somewhat different manner. But he had no skilled legal adviser to assist him and, even if he had, the adviser must have told him that, as a matter of strict law, Wentworth was not entitled to notice before he could be legally suspended. Despite his evidence at the Johnston court martial, it is probable that Atkins advised Bligh to do exactly what Bligh did.

In my opinion, Wentworth is not entitled to much sympathy in this matter. Even the ruling from Castlereagh seems to have been obtained by the undue influence of his "patron," Lord Fitzwilliam. A rather friendly critic admits that his "acquisitiveness . . . was one of his most prominent characteristics."²¹ He gave the fullest exercise to this characteristic and, later on, under Macquarie's regime, he became one of the contractors for the Sydney Hospital which was built by convict labour, the contractors obtaining a three years' monopoly of the sale of rum, buying at three shillings per gallon and selling at forty, to make profits amounting to nearly £50,000.²²

But Wentworth was only true to the type—the high development of the acquisitive instinct characterized almost all the officers and rum traffickers in the colony. They all tried to obtain as much convict labour as possible, especially where Government also provided the labourers with rations.

²¹ Melbourne, Dr A. C. V., *W. C. Wentworth*, p. 7.

²² While building the hospital, Wentworth was actually allowed by Macquarie to retain the positions of chief surgeon and superintendent of police. Montgomerie deals at some length with Wentworth's exciting and interesting career (*William Bligh*, pp. 288-9). There are further references to him in the report of 1812 of the House of Commons Committee on Transportation (at p. 45). His moral attitude to the unfortunate female convicts is sufficiently indicated in a letter he addressed to Piper at Norfolk Island. (*H.R. of N.S.W.*, vol. vi, p. 204.)

The Parramatta Hospital Case is therefore another test case between Bligh and the combined group of military and non-military traders. Everything establishes the probability that the prosecution of Wentworth before the military Court Martial was in the nature of a collusive proceeding. When, later, Wentworth forwarded his complaint to Lord Fitzwilliam, he never suggested that the officers had treated him unfairly or that he was smarting from the very friendly reprimand which he had received.

His one and only complaint was against Bligh's interference with the manipulation of convict labour. Macarthur was hovering in the background, but the organization of the court martial bears signs of the Macarthur technique. As in the case of the promissory note, Bligh sided with the free settlers who needed labour so much more than the wealthy traffickers. And again Bligh showed that he was prepared to act most vigorously against any person who attempted to interfere with the regulations embodying the policy of assisting the poorer agriculturalist.

CHAPTER XX

THE CASE OF THE IMPORTED STILLS

ON 24 October 1807, Macarthur instituted proceedings by way of complaint before the Bench of Magistrates. The Bench comprised Major Johnston and Palmer, the Commissary of the colony. The defendant was Robert Campbell Junior, and the complaint alleged that he had seized from Macarthur two copper boilers. The boilers belonged to two stills imported into the colony and ordered to be exported by Campbell's uncle, Robert Campbell, who was Naval Officer under Bligh, and whose duties included those of controlling imports and exports.

Despite the fact that a general regulation of Bligh's forbidding the importation of stills was in full force, Abbott had imported the two stills from England on behalf of himself and Macarthur. On the matter being discovered, Macarthur and Abbott were permitted to land the two stills only for the purpose of their being received into the government stores pending exportation. But Harris (Robert Campbell's predecessor as Naval Officer), who acted without any authority from Bligh as Governor, had permitted Macarthur to remove the two boilers from the stores for the supposed purpose of taking from the boilers a supply of medicines which had been packed in them. On hearing of Macarthur's action, Bligh gave instructions that the two boilers must be returned to the stores to rejoin the heads and worms of the two stills.

Before the magistrates it was proved that the defendant had taken the two copper boilers out of Macarthur's possession. But it was also shown that the defendant had done so pursuant to specific instructions from his uncle, who had replaced Harris as Naval Officer. It was proved further that the Naval Officer had acted under the express authority of the Governor.

The legal elements of this case have been almost hopelessly confused. In reality the position is abundantly clear. It is obvious that, if the general order forbidding the importation into the colony of stills was valid—and this was the law as accepted by all parties—then the seizure of the two copper boilers which were integral portions of the unlawfully imported stills was lawful, provided that the particular defendant acted with the authority of the Governor as chief executive. In dealing with this case, many of the commentators have made a great point of the fact that the Naval Officer had not prepared for Macarthur a receipt stating that the Naval Officer had duly received the two copper boilers and nothing else. But that fact is entirely devoid of any legal significance.

The sole question is whether the seizure of the boilers for the purpose of re-export was lawful or unlawful. The stills, with all their component parts, were allowed to be landed on the express condition of their being sent back to England by the first available ship. Macarthur had no authority from the Governor to remove any portion of the stills out of the government stores. When Harris, Campbell's predecessor, who for the time being was in close collaboration with Macarthur, allowed the latter to take the boilers out of the stores, he knowingly disobeyed the Governor's orders. When the affair came to the knowledge of Bligh, he at once directed that the stills, including every portion of them, must be re-exported.

Harris, who was called as a witness, admitted in the plainest terms that the order from Bligh to re-export covered the two complete stills. Bligh's secretary, Griffin, gave evidence of an order from Bligh to the Naval Officer to ship the stills complete on board the vessel *Duke of Portland*. Finally, the defendant Robert Campbell Junior proved that he was ordered by his uncle to obtain the two boilers from Macarthur in order to complete the two stills and place them on board.¹

What was Macarthur's case against the defendant? Merely an illogical and inflammatory speech. He said:

It would therefore appear that a British subject, living in a British settlement, in which the British laws are established by the Royal Patent,

¹ *H.R. of N.S.W.*, vol. vi, p. 332-5.

has had his property wrested from him by a non-accredited individual, without any authority being produced or any other reason being assigned than that it was the Governor's order. It is therefore for you, gentlemen, to determine whether this be the tenor on which Englishmen hold their property in New South Wales?²

From the point of view of strict law, all this was rhetorical nonsense. Not a sentence in Macarthur's address had any legal relation to the question in dispute. The stills had been unlawfully imported. The Governor had power to order their re-export to England without permitting them even to be landed temporarily. As a concession, he allowed them to be landed on the express condition that they should be exported, each and every part. The Governor's power to compel re-exportation arose, not because of any personal wish or whim, but because, as chief executive officer, he was enforcing the general orders of the colony. It is almost certain that all this was well known to Macarthur.

But Atkins, who by virtue of his position as Judge-Advocate had the deciding vote, was deceived or intimidated by Macarthur's invective and he decided in Macarthur's favour, joining with Major Johnston, Palmer dissenting.

The majority held that the defendant had no authority to remove the two coppers, "he not being either a magistrate or a Naval Officer, nor did he receive any orders from the Governor to that effect."³ It is true that Campbell did not receive in person the order from Bligh. But the direction from Bligh to the Naval Officer was fully proved as was the subsequent direction from the Naval Officer to the defendant. By admissible evidence, the defendant proved a chain of authority reaching from the Governor to himself, and the legality of the Governor's direction to seize was warranted, not only by the terms of the general order, but also by the undertaking of Macarthur to re-export the stills.

Apparently the magistrates were impressed by Macarthur's submission that, as he was not present either when the Governor told Campbell Senior or when Campbell Senior told Campbell Junior to seize the boilers, evidence of these orders must be rejected as "hearsay" and therefore inadmissible. But there was no substance in Macarthur's submission. As Sir David Ferguson has pointed out so lucidly:

² *ibid.*, p. 335.

³ *ibid.*

Whether the evidence in any particular instance is admissible or not depends upon the question what fact it tends to prove. If, for example, the question is who was driving a certain car when an accident took place, a witness cannot give evidence that somebody told him A. was driving it. But if the question is who told A. to drive the car, the evidence of a witness who heard the instructions given, whether in the presence of the opposing party or not, stands on a quite different footing. That fact is one about which he can speak from his own knowledge. If the evidence is not relevant to the issue, that may make it inadmissible; but assuming it to be relevant it cannot be rejected on the ground that it is hearsay.⁴

Macarthur's defenders have suggested that quite possibly Abbott imported the two stills from England without Macarthur's knowledge. This is highly improbable, because, in the proceedings against Robert Campbell Junior, Macarthur appeared as the complainant *in respect of both boilers*. Therefore, Abbott had disappeared from the picture, and it is very unlikely that he was ever in it.

Owing to the weakness of Atkins or his ignorance of the law or both, justice miscarried and Macarthur won his case. As we know, Bligh was disgusted with Atkins, and he so reported to England. Incidentally the case suggests that, in spite of the old quarrel of 1796, Atkins had little or no real bias against Macarthur.

In this affair, the historians have again treated Bligh most unfairly. Thus Roderick Flanagan denounces his action in the case of the imported stills as "not only uncalled for, but arbitrary."⁵ The existing regulation, in his view, "applied only to stills which were manifestly used, or intended, for that purpose,"⁶ i.e. the purpose of distillation. Flanagan asserts that, in the first instance, the Governor violated the law by prohibiting the importation of the stills. The argument is that there is no reason to suppose that the stills would be used in an illegal manner. Accordingly, says Flanagan, the still was "nothing more than any other necessary or useful utensil."⁷ In his opinion Macarthur was also correct in refusing to hand over to Campbell Junior without an accurate receipt those portions of the stills which were still in his possession.

⁴ "Hearsay Evidence," by Mr Justice Ferguson, *Australian Law Journal*, vol. i, at p. 196. An instance of a case not dissimilar to that of Macarthur v. Campbell Junior is *Bardolph v. State of New South Wales* (52 C.L.R. 455).

⁵ Flanagan, R., *History of New South Wales*, vol. i, p. 174.

⁶ *ibid.*

⁷ *ibid.*

It would be difficult to collect together in a small space so much bad law and special pleading as is displayed by Flanagan's discussion. Each one of his statements is legally unsound. Bligh had ample power to prevent the landing of the stills and, as necessarily incidental thereto, to require their being sent away if wrongfully or unauthorizedly imported. The fact that the copper might also be used for domestic purposes was true, but nothing to the point. The suggestion that Macarthur's coppers would be used for domestic purposes is almost ludicrous. With the additional parts, which could easily be procured or made within the colony, the coppers could be turned into a complete still. In any case, they were part and parcel of the two articles which were unlawfully imported, and necessarily they also had to be sent away.

The argument over the receipt was the merest quibble. After all, such a receipt is only evidentiary of the fact of receipt—no legal magic results from the fact of giving it or withholding it, and the facts of possession and seizure were both admitted. Macarthur's speech at the trial misled Atkins, and it has also misled Flanagan and many others. The civil Government was not attempting to forfeit Macarthur's wretched stills as it might have done, but was permitting him to re-export them as his own property and for his own advantage.

Despite its absence of legal backing, the speech of Macarthur to the magistrates is of very great importance as evidencing his determination to secure Bligh's humiliation. It shows that the case is not merely a trumpery dispute about property, but is to be regarded as a test case brought in the interests of the rum traffickers who were desirous of bringing about Bligh's downfall because his firmness and determination were becoming more and more obnoxious.

In this way Macarthur obtains a decision from Atkins—Johnston of course was a mere vote in his favour—but the decision is quite erroneous in point of law. Bligh quickly understands that Atkins has made a serious blunder, to say the least. On the other hand, Macarthur is encouraged by the result of the case and readily believes that his skilful advocacy in court can be used, not only to persuade Atkins, but to inflame all the inhabitants against Bligh. The struggle between Macarthur and Bligh thus becomes more intense.

CHAPTER XXI

THE CASE OF THE SCHOONER *PARRAMATTA*

THE next legal contest between the Governor and Macarthur arose in relation to Macarthur's schooner *Parramatta*. In order to prevent the escape of convicts from the colony, a general regulation had been made by which all masters of outgoing vessels were required to execute in favour of the Government a bond for £800, the obligation being that the vessel should not carry away any convict from Sydney.¹

It appeared that the *Parramatta* left Sydney for Tahiti, and that Macarthur and his then partner Blaxcell executed the usual bond for £800, each owner also binding himself in an additional sum of £50. On 27 June 1807, a public notice at Sydney announced that a convict transported for life had escaped from the colony by the *Parramatta*. Subsequently, information forwarded from Tahiti showed that the convict had escaped from the *Parramatta* at Tahiti with the connivance of Glenn, the master. Early in December 1807, the *Parramatta* returned to Sydney, and it was at once revealed to the authorities, not only that the convict had left Sydney in the vessel, but that he had been transhipped at Tahiti from the *Parramatta* to an American-bound vessel.

Bligh decided that the case was a bad one, so that *prima facie* the bond should be enforced. Robert Campbell, as Naval Officer, refused to pass the ship's papers for entry, and placed the ship under arrest. On 7 December Macarthur wrote to Glenn stating that, owing to the action of the Naval Officer, he (Macarthur) had been virtually dispossessed of the vessel; he purported to notify the master and crew: "I have abandoned the said schooner, and that neither you nor them are henceforward to look to me for pay or provisions."² Macarthur's letter also ordered Glenn to wait on the Naval

¹ *H.R. of N.S.W.*, vol. vi, p. 609.

² *ibid.*, p. 466.

Officer, to deliver to him a copy of Macarthur's letter, and to ask him to take an inventory of the stores and provisions before they were removed from the *Parramatta*.

As a direct consequence of this letter, Glenn and the crew went ashore on 14 December, in open breach of the local regulations which prohibited unauthorized landing. The master and crew made depositions to the effect that they had come on shore solely because of the letter from Macarthur.³ Glenn went to Government House in order to interview the Governor, but Bligh, who suspected him of direct complicity in the convict's escape, refused to see him. Between 8 December and 14 December Macarthur provided no food for master or crew. After the depositions had been received from Glenn and his crew, the civil authorities decided to forfeit the bond.

Next, Macarthur and Blaxcell petitioned Bligh to be relieved from the obligation of the bond. Bligh desired the matter to be investigated, so Atkins wrote to Macarthur at Parramatta stating that he was directed by the Governor to say that the master and crew had violated the regulations of the colony by coming unauthorized on shore, and had justified their so doing by alleging that they had no means of subsistence on board the schooner. The letter concluded: "In consequence of such their representations I request your attendance at Sydney to-morrow morning, at 10 o'clock to shew cause for such your conduct."⁴

In his subsequent report on the affair, Bligh described Atkins's letter as "a polite letter to appear and explain why those men were thrown on the public without support."⁵ It is true that the letter used the pompous and inapt phrase "shew cause," but, having regard to Macarthur's conduct and the pendency of his petition to Bligh for relief from the letter of the bond, I do not think it is fairly open to serious criticism.

Up to this point, therefore, Macarthur was clearly in the wrong. Whether he had actually connived at the escape of the convict in the *Parramatta* is not known, but it is plain enough that Glenn, the master, was a guilty party. In any event, the bond was clearly forfeit because it was conditioned, not on knowing participation in the escape of a convict, but on the bare objective fact of such escape. Further, the

³ *ibid.*, p. 471.

⁴ *ibid.*

⁵ *ibid.*, p. 610.

authorities were justified in retaining control of the vessel until the bond had been liquidated. Then, although he had no legal ground of answer to the claim to forfeit the bond, Macarthur deliberately provoked an occasion for public turbulence by refusing to provide food for his own crew and by directly procuring them to break the local laws which prohibited landing without the authority of the civil administration. Whilst, therefore, Atkins's letter might have been more considerably worded, Macarthur's high-handed conduct disentitled him to complain.

Macarthur's answer was to send a letter to Atkins stating curtly that, many days since, he (Atkins) had been informed that Macarthur declined any further interference with the schooner, "in consequence of the illegal conduct of the Naval Officer in refusing to enter the vessel and retaining her papers."⁶ Macarthur also justified his refusal to pay or to victual the crew, and he referred Atkins to the Naval Officer "for what further information you may require upon the subject."⁷ This letter was extremely misleading and defiant, and the challenge could hardly be ignored.

Therefore Atkins issued a warrant to Oakes, chief constable at Parramatta, which recited that complaint had been made on oath that Macarthur had illegally stopped the provisions of the crew, whereby they had violated the colonial regulations by coming unauthorized on shore.⁸ The warrant also recited that, by official letter, Atkins had requested Macarthur to appear before him. The warrant might have been more accurately worded, for the reference to the "official letter" of Atkins was, for the time being at any rate, quite irrelevant to the substance of the complaint. But the substance of the complaint was good, because it was a misdemeanour to cause or procure a breach of the landing regulations, and this was the offence in respect of which the warrant was issued. It mentioned the time for Macarthur's appearance before the magistrates as Wednesday 16 December at 10 a.m.

In obedience to the warrant, Oakes proceeded to Macarthur's home near Parramatta for the purpose of making the arrest. Macarthur looked at the warrant and then wrote out and handed to Oakes the following paper:

⁶ *ibid.*, p. 467.

⁷ *ibid.*

⁸ *ibid.*, p. 474.

Mr Oakes—You will inform the persons who sent you here with the warrant you have now shewn me, and given me a copy of, that I never will submit to the horrid tyranny that is attempted until I am forced; that I consider it with scorn and contempt, as I do the persons who have directed it to be executed.

J. McARTHUR.⁹

Parramatta, 15 December, 1807.

Macarthur told Oakes to retain the paper because it would constitute his justification and said "that if the persons directing that warrant had served it he would have spurned them from his presence"; that "if he came a second time to come well armed, for that he would never submit until there was bloodshed"; that "he had been robbed of £10,000," and "leave them alone; they will soon find a rope to hang themselves!"¹⁰

Up to the stage when Macarthur thus defied the authority of the law, the dispute in which he was involved related (i) to the obligation to pay £900 in respect of the escape of the convict, and (ii) to the unlawful act of procuring the crew to land at Sydney without authority. Each of these two matters was of importance to the parties concerned, and in each Macarthur was legally in the wrong. But Macarthur's reception of the warrant was the starting point of an entirely new legal contest which turned out to be of crucial significance.

⁹ *ibid.*, pp. 475, 610.

¹⁰ *ibid.*, p. 475.

CHAPTER XXII

THE CASE OF SEDITION

IMMEDIATELY upon the receipt of Oakes's report of Macarthur's conduct, Atkins called together Major Johnston, Palmer and Campbell. The four magistrates issued a second warrant for Macarthur's arrest which was executed, the arrest taking place on the same day—16 December—at the home of Grimes, the Surveyor-General, who was a close, if prudent, associate of the trading group. Macarthur was granted bail until the following morning, 17 December. Then four magistrates sat, viz. Atkins, Johnston, Abbott and Palmer. After the evidence of Oakes as to his attempt to arrest Macarthur pursuant to the warrant, the latter was committed for trial before the Criminal Court. It was plain that the charges to be preferred against him would include a charge of sedition.

It is apparent that, by his contemptuous treatment of the warrant of a magistrate having jurisdiction over the subject matter and over all persons in the colony, Macarthur had placed himself in extreme jeopardy. No doubt he was legally warranted in ignoring the "shew cause" letter sent to him by Atkins on 14 December, although the tone of his written reply was very insolent. Although insolent, nothing in it could of itself give ground for a charge of sedition. But his actions in resisting Oakes, in defaming Bligh and Atkins before Oakes, in handing to Oakes the extraordinary document of 15 December, in imputing "horrid tyranny" to the civil authorities, in deriding them "with scorn and contempt," a feeling which he openly expressed for "the persons who have directed it to be executed," in declaring that he would not submit until blood was shed and that, if Oakes came a second time, he had better come well armed, undoubtedly constituted a *prima facie* case justifying the four magistrates in committing him for trial.

Thus on 17 December 1807, when he was committed for

trial before the Criminal Court, Macarthur's personal position was perilous. First, he had irrevocably antagonized Bligh in relation to the latter's enforcement of the law of the colony. Second, Macarthur's financial interests were involved even if he could successfully turn aside the shafts of the criminal law. Professor Shann regards the contest between these two men as a test battle between the New South Wales Corps officers and their associates, nobly fighting for trade and exchange freedom against the quasi-socialism or communism deemed necessary in the very early days of the settlement.¹ With more accuracy it may be regarded as a contest between Bligh as the person chosen to execute a general policy which benefited the settlers and poorer classes and Macarthur as the representative of the rising trading or capitalist group, the money power and the forces of combination and monopoly. Certainly economic motives played a great part in the combination against Bligh, whose task was, on that account, both difficult and dangerous, for, as one of our historians has said:

It is not more risky to attempt to take a bone from an angry dog than to interfere with the monopolies of a privileged class—particularly when the bone belongs to another dog.²

In such a contest, the fact that two-thirds of the soldiery had property either in land or cattle³ raised a presumption that even the rank and file of the regiment would naturally support the anti-Bligh combination.

In addition to the broader economic and class antagonism, an important part was played by the element of personal antagonism, the fight for supremacy being waged for the most part by two strong-willed men. Neither Bligh nor Macarthur was the type of person to yield to the other without a tremendous struggle. Thus the contest between them had a double aspect, which was expressed by J. H. M. Abbott in one of his novels:

The officers of the New South Wales Corps had come to regard their military duties as being very much subordinate to the advancement of their private interests . . . They traded and trafficked, they speculated

¹ Shann, E. O. G., *Economic History of Australia*, p. 23.

² Bladen, *Jnl and Proc.*, R.A.H.S., vol. i, p. 196.

³ *Court Martial of Lieut.-Col. George Johnston*, London (1811), pp. 252-3. (Evidence of Abbott.)

in land, and they dealt in spirits. Some of them actually owned in Sydney public houses and inns, that were no better than brothels . . . It would have been impossible to expect, at a time when the Napoleonic wars were raging in Europe, to find the flower of the British commissioned ranks in it . . . Captain Bligh was determined to thwart the scheme of these powerful factions. In his own way he was a just man and had high ideals as to the proper discharge of his duties . . . Being a determined man, of choleric habit and despotic inclination his attitude towards those whom he saw trying to benefit themselves unfairly at the cost of the public welfare was, to put it in his own way, "he'd be damned if they should."⁴

Both Bligh's and Macarthur's actions were governed to some extent by personal animus as well as by economic interest. In the Case of the Promissory Note the latter's motives were mainly financial. The struggle by the privileged classes to retain their control of free convict labour is strikingly illustrated by the case of D'Arcy Wentworth. Similarly, Macarthur's litigation over the imported stills may be regarded as a move on behalf of the rum traffickers.

In the *Parramatta* affair, however, it is plain that, at times, Macarthur's actions were inspired by personal malevolence against Bligh and fury at the latter's relentless employment of all available weapons of law enforcement. It is hard to believe that Macarthur's contemptuous treatment of Atkins's warrant was not inspired, at least in part, by extreme anger at the personal affront and humiliation necessarily involved in being arrested. Macarthur's motives were mixed, for his actions were dictated by his imperious temper as well as by his bitter resentment at Bligh's execution of the English policy in favour of the poor settlers.

⁴ Abbott, J. H. M., *The Governor's Man*, pp. 102-4.

CHAPTER XXIII

WAS MACARTHUR GUILTY OF SEDITION?

A VITAL question in connexion with the last phases of the contest between Bligh and Macarthur is whether or not Macarthur was guilty of the charges of sedition now to be preferred against him. At the court martial in England, Johnston asserted that, according to legal advice received from English counsel, Macarthur was not guilty of the charges, and that, on the subsequent mock trial conducted by the rebel Government upon the same indictment which had been prepared for use on the trial fixed for 25 January, Macarthur was rightly acquitted. At his court martial Johnston declared that: "nothing, as I am informed, could be more shallow, absurd and wicked than the indictment which was preferred against him."¹

Very little attention should be paid to Johnston's assertion. If he received legal advice to the effect stated by him, it is quite probable that it was given without a full disclosure by Johnston to the adviser of the material facts. We do not know what Macarthur told the English lawyers, and it would be quite wrong to assume that all the facts were stated. After Bligh's arrest, Johnston and Macarthur busied themselves in the production of misleading propaganda for English consumption. Moreover, very misleading documents and petitions were prepared for the purposes of local propaganda. Having regard to the question of credibility, which I discuss later, it cannot even be assumed that what Johnston told the Court Martial was accurate.

In circumstances later discussed, Macarthur obtained a copy of the indictment prepared for use against him at his trial before Judge-Advocate Atkins and the six military officers. Moreover, Atkins, on leaving the court, forgot to take with him the official papers relating to the charge,

¹ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 156.

including the original indictment signed by him. Therefore, after the rebellion, at what was called Macarthur's "mock trial," the same charges were repeated verbatim. Accordingly, it is now possible to investigate the legal charges on which Macarthur was committed.

Sedition is a vague phrase, vaguely used, and the definition of the crime of publishing seditious words or writings partakes of such vagueness. Often it is easier to determine whether certain conduct should be deemed seditious than to give any perfectly satisfactory definition of the crime. The reason for this consists in the circumstances or conditions of the British territory in which the alleged offence has been committed. Such circumstances must not be forgotten in considering the question of Macarthur's guilt.

Sedition is said to be an offence not known to English law by that name *simpliciter*,² and to be a mere name for the three well-known misdemeanours of seditious words, seditious libel and seditious conspiracy.³ Sometimes "sedition" is defined more broadly so as to include acts done, as well as words and writings published, if accompanied by the necessary seditious intention.⁴ It is well established law that the seditious intention which is essential to constitute each of these misdemeanours includes an intention (a) to excite disaffection against the King, or the Government and Constitution of the United Kingdom, or the administration of justice, and (b) to raise discontent or disaffection amongst the subjects of the King.⁵ In modern times it is well recognized that a person may endeavour to urge by writing or words that the King has been mistaken in his measures, and may advocate attempts to amend by lawful means any matter "in Church or State by law established." Moreover, "something must be allowed for feeling in men's minds and for some warmth of expression."⁶ None the less, "an intention to incite the people to take the power into their own hands, and to provoke them to tumult or disorder is a seditious intention."⁷

From the general principles of the law of libellous or

² Stephen, J. F., *History of the Criminal Law of England*, vol. ii, p. 298.

³ *ibid.*

⁴ Halsbury, *Laws of England*, 2nd edn, vol. ix, p. 302.

⁵ Stephen, J. F., *History of the Criminal Law of England*, vol. ii, pp. 298-9.

⁶ *R. v. Collins* (1839), 9 C & P at p. 461.

⁷ *ibid.*

seditionous publications, it follows inevitably that in order to determine whether a misdemeanour has been committed, the circumstances accompanying and surrounding the publication are all important. A recent work correctly points out that "the definition of sedition is wide enough to cover almost any act of disaffection or disloyalty to State or Church."⁸ Fortunately, the jury system operates to retain an important element of popular veto over governmental attempts to enforce the law tyrannically, though the presence of juries does not always or necessarily guarantee the subject against the infliction of injustice in times of high political excitement. Thus Stephen has emphasized that, after the passing of Fox's Libel Act in 1792, the convictions for seditious libel "were as common as they were before, if not commoner."⁹ But the law of the land requires that the tribunal determining the question of guilt, when judging of the tendency of a publication, must "look about and see what the times were when the publication took place . . . look at all the attendant circumstances, and, with that assistance . . . set about to expound the paper."¹⁰

These are the general principles which have to be applied in determining the question of Macarthur's guilt. Nothing is more repellent to the lay mind than the verbiage which often disfigured the indictments formerly, and occasionally, even now, employed in great State trials, and a great deal of the matters set out in the indictment against Macarthur may properly be rejected as surplusage. However, Crossley, who prepared the document, had many English precedents to follow, for, as Stephen says:

the practice always was to fill indictments and informations with averments of every sort of bad intention on the part of the defendant. It is no exaggeration to say that they loaded him with abuse. My own opinion is that nearly the whole of the matter thus introduced was surplusage. . . .¹¹

⁸ Wade and Phillips, *Constitutional Law*, p. 305.

⁹ Stephen, J. F., *History of the Criminal Law of England*, vol. ii, p. 363. See also the famous New South Wales case of *R. v. Reeve and Ors.* 17 S.R. (N.S.W.) at pp. 87-8, where the third and extraordinary count was for sedition but the decision of the House of Lords in *R. v. O'Connell*, though very material, was not even cited.

¹⁰ Lord Kenyon's summing up in *R. v. Perry and Lambert* (Erskine, *Speeches*, High edn, vol. ii, p. 262).

¹¹ Stephen, J. F., *History of the Criminal Law of England*, vol. iii, pp. 353-4.

So far, the legal basis of the charges against Macarthur has been considered from the point of view of the common law. However, there is evidence that those advising Governor Bligh also had in mind a Statute passed in England in December 1795, "for the safety and preservation" of George III and his Government "against treasonable and seditious practices and attempts." The Act was to endure for the life of George III, but in 1817 it was made permanent.¹² At the time of Macarthur's trial it was in full force and, on his mock trial before the rebels, Atkins stated that Crossley had advised him that that portion of the Act of 1795 which dealt with sedition might lawfully be applied to Macarthur's case. Section 2 of the Act provided that if any person "within that part of Great Britain called England" by writing or speaking used words inciting the people "to hatred or contempt of the person of His Majesty" or "the government and constitution of this realm as by law established," he should incur the punishment inflicted in cases of high misdemeanour, i.e. fine, imprisonment and pillory, and, in the case of a second conviction, banishment or transportation from the realm.

The preamble to the Imperial Statute in question recited both the "daring outrages" offered to the person of George III in his passage to and from Parliament at the opening of the session of 1795 and: "the multitude of seditious pamphlets and speeches daily printed . . . tending to the overthrow of the laws government and constitution of these realms."

It turned out that a copy of the Act was not obtainable in the colony in the year 1808, so Bligh's advisers borrowed a copy of the latest edition of Blackstone's *Commentaries on the Laws of England* from Simeon Lord. The then editor of Blackstone—Professor Edward Christian, the brother of the leader of the *Bounty* mutiny—had set out in a footnote the material terms of the Act, and on these Atkins and Crossley were content to rely.¹³

Under the Imperial Statute 27 Geo. III, c. 2, the Criminal Court of New South Wales certainly had jurisdiction to punish "misbehaviours" which, if taking place within the

¹² That part of it which is here described (secs 2 to 4) was replaced by the Treason Felony Act of 1848.

¹³ *H.R. of A.*, series i, vol. vi, p. 306; cf. Blackstone, Sir W., *Commentaries on the Laws of England* (15th edn), vol. iv, p. 87.

realm of England, would have amounted to an offence against 36 Geo. III, c. 7. But the terms of 36 Geo. III, c. 7, were by no means so all inclusive in scope as the common law conception of sedition to which I have already referred, and, even assuming that Macarthur had in England acted towards an officer holding the King's Commission and treated the execution of a lawful warrant of a magistrate, in the way imputed to him by the indictment, it would be difficult to say with certainty that his conduct made him liable to be punished under the Statute of 1795. For, in my view, despite Bligh's commanding position in the colony, it is not sound to interpret the Act 27 Geo. III, c. 2, as requiring the Courts of New South Wales to regard such position and the occupant as comparable to the King as supreme executive of the realm of England. And the chief purpose of that portion of 36 Geo. III, c. 7, which punished seditious publications was to protect King George III and his then existing Government by punishing those seeking to bring him or them into hatred or contempt.

Although this reasoning would have left Macarthur free of the penalties provided for by that portion of the English law of sedition which was then contained in 36 Geo. III, c. 7, he was still exposed to prosecution at the common law which, as Section 6 of that Act clearly provided, was to remain in general force throughout England. Therefore the New South Wales prosecutors of Macarthur could still contend that his conduct and intentions were seditious not in the particular sense of striking against George III, but in the general sense of deliberately stirring up discontent and disaffection among the colonists by making inflammatory speeches against the executive and judicial organs of the Government. Upon this footing I proceed to an opinion as to each of the three counts of the indictment.

The indictment against Macarthur contained three counts which can be fairly summarized thus:

(1) The unlawful importation by Macarthur of two stills in the *Dart*, the illegality being the absence of any authority from the Governor, his unlawful removal of the copper boilers from the stores, his action in bringing a complaint against Robert Campbell Junior for the seizure of the boilers, not for the bona fide purpose of having a complaint dealt with according to law, but for the seditious purpose of

assembling the people together in order to libel the Governor, to obstruct the executive power and to inflame the minds of the people against both the Governor and the civil administration, and the subsequent carrying out of this seditious purpose by making an address to the magistrates declaring that British law was being trampled on in the colony, and that the property of a British subject was being taken away from him by the *ipse dixit* of a tyrannical governor.

(2) Carrying out a seditious purpose similar to that specified in the first count by writing the letter to the master of the *Parramatta*, falsely describing the actions and purposes of the Government so as to procure the master and seamen to break the law by coming ashore and creating disorder, writing the defamatory letter to Atkins on 14 December in reply to Atkins's first letter; publishing seditious words to Oakes when the latter was lawfully executing Atkins's first warrant, publishing to Oakes the document containing a seditious libel against Bligh and the Judge-Advocate as the persons responsible for the issue of the warrant, uttering further seditious words, e.g. that the Governor was a tyrant and had robbed him, and threatening forcible resistance to any further attempt to execute the warrant, all such conduct being seditiously intended by Macarthur to inflame and stir up opposition to the King's Government and Governor and to obstruct the executive power of the colony.

(3) A count for seditious words and seditious libel based upon the writing handed by Macarthur to Oakes and the words and threats then made by Macarthur.

Of the three counts in the indictment which I have analysed, the only one that could possibly be objected to in point of substance was the first; the second and third counts alleged facts which would have justified a verdict of guilty, providing, of course, that the tribunal of fact found that Macarthur had the necessary seditious intent. With regard to the first count, the essence of the charge was that, in the case of *Macarthur v. Campbell Junior*, there had been an abuse by Macarthur of the Court's process and that his real object was, not to obtain any redress against *Campbell Junior*, but merely to create an occasion on which he would be at liberty to denounce and defame the Governor in order to stir up the inhabitants against the executive Government. If these allegations had been proved and Macarthur's pro-

ceedings could be regarded as part of a preconceived plan to stir up hatred and contempt against the civil administration under Bligh, then I am of opinion that Macarthur was guilty of the common law misdemeanour of publishing seditious words.

The argument to the contrary would necessarily be that all statements made in a court of justice are absolutely privileged. As a general proposition that is indubitable, and no prosecution for or action of defamation could be brought merely in respect of statements made before a court of justice. But one of the best known forms of common law misdemeanour is the crime of conspiring to subvert the course of justice, in which speeches, though made in court, may be overt acts in the conspiracy charged. In principle, I do not see why the fact that a court of justice was used for the execution of the seditious purpose imputed to Macarthur by the indictment must of itself make the charge bad in substance. Of course, these observations are made upon the assumption that there was adequate proof of the intent and purpose charged.

The principle upon which my opinion proceeds finds striking confirmation in an interesting passage in *Hawkins's Pleas of the Crown*¹⁴ where it is said:

But it hath been resolved, that no false or scandalous matter contained in (a) a petition to a committee of parliament, or in (b) articles of the peace exhibited to justices of peace, or in any other (c) proceeding in a regular course of justice, will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to public prosecutions, in respect of their applications to a court of justice. . . . Yet if it shall manifestly appear, from the whole circumstances of the case, that a prosecution is entirely false, malicious, and groundless, and commenced, not with a design to go through with it, but only to expose the defendant's character under the shew of a legal proceeding; I cannot see any reason why such a mockery of public justice should not rather aggravate the offence than make it cease to be one, and make such scandal a good ground of an indictment at the suit of the king as it makes the malice of their proceeding a good foundation of an action on the case at the suit of the party, whether the Court had a jurisdiction of the cause or not.

It may be noted that Atkins objected to the inclusion in the indictment of the first count. Certainly no inference unfavourable to its validity can be drawn from this fact.

¹⁴ 8th edn (ed. Curwood), vol. i, p. 544.

Atkins's real objection was that he had been one of the two magistrates who decided the imported stills case in Macarthur's favour, so that he expected and feared that the fact of his so deciding would be introduced by Macarthur into the case if it was decided to retain the first count. The retention of it is a striking evidence of the legal astuteness of Crossley.

My conclusion is that all three counts, despite the long-winded repetitions so characteristic of that day, were good in law. Indeed, with a few amendments, the second and third counts would have passed muster anywhere.

But this does not conclude the matter, for the next question is: Was Macarthur guilty of the misdemeanours charged against him? To-day we are in possession of the material which, in my opinion, shows that on two counts he was guilty. It is quite evident that Macarthur intended to stir up disaffection against the Governor, and, with that object in view, he openly defied the authority of the law and threatened to use force in resisting the execution of lawful warrants. Further, he deliberately defamed the Governor acting in his official capacity, and, lest there be any doubt about his meaning, he reduced his aspersions into writing, the meaning and intent of which were quite plain. As to the second and third counts, the case could be sheeted home.

The first count, which I have already analysed in relation to the law, raises serious difficulties as to the facts. What was Macarthur's purpose in laying his complaint against Robert Campbell Junior? As to this, a jury, properly instructed and warned, would probably have acquitted him upon the ground that it was by no means impossible that Macarthur instituted the proceedings bona fide, and that it was only subsequently, during the heat of the forensic battle, that he lost his temper and let himself go; so that, although he abused and derided Bligh, he did so only in the course of a genuine attempt to enforce the law. Therefore a jury acting honestly and reasonably would probably have convicted Macarthur on the second and third counts, but have acquitted him on the first. But, as we shall see, no verdict was ever pronounced by any lawfully constituted Court.

CHAPTER XXIV

MACARTHUR IN DANGER

AFTER his committal for trial, Macarthur's danger was increased by the fact that, if the military officers could possibly be persuaded to keep true to their oaths and for once run straight, he might well have been convicted.

I have already referred to Macarthur's letter of 11 October 1807 to Piper, where he stated that the Corps officers were "most wretchedly circumstanced amongst themselves."¹ It is hardly likely that unity among them was restored by 17 December, when Macarthur was committed. Further, in a body of men so desperately self-seeking, some defections were quite possible so soon as it was believed that Macarthur would, or even might, be regarded as guilty of a serious criminal offence.

Again, the small settlers were enthusiastically favourable to Bligh. On 1 January 1808, 833 of them signed an address thanking him for having so greatly improved their lot, and assuring him that they would always regard themselves as bound "at the risque of our lives and properties" to support his government.² Only two requests they made; first, similar facilities in relation to shipping as other colonies possessed, and, second, administration of the law as in England by a jury of the people. This address was made public and must have struck great fear into the hearts of Bligh's enemies. If justice was to be no longer the monopoly of the officers, the colony would no longer be worth living in.

Accordingly, Macarthur had to secure unity amongst the officers until his own criminal trial was safely concluded, for conviction on any one count would necessarily involve him in a long and ruinous absence from the colony. As he was

¹ Macarthur to Piper, 11 October 1807. (Piper Papers: Mitchell Library.)

² *H.R. of N.S.W.*, vol. vi, p. 411.

thus personally involved, his motives would necessarily be suspect, so that his task of unifying the officers might have proved a very difficult one. Yet by 25 and 26 January, which turned out to be the crucial dates, he succeeded in obtaining a solid and united combination against Bligh. This achievement was a remarkable one for, although on 26 January all the officers joined together in the rebellion and overturned the Government, only a few months afterwards they were again embroiled in faction fights until, in May, Macarthur wrote to Piper:

I am sorry to report to you that some of your old acquaintance have behaved most scurvily—Abbott amongst the worst. Minchin sent home with the despatches—not from any confidence placed in him—Grimes on the same errand . . . Bayly for whom every proper thing has been done, is become a violent opposititionist—the assigned reason, some information he received from Grimes of my finding fault with him—but the real one because I would not advise Johnston to make Laycock a Magistrate and police officer—with some other little disappointments respecting men, cows, etc. In short I am of opinion that had they been given way to, the whole of the public property would not have satisfied them. . . . In short if I except Kemp, Lawson and Draffin, there is not a man that affords Johnston the least support, and most of them oppose everything, although the whole called upon him to assume the government and pledged their words of honour to support him—pretty pledge you will say. Harris has also been advised to take a despatch home, but he very conveniently fell sick.³

Not only did Macarthur secure unity within the critical period, but he so arranged affairs that he procured officers of the regiment to take the initiative against Bligh, and finally to arrest and supplant him. Of course, whatever evidence was adduced against him, an acquittal was probable at the hands of the six officers who would sit on the Criminal Court. But an acquittal would not be sufficient for his purposes, because other dangers might arise. Macarthur's view was that Bligh had to go. The manner in which Macarthur achieved his object appears tortuous in some respects, but it displayed great boldness and ingenuity. The time at his disposal was short—the available period between 17 December and 25 January was only six weeks. During the whole of this period, to use the euphemism of Bladen, Macarthur "was not idle."⁴

³ Macarthur to Piper, May 1808. (Piper Papers: Mitchell Library.)

⁴ *H.R. of N.S.W.*, vol. vi, intro. p. lvii.

CHAPTER XXV

MACARTHUR'S FIRST MANOEUVRE

ON 17 December the Bench of Magistrates assembled in Macarthur's case had included both Robert Campbell, the Naval Officer, and Atkins, the Judge-Advocate. Macarthur at once raised an objection to Campbell's sitting, his ground of objection being that Campbell had been concerned in the legal disputes over the imported stills and over the various disputes connected with the *Parramatta*. Campbell abstained from taking part in the decision of the magistrates upon this preliminary objection. Johnston and Abbott, the two military officers, were in favour of the objection to Campbell, Palmer and Atkins were for overruling it. On the announcement of this equal division of opinion, Macarthur stated that he withdrew his objection to Campbell, but the latter still refused to sit and the remaining four magistrates unanimously committed Macarthur for trial.

This episode is important. Macarthur clearly accepted Atkins as a suitable person to preside over the committal proceedings. Moreover, during the previous October, Atkins had decided in Macarthur's favour in the case of the imported stills. Yet we find that, on 21 December, only four days after his committal, Macarthur called on Atkins "with intention personally to require his money," the demand being in relation to a bill of exchange drawn by Atkins and now in Macarthur's possession.¹ Macarthur was informed at the door that Atkins was not "at home".² Macarthur would take no denial and insisted on remaining in Atkins's garden until he was informed that the Judge-Advocate was not "at home" to him and could not be spoken with.³

On the following day Macarthur wrote to Atkins demanding payment of £82. The bill of exchange was of the face value of only £26, but Macarthur claimed £56 interest, the

¹ *H.R. of N.S.W.*, vol. vi, p. 395.

² *ibid.*

³ *ibid.*

bill having been drawn no less than fifteen years before. Atkins's answer was that, although the Statute of Limitations would exonerate him from any liability, he would pay the amount of the bill if Macarthur produced both the original bill and the formal protest for non-payment. Subsequently, the bill was presented to Atkins on behalf of Macarthur and Atkins said that there was a mistake as to the amount of interest, but he must not be taken as refusing payment. Next, Macarthur, pretending to think that, if he sued Atkins, the latter would take advantage of the Statute of Limitations, addressed a memorial to Governor Bligh, dated 29 December, deploring:

the unhappy effects it might produce on the morals of this colony if it should appear that a judge resists the payment of a just debt, without any other reason to offer in his defence than that he chose to take advantage of the merciful and indulgent spirit of his creditor.⁴

Bligh's secretary, Edmund Griffin, replied in a curt note that civil actions could be instituted in the Civil Court of the colony.⁵ On 1 January Macarthur again addressed Bligh, declaring that it would be "entirely inimical to the principles of natural justice and equity"⁶ for Atkins, as Judge-Advocate, to allow the issue of a writ against himself, for he was also a member of the Court of Civil Jurisdiction, which by the letters patent consisted of the Judge-Advocate and "two respectable inhabitants of the colony to be from time to time appointed by the Governor."

The next step was a letter from Atkins to Macarthur pointing out that the bill was fifteen years old and that it now came to him "in a very questionable shape . . . no protest having yet been produced."⁷ Atkins added that, as Macarthur was to stand his trial on 25 January, the matter could not be considered as a present object for discussion. Again Macarthur moved to the attack. He wrote to Bligh alleging that, more than two years before, Atkins had promised to pay him the amount of the bill, and added:

If this withholding from me my money be intended by the Judge-Advocate as a sort of precursor of a more severe vengeance than he is meditating at this threatened trial, and if your Excellency should continue to sustain his refusal to pay me by not allowing me to prove my claim before a disinterested tribunal, I must submit with patience; nor will I any further trouble your Excellency upon the subject until there

⁴ *ibid.*, p. 396.

⁵ *ibid.*

⁶ *ibid.*, p. 412.

⁷ *ibid.*

may be an opportunity to send, with your dispatches, a memorial to His Majesty's Secretary of State for the Colonies.⁸

Therefore, by 12 January, we find Macarthur endeavouring to convert a claim for debt against Atkins into a grand cause of complaint against the Governor, over whose head he threatens to appeal to the English authorities. The inference is clear. Macarthur is engaged in the deliberate manufacture of a cause for grievance against both the Governor and Atkins. Unless they adopt a more conciliatory attitude, the grievance will be fully ventilated.

Many questions suggest themselves. Why had Macarthur retained Atkins's draft so long? He asserted that, some two years earlier, Atkins had promised to pay the draft. Why did Macarthur not sue on it then? Why had he not sued on it many years before? It is no wonder that Atkins now regarded the bill as coming to him in a "questionable shape." Remembering the old quarrel between Atkins and Macarthur during Hunter's governorship, we are forced to conclude that Macarthur, who then falsely alleged that Atkins had drawn bills with intent to defraud, set about becoming the owner of a bill which Atkins had drawn, a bill perhaps protected already by the Statute of Limitations. The bill might always be useful for the purpose of silencing or coercing Atkins, who had a very small salary. And now he resurrects the document in order to apply pressure on the Judge-Advocate. In my view it is plain that it was not for the purpose of collecting a paltry £82 that Macarthur selected this particular time to bring the matter to a head.

The historians who condemn Atkins over the matter overlook the fact that, although Macarthur asserted that Atkins had long owed him the amount of the bill, he allowed him not only to decide in his favour the case of the imported stills, but also to sit without objection on the committal proceedings. How are these facts to be explained except on the hypothesis that Macarthur's real object was more important than the collection of a trifling debt?

The true purpose of Macarthur's visit to Atkins, nominally for the purpose of pressing an extremely stale money claim, was to create a situation which he might subsequently employ for the benefit of himself and to the detriment of Bligh and Atkins.

⁸ *ibid.*, p. 413.

CHAPTER XXVI

MACARTHUR'S SECOND MANOEUVRE

MACARTHUR'S next move was to create a grievance against Bligh which would more closely affect the military officers and their associates, whose assistance would soon be necessary. He discovered such a ground in the application of Bligh's order as to the Crown leaseholds in Sydney.

Bligh had sufficient imagination to appreciate the necessity for carrying out Phillip's far-seeing policy of not granting leases of Crown land within the town of Sydney. Phillip's original order in reference to this matter was issued on 2 December 1792, and declared: "that no ground within the boundary line is ever granted or let on lease, and all houses built within the boundary line are and are to remain the property of the Crown."¹

In spite of Phillip's regulation, Governor King had, in 1801, made a general order authorizing the granting of town building leases for a period not exceeding five years. Subsequently, in January 1806, when King knew he was about to be relieved by Bligh, the former "renewed certain expiring leases for a further period of fourteen years."² Having regard to the fact that Bligh was shortly to take over the government, that the existing regulation of 1801 was never rescinded, and that the lands had been specifically reserved for government and church purposes, there is something very strange in these, so to speak, "midnight" leases of King's. Moreover, King never received from England any instruction or permission to alter Phillip's scheme by means of the General Order of 1801. Even if that order was valid, it should have been replaced by an amending order, so that King might be enabled to grant or extend leases for periods in excess of five years. It would therefore appear that the fourteen year leases granted in January 1806, were invalid.

¹ *Beginnings of Government*, p. 16.

² *ibid.*, p. 17.

Further, King's action was calculated to embarrass Bligh so soon as he attempted to carry out Phillip's original plan for improving the town. When we find that lot 77, although part of the lands reserved for church purposes by Governor Phillip, was leased by King to Macarthur for fourteen years, it seems almost certain that, in obtaining the lease, Macarthur had some purpose in mind other than a mere acquisitive desire to extend his proprietary interests. Among the fourteen year "midnight" lessees were Harris, Mann, Jamison and Paterson, all of whom were to become strong opponents of Bligh.

Here it must be noted that when, in the previous October, Major Johnston had objected to Bligh's nominating the six officers for the trial of Provost-Marshal Gore and had addressed a letter of protest to the Duke of York as commanding officer, he also caused to be collected for use against Bligh, certain unsworn statements from the rank and file of the regiment. One of these informers, a soldier named Blakemore, said that Bligh had questioned him about a hut which Blakemore had built opposite his own dwelling. He also said that he answered that Major Johnston had given him permission to build, and that Bligh "damned Major Johnston and Major Paterson too. He did not care a damn for them; no person should have two Houses and others go without."³

The intense interest of the officers in this matter of the leases is shown by the fact that in December 1807, the notorious Whittle,⁴ sergeant-major in the Corps, who occupied one of the dwellings within the government reserve, purported to transfer his property over to Johnston.⁵ Similar methods of evading the Governor's orders appear to have been employed by others, for at his court martial Johnston said: "When Governor Bligh threatened to pull down their houses, they were in the habit of requesting some person of respectability and character to accept a friendly assignment of their leases, flattering themselves that the superior station of these persons would be respected, and their property thus secured."⁶

These preliminary anti-Bligh manoeuvres of Johnston and some of the soldiery were, of course, known to Macarthur,

³*H.R. of A.*, series i, vol. vi, p. 403.

⁴ Whittle collapsed during the court martial of Johnston when he was perjuring himself in order to injure Bligh.

⁵*H.R. of A.*, series i, vol. vi, p. 404.

⁶ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 148.

who decided that now was the appropriate time when Bligh's decision to revert to Governor Phillip's policy of improving the town should be agitated in order to prejudice the Governor and unite his opponents. Accordingly he stepped into this new arena.

On 13 January Grimes, the Surveyor-General, wrote to Macarthur, who was now his close associate, that he could not allow the latter to build on the land in respect of which King had granted the fourteen year lease, for the lease was situated on the church reserve.⁷ The same decision was announced by the Governor through Grimes, the letter adding that Macarthur might either choose land of a similar character elsewhere in the town, or await the decision of Downing Street as to the validity or otherwise of his present lease. Macarthur replied to Grimes on the same day, 13 January, and announced that he had now selected part of the government wharf reserve. He must have known that this location could not be made available. On 14 January Grimes informed Macarthur that Bligh was unable to approve of such selection, and, further: "that the Governor will not allow you to build on your lease, or make any erections, until the Governor may receive orders respecting that spot from England; and that the Governor will not receive any letters upon the subject from you."⁸

If this letter of Grimes had come from an official who was thoroughly loyal to Bligh, Macarthur, high-stomached as he was and full of ire, would probably have shown personal resentment against its writer. The probabilities are that Grimes was co-operating closely *with* Macarthur in the latter's manufacture of this second dispute. On 14 January Macarthur answered by declaring that he refused to select any other situation for his lease than that which he had already selected, so he would: "beg leave to retain the lease of which he is now already possessed."⁹

This statement, though rude enough, was not necessarily of significance, because it did not indicate that Macarthur was about to defy Bligh's interim decision that nothing was to be done on the leases pending a ruling from England. But Macarthur went further. He at once sought out suitable men

⁷ Lang, Rev. J. D., *An Historical and Statistical Account of New South Wales*, vol. i, p. 129.

⁸ *H.R. of N.S.W.*, vol. vi, p. 416.

⁹ *ibid.*, p. 417.

in the Corps who were: "in the constant habit when off duty of working for such gentlemen as were inclined to employ them."¹⁰ He then ordered the soldiers to fence the land subject to the disputed lease. Excitement grew apace as it became known throughout the town that Macarthur and the soldiers were defying Bligh's order, and it was accentuated when Bligh at once directed the constables to pull down the fencing posts.¹¹

The meaning of Macarthur's second pre-trial manoeuvre is reasonably plain. At the Johnston court martial, the members of the tribunal were quite alive to the significance of Macarthur's high-handed act of fencing the land before any ruling could come from England. Macarthur was asked: "What particular reason had you for setting about it just at that time?" His answer was: "The circumstances that had arisen in the Colony had impressed upon my mind the necessity of providing a residence for myself and family in Sydney."¹² It is not surprising that the disingenuous answer made no impression—or no favourable impression—on the members of the Court Martial. Indeed, the answer was quite absurd. At the time when his liberty was in jeopardy, and he might, if found guilty, be imprisoned or sent to England, he suddenly decided that a residence at Sydney would be very desirable, although, if the lease was invalid, he would have to abandon the location and sacrifice the value of his improvements! It is also important to note that a condition of the "midnight" lease granted by King to Macarthur was that the lessee should build, yet Macarthur had done nothing for two years. Nor did he really propose to build even now. He decided only to fence, so as to inform the military and their trading associates that there was one man at least who was courageous enough to defy the tyrant. Macarthur's decision to employ the soldiers of the regiment was a necessary part of his plan, for he rightly anticipated that, when the police authorities under Divine and Gore interfered, the flames of faction could more easily be fanned.

At the London court martial, the introduction by Johnston of this matter of the building leases helped Bligh and not Johnston or Macarthur. In a letter written to Banks during

¹⁰ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 183.

¹¹ *H.R. of N.S.W.* vol. vi, intro. p. lviii.

¹² *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 184.

the course of the inquiry, Bligh vividly describes the scene when Sergeant-Major Whittle, terrified of the consequences of his exposure as a perjurer, collapsed in court and had to be removed. The witness made no subsequent appearance. "The soldiers," says Bligh, "gave the most atrocious falsehoods in proof of my arbitrary character, and stuck at nothing to lessen Johnston's guilt. One of the soldiers, a sergeant-major, when in the midst of his zeal and falsehood against me, was suddenly seized with a fainting fit like the stroke of death and was taken out of Court."¹³

The only conclusion is that the action taken by Bligh in reference to these leaseholds was justified, and that it was King's actions which were open to question. Yet the affair was of great importance as a part of Macarthur's plans, because, owing to their interests being affected similarly, it conspired to create the united anti-Bligh front shortly before 25 January, the day fixed for Macarthur's trial.

This united front was celebrated and consolidated at a mess dinner of the Corps which was held on Sunday evening, 24 January, the eve of the trial. At his court martial, Johnston tried to explain away the significance of this occasion, stating:

In Governor King's time there had been a regular mess-dinner, and it was now the wish of the officers to re-establish so laudable and convivial an arrangement; and this was the first meeting we had for the purpose. Considering what followed I do not wonder that Capt. Bligh should imagine this dinner had some connection with the events of ensuing days; but I most solemnly declare . . . that nothing of the kind was agitated or even hinted at.¹⁴

Macarthur, while not himself a guest, was well represented at the dinner party, for there were present his two bailsmen and his son, and of course there were also present the six officers, Kemp, Brabyn, Moore, Laycock, Minchin and Lawson, who had been nominated by Bligh as the panel of six to sit with Atkins on the Criminal Court. Where was Macarthur? According to his evidence, given in London, he had succeeded in establishing an alibi:

I was walking in the most conspicuous part of the town, where I must have been seen by hundreds, and particularly by every person at

¹³ Bligh to Banks, 31 May 1811. (Banks Papers: Mitchell Library.)

¹⁴ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 148.

Government House. The regimental band played during the dinner; and after dinner, I believe, I amused myself by listening to them, and walking backward and forward on the parade.¹⁵

The inference subsequently drawn by Gore seems quite justified. He said:

For the first time since our arrival in this country the officers of the New South Wales Corps dined together as a mess, and the novelty of their assembling on that day was heightened by the display of their regimental colours at the door of their mess room. It was cased in the fore part of the day, and unfurled during the afternoon.

At any other time, my Lord, or on any other occasion, this circumstance would have been undeserving of notice; but from subsequent events it is to be inferred that had any one amongst the officers been waiving, this was the rallying day, when heated by wine, that was to fix them in a unanimous resolution of possessing themselves of the administration of the country.¹⁶

It is very probable that, on the same Sunday evening, Macarthur conversed with Sergeant-Major Whittle and made the announcement that he was distributing, at very cheap prices and for the benefit of all the non-commissioned officers and soldiers of the regiment, large quantities of liquor from which a handsome profit could be derived.¹⁷ Evidence to that general effect was given by Whittle before his collapse at the court martial. And the evidence was never controverted by Macarthur. The dinner party did not conclude until a very late hour, and Johnston dined too well. On his way home to Annandale his condition was such that he "tumbled out of his chaise."¹⁸ Thus, on the day before Macarthur's trial, the anti-Bligh alliance was sealed in a little blood and a great deal of rum.

¹⁵ *ibid.*, p. 198.

¹⁶ *H.R. of N.S.W.*, vol. vi, p. 553.

¹⁷ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 371. (Evidence of Whittle.)

¹⁸ *ibid.*, p. 70. (Evidence of Bligh.)

CHAPTER XXVII

MACARTHUR'S TRIAL OPENS

ON the morning of Monday 25 January the Criminal Court assembled. The precept convening it was read and the six officers were sworn in by the Judge-Advocate Atkins. Before Atkins was sworn and before the indictment was read, Macarthur rose to protest against Atkins being allowed to take his seat as Judge-Advocate. Atkins interposed to point out that the Judge-Advocate could not be removed or replaced by the six officers, but the latter allowed the accused to read a declamatory but carefully prepared speech setting forth a number of reasons why Atkins should not be allowed to officiate.

Macarthur's first objection was that he was intending to sue Atkins for a sum of money due by Atkins under the bill of exchange, payment of which had been demanded in the circumstances I have described. Macarthur's second and third objections were that Atkins was biased against him as a result of the dispute between them during Hunter's governorship. The fourth objection was that Atkins and Crossley were conspiring to ruin him, for Crossley had prepared the indictment against him.

This ground of objection to Atkins's competency to sit is too lengthy to be set out in full. Its absurdity is plain, for it may fairly be paraphrased thus: "I object to this trial proceeding. It is most improper. The indictment against me alleges frivolous and trumpery charges. I acted within the law. Conviction would ruin me, and my ruin is what the prosecution is trying to attain. I tell you this on my own authority. Therefore I should not be tried at all."

Further, this portion of Macarthur's address falsely suggests that the only charge about to be preferred against him was based upon his conduct in the case of the imported stills. He conveniently overlooked the far more direct charges con-

tained in the second and third counts of the indictment, upon which, in my opinion, an impartial jury would have convicted him.

Here it should be interpolated that the Judge-Advocate was under a duty to prepare all indictments for prosecution before the Criminal Court. Accordingly, Atkins was the officer responsible for the indictment, although Crossley had assisted in preparing it. On 20 January, five days before the trial, Macarthur had written to Atkins demanding a copy of the intended indictment, claiming that Atkins was well aware that he (Macarthur) was legally entitled to a copy¹ On the same day, Atkins replied that he was certain that Macarthur was not by law entitled to a copy, and he could not comply with Macarthur's request.² But Macarthur again repeated the request, and asserted that Atkins's refusal was illegal.

Already it must be reasonably plain that, by this time, Macarthur had resolved to use the occasion of his trial for procuring the overthrow of the Governor. It is my opinion that his demand for a copy of the indictment, though in itself quite reasonable and one which would readily be granted under the best practice of to-day, indicates that he was again laying the ground for creating an occasion of dispute between Bligh and the six officers who would sit on the Court—a dispute which should develop into an acute crisis.

Atkins's final decision was a repetition of his prior refusal, and a statement that the indictment was not for high treason.³ At first sight this reference to high treason may appear to be insulting to Macarthur. But the point was this, that, under the English practice, it was only in cases of high treason that a prisoner became entitled as a matter of right to receive in advance a copy of the indictment to be presented against him. Macarthur replied to Atkins in an argumentative strain,⁴ and on 22 January also wrote to the Governor stating that he objected to Atkins sitting as Judge-Advocate at his trial. In this letter to Bligh the only ground of objection raised to Atkins was that, if Macarthur was acquitted, Atkins was liable to be proceeded against by Macarthur for false imprisonment, so that he would be interested in procuring a conviction. But such a ground was quite untenable, and for more reasons than one. There was nothing wrong

¹ *H.R. of N.S.W.*, vol. vi, p. 418.

² *ibid.*

³ *ibid.*, p. 419.

⁴ *ibid.*

with the legality of the warrant to arrest Macarthur which had been issued by Atkins. Macarthur's guilt or innocence of the charges mentioned in the warrant had nothing to do with the legality of Atkins's action in issuing the warrant. In other words, no possible action for false imprisonment could have been brought against Atkins, even in the event of Macarthur's acquittal. Accordingly, the ground of objection to Atkins raised in the letter to Bligh was without substance.

In reply to Macarthur, Bligh stated that Atkins was appointed by the King's Commission, and was the only person who could lawfully act as Judge-Advocate in the territory.⁵ The vital question is, was Bligh right? Did the six officers possess any lawful authority to sustain any one of Macarthur's objections and rule that Atkins could not officiate as Judge-Advocate?

The Imperial Statute then in force described the Criminal Court of the colony in these terms: "Which Court shall consist of the Judge-Advocate, to be appointed in and for such place, together with six officers." It should at once be appreciated that, without "the Judge-Advocate" of the colony, there was not in law any Criminal Court at all. The Statute made no provision for a substitute judge-advocate, as would no doubt be permissible under the existing practice governing the composition of a military court martial. The Criminal Court of the colony was not a court martial. The terms of the Imperial Statute were clear and adamant. Bligh had no legal power to replace Atkins by some person to whom Macarthur could or would offer no objection.

Bladen's comment on this aspect of the Bligh-Macarthur controversy must be mentioned. According to Bligh, Atkins had been appointed Judge-Advocate by the King and was the only person in the colony who could legally act in that office. During the course of Macarthur's trial, Bligh quoted for the benefit of the six officers the very terms of the Imperial Act, and he added: "I do not consider the Court to be formed without the Judge-Advocate, and when legally convened I have no right to interpose any authority concerning its legal acts."⁶ Bladen's comment is that Bligh's powers "were so ample that had he chosen to appoint a *succedaneum* to the Judge-Advocate, no one would have blamed him."⁷ If

⁵ *ibid.*, p. 420.

⁶ *ibid.*, p. 425.

⁷ *ibid.*, intro. p. lviii.

Bladen is venturing on a legal opinion as to the application of the Statute, he is demonstrably wrong. But if, as is possible, he means only that Bligh should have disobeyed the law and taken the risk of being subsequently rebuked by the authorities in England, the suggestion is equally impossible. Bligh was sworn to uphold the law. Nothing in the world could have persuaded him to break it. In all their addresses to him, the poor settlers had persistently demanded an impartial administration of criminal justice, and had attacked its *de facto* control by the military officers who usually controlled six-sevenths of the voting power in the Criminal Court, and who almost invariably acted as a unit. No doubt, the settlers were right. The Criminal Court needed reform, and reform was to be sought, certainly not by giving additional powers to the six military officers over the one civil officer, the Judge-Advocate, but rather by reducing the number and powers of the military officers.

It is indisputable that Bligh was quite aware that Atkins was not a satisfactory Judge-Advocate, and he had actually asked England that a fresh appointment should be made. But distrust of the capacity of a person lawfully occupying an office is one thing; the subversion of the office itself is quite another. In my view, Bligh would have been permanently discredited in England had he countenanced for a moment the illegal proposal that Atkins should be temporarily superseded.

CHAPTER XXVIII

ANOTHER STRANGE TALE

THE fifth objection raised by Macarthur was that, unless Macarthur was convicted, Atkins would be liable to an action for false imprisonment. But, as already shown, this point entirely lacked substance. The sixth and last objection was that Atkins had declared that, independently of the Criminal Court, the Bench of Magistrates possessed power to punish by fine and imprisonment, so that Atkins must have intended to deprive Macarthur of the benefit of trial before the Criminal Court. There is no evidence to show that Atkins had ever so declared. Even if he had, the fact afforded no objection whatever to the Criminal Court's proceeding with its business.

I have reserved the question of Macarthur's objection to Atkins sitting, on the ground that the latter was biased. At first sight the objection might seem formidable, but there were many answers to it. In the first place, the only occasion on which Atkins exhibited malice towards Macarthur was in 1796, following upon Macarthur's having falsely charged Atkins with a number of offences. Second, Macarthur had accepted Atkins as a judicial officer during the six months before the trial. On one occasion Atkins gave the deciding vote in his favour, and nothing had occurred since which suggested any new ground upon which the honesty or impartiality of Atkins could reasonably be challenged. Macarthur's crude attempts during the five or six weeks before the trial to involve Atkins in contentions with him were transparently lacking in bona fides—Macarthur was merely seeking to create a ground for subsequently alleging bias. Finally, under the statute governing the colony, the Judge-Advocate Atkins was alone competent to adjudicate as such in the Criminal Court, so that, of legal necessity, the objection of Macarthur had to be repelled. As was said of Macarthur's

challenge by Manners Sutton, who acted as Judge-Advocate General at the court martial of Johnston: "he might as well offer a challenge against a Judge in this country sitting at the assizes."¹

I have already had occasion to refer to several of the legal arguments of Roderick Flanagan. He attempted to justify Macarthur's objection to Atkins, and to criticize the opinion of Manners Sutton.² But Flanagan employs a good deal of special pleading, and of course he was not acquainted with the documents which are now available. He seems to have been impressed by Macarthur's collection of legal "authorities" in support of the "challenge" of Atkins. While a profound learning of the law may not much avail an accused person, the possession of a little learning may be positively dangerous. Though Macarthur's "authorities" were all interesting they were legally irrelevant, because they were based upon the double fallacy that the Judge-Advocate was in a position analogous in all respect to that of a juror, but that the six officers were placed—in some mysterious way—in the position of trial judges who could exclude a juror at their discretion.

Twice, during the course of Macarthur's speech, he suggested that, not only his property and his liberty, but his life itself was at stake. It is interesting to note that, by the terms of Bligh's Commission from the King, he was not only Captain-General and Governor-in-Chief of the territory, but was specifically authorized to command all persons residing in the territory to resist all enemies, pirates and rebels, both at sea and land, and to apprehend such enemies, pirates and rebels, who "being taken according to law, *to put to death, or keep and preserve alive at your discretion.*"³ Therefore Bligh had the widest discretionary powers in respect of declaring and executing martial law upon occasions of rebellion. For instance, if Bligh had caused the leaders of the rebels to be put to death, he might afterwards have had to face an inquiry in England, but it is quite possible, even probable, that an investigation would have vindicated his action. While there is no evidence that Bligh ever entertained the notion of taking such drastic action, Macarthur, whose consciousness of

¹ *H.R. of N.S.W.*, vol. vi, p. 425n.

² Flanagan, R., *History of New South Wales*, vol. i, pp. 177-8.

³ *H.R. of N.S.W.*, vol. v, p. 631. (Italics are mine.)

guilt made him a desperate man and in no mood for half measures, may well have supposed that the Governor would not hesitate to exercise his extreme powers with the utmost rigour.

A further aspect of Macarthur's speech raised the point which received great prominence later when it was repeatedly urged against Bligh that he should never have lent himself to Crossley's employment for the purposes of the prosecution. The argument was that Crossley, although emancipated long before by Governor King, should have been deemed permanently incapacitated from taking even a minor and indirect part in the administration of justice. We know that during 1807, when the anti-Bligh malcontents attempted to ruin Provost-Marshal Gore, Bligh was criticized for allowing Crossley to assist the defendant in exposing the conspiracy against him.

And a great song was made of the undoubted fact that the present indictment against Macarthur was prepared by Crossley. Undoubtedly Crossley had borne a very bad character. As an attorney convicted in England of perjury he came within the English Statute 12 Geo. I, c. 29, which provided that any person so convicted of perjury who should act as a solicitor or agent in any matter "*in any Court . . . in England*" should, after summary investigation by the presiding judge, be transported from the realm of England. Such a provision, though part of the criminal law of England, could not be applied in New South Wales so far as the quantum of punishment was concerned, for New South Wales was a place *to* which, and not *from* which, transportation might lawfully take place. Yet, after Bligh's overthrow, the rebel party at once applied the Statute to Crossley. They admitted that the law required him to be "transported." But where to? As there was no place outside New South Wales to which he could be sent, they decided to do the next best thing and send him—transport him—to a place within the colony, the Coal River (now Newcastle) being selected. The fact that the Criminal Court which pronounced this order was entirely incompetent in law only added to the illegality.

In the peculiar circumstances existing in the colony, Bligh's decision to call on Crossley for assistance in legal matters was justifiable. There was no other person there who possessed a sufficient knowledge of legal forms. The legend created by the

rebels was that so soon as the inhabitants of Sydney discovered that Crossley (an ex-convict, mark you!) had helped to draw up the indictment against Macarthur they were stricken with terror and furious with indignation. Crossley's name was always featured in the rebel dispatches narrating the events of the trial, including the dispatch signed by Johnston but undoubtedly drafted by Macarthur. As a matter of cold fact, the suggestion of terror and indignation was mere propaganda. Crossley had been emancipated many years before. But the rebels persisted in their suggestion and, at the court martial of Johnston in England in 1811, Bligh's consultations with Crossley were relied on by Johnston and Macarthur by way of a charge of misconduct against the Governor. However, in the calm atmosphere of the Chelsea court martial, Manners Sutton, as Judge-Advocate General, stated the legal position most convincingly:

If a person in a high responsible situation as a public officer, thinks proper to consult any individual upon any public matter, whether that individual be a fit or an unfit person to consult with, the public officer so consulting him is responsible for whatever act he does, be it in consequence of the advice of this man or of any other; for whoever gives the advice, it is the officer who adopts it, and who is therefore responsible for it. If Mr Crossley had been in an official situation, perhaps it would have been necessary from the nature of his office, to have consulted him; if he was not in an official situation, I must confess I am unable to see how any person is to be responsible merely for the act of advising with another, though I admit he must be responsible for any act which he does upon his advice.⁴

On this particular matter Bladen sides with Bligh, stressing the fact that Judge-Advocate Atkins was ignorant of the law. He says that: "Bligh was unschooled in the law, and with a Judge-Advocate equally ignorant, he was forced to employ whatever means presented themselves. It was not a question of selecting aid from the cleanest source, but of getting it at all."⁵

When we recall the trouble and anxiety caused to Bligh by Atkins's weaknesses and the fact that Bligh had twice asked the English Government to send out to the colony an efficient and honourable law officer, it is utterly unfair for the historians to pay attention to the bogey deliberately raised by

⁴ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 64.

⁵ *H.R. of N.S.W.*, vol. vi, intro. p. xlvi.

Macarthur and Johnston to serve their own immediate ends. With Atkins and Crossley as his sole advisers on matters of law, Bligh's situation was in striking contrast to that of his successor, Governor Macquarie, who, as so often happens, reaped the benefit of his predecessor's agitation for legal reform. Ellis Bent, Judge-Advocate under Macquarie, was the first efficiently trained lawyer sent to the colony. Collins, the first Judge-Advocate, was a mere captain of marines. To the character of his successor, Dore, I have already referred. Atkins, "a hard drinker and a born fool,"⁶ was much superior to Dore because of his greater honesty. But the practical control of the Criminal Court by the six officers required the Judge-Advocate to possess personality, poise and courage as well as legal knowledge, for otherwise the officers would never pay attention to him. Even with a first-rate man like Ellis Bent, Macquarie got himself into trouble over the administration of justice. Bligh, almost entirely unequipped with legal assistance, had to rely on Atkins and Crossley. The miracle is that, even from a strictly legal point of view, the result of this assistance was by no means unsatisfactory. The inference is that Macarthur was of the opinion, not that Atkins and Crossley were making a bad legal job of it, but that they were making too good a legal job of it.

During that portion of Macarthur's speech which referred to Crossley, he said:

I have also proof in my hand, in the writing of the veteran practitioner, Crossley, which will convince the most sceptical mind that other schemes have been agitated to deprive me of my *property, liberty, honor, and life*. Here it is, gentlemen, read it; and after, read the proceedings of a Bench of Magistrates; and you will see that, for presuming to complain of a most unlawful seizure of my property (which the Judge-Advocate joined in reprobating), it has been determined to ruin me. This precious document came into my hands, as it were, by the interposition of Divine Providence. It was dropped from the pocket of Crossley and brought to me.⁷

These observations include an admission that, prior to the commencement of his trial, Macarthur was in possession of a copy of the indictment which was to be used against him. It is a reasonable inference that Macarthur had come into possession of the copy before he wrote to Atkins demanding

⁶ Phillips, M., *Colonial Autocracy*, p. 28.

⁷ *H.R. of N.S.W.*, vol. vi, pp. 423-4.

one. If so, such letter was a mere sham. But the crucial matter for investigation is, how came Macarthur to be in possession of a copy of the indictment? He advanced the explanation that the copy had been dropped from the pocket of Crossley. *Qui s'excuse, s'accuse*. An accidental loss by Crossley of his copy of the indictment at the very time when the powerful and unscrupulous Macarthur was so much in need of a copy, is too startling to accept—as a mere coincidence. It is impossible to refrain from recalling the theft of another document—the dispatch of Governor King,⁸ which contained so much damning evidence against Macarthur:

. . . very strange tales
Are told of gentlemen of New South Wales.

Again, it is extremely difficult to resist the conclusion that the document did not come into Macarthur's hands "as it were by the interposition of Divine Providence" on his behalf, but that it was a mere human agency which had been at work. If so, the document was purloined from Crossley or some other government official. Other hypotheses may be suggested in order to explain this most extraordinarily lucky coincidence, but the only reasonable one which the historian can adopt is that of a deliberate theft.

This conclusion finds striking confirmation in the version propounded apparently by Macarthur's son, and set forth in the Macarthur family book.⁹ According to this second version, an "Irish settler of the Hawkesbury District" was carousing with Crossley, who "finally pulled out the draft of the indictment" which "the Irishman secured and carried forthwith to Macarthur." According to this "explanation," "secured" is merely a euphemism for "stole," and the explanation, if true, does not march in step with that furnished by Macarthur himself, viz. an accidental loss by Crossley. James Macarthur's version, moreover, adds the following comment:

⁸ After the rebellion, Bligh was always anxious to guard against any interference with his dispatches, especially when they were sent in the *Dart*, of which Macarthur was co-owner, "being assured that, through the vigilance of our enemies, my despatches would have been secretly relanded and given to the rebels. I was the more ready to believe this, knowing the infamous transaction of Governor King's despatches on the occasion of troubles he had in this colony with McArthur, being stolen, and when the box which had contained them was delivered at your Lordship's Office filled with old paper." (*H.R. of N.S.W.*, vol. vi, p. 681.)

⁹ *Early Records of the Macarthurs of Camden*, p. 147n.

It was the knowledge derived from the draft of Crossley's indictment which induced Macarthur to adopt the course he took towards Oakes, the head Constable, of refusing to submit when he came to arrest him at Parramatta. His object was to drive the Governor into violent and precipitate measures.¹⁰

This comment is absurd, for the indictment not only included, but was mainly founded upon, Macarthur's actions in resisting the execution by Oakes of his warrant, so that it necessarily came into existence after the Oakes affair. It was the "violent and precipitate" conduct of Macarthur which led to his being charged with sedition. However, the Macarthur comment is valuable as evidencing the deliberate character of the attempt on Macarthur's part to thwart and humiliate the Governor.

¹⁰ *ibid.*

CHAPTER XXIX

THE NIGHT OF THE TWENTY-FIFTH OF JANUARY

THE reading of Macarthur's speech against Atkins occupied some time, but the orator did not have the anticipated pleasure of observing what Atkins would do after a ruling by the six officers in Macarthur's favour. For Atkins finally intervened and said that, under the guise of a legal challenge, Macarthur was merely defaming him and should be committed to prison. Thereupon, Kemp, the senior of the six officers, threatened that, if he again interrupted Macarthur, Atkins would himself be committed. Then Atkins left the court, declaring loudly that in his absence there could be no lawful Court. Several minutes later Atkins sent a constable back to secure the official documents which had been left on the Judge-Advocate's table, but the six officers refused to hand them over. As soon as Atkins left, Gore, as Provost-Marshal, also left and ordered away the constables on duty—an action which was bitterly resented by the six officers as it deprived them of part of the ordinary paraphernalia of the Criminal Court.¹

Atkins proceeded to Government House, where Bligh was consulting with Campbell and Palmer in their capacity as civil officers. At 11.15 a.m. the six officers wrote to Bligh stating that, in their opinion, Macarthur's objection to Atkins was valid and should be upheld. They asked Bligh to appoint an Acting Judge-Advocate. After further consultation at Government House, Crossley also being present, Bligh replied at 12.30 quoting the terms of the Imperial Statute, and he stated that, without the duly appointed Judge-Advocate, there was no Court. The six officers replied to the effect that they could not, or would not, sit with Atkins. Bligh then wrote to them demanding the return of Atkins's official documents.

¹ *H.R. of N.S.W.*, vol. vi, p. 436.

The officers, also by letter, refused this request. It is quite impossible to believe that the officers' wilful and persistent recalcitrance was not carefully studied, and, to a large extent, prearranged.

At 3.30 p.m. the officers took another critical step. They wrote to the Governor mentioning a deposition made by Macarthur in their presence to the effect that, from information he had received, he believed his life was in danger: "from the unprincipled and atrocious characters that are combined against him under the direction of the infamous George Crossley."²

In the same deposition, Macarthur declared that he would not give any bail, but required the protection of a military guard. The six officers recommended to Bligh that this demand of Macarthur should be conceded. This letter indicated that Macarthur and the six officers all regarded him as still in the custody of the Criminal Court, Macarthur not having obtained fresh bail after his bail surrendered him at the commencement of the trial. Next, Bligh made a further demand that the officers should return Atkins's official papers, but at 5 p.m. the officers wrote refusing to comply unless the Governor complied with their previous demand and appointed another Judge-Advocate for the trial.

By now, it was obvious to the Governor that, as their taking of Macarthur's deposition showed, the six officers were pursuing a course of action in very close collaboration with the person whom they were sworn to try truly. In this emergency, all the officers of the regiment being apparently involved, Bligh at 5.30 p.m. wrote to Johnston, who lived four miles out of the town at the place which is now the suburb of Sydney called Annandale, asking him to call at Government House. Johnston gave a verbal message to Bligh's orderly that he was dangerously ill, that it would endanger his life to come to the city, and that he could not write because his arm was bandaged.

Meanwhile, at 4 p.m. the six officers, without having the slightest legal authority to do so, purported to remand Macarthur to the custody of his former bail, consisting of his partner Blaxcell and his follower Bayly. This order, under which Macarthur regained his liberty, was a nullity in law, Macarthur having been duly surrendered to the legally con-

² *ibid.*, p. 427.

stituted Court, and Atkins's absence precluding any valid order for further bail. Gore, the Provost-Marshal, whose duties included those of a sheriff, went to Government House and swore, before the magistrates, that Macarthur had surrendered to his bail in the morning, that at first the six officers had regarded him as being still the Court's prisoner, that he was no longer in the custody of Gore as the proper officer of the Court but had procured some persons to keep him out of Gore's custody. Gore asked for an escape warrant, which the magistrates granted, commanding the officers of police to re-arrest Macarthur. This action of the magistrates was perfectly legal; and, moreover, it was necessary unless the criminal law was to be openly defied.

Thus, on the evening of 25 January, Macarthur was temporarily free. The Court had been successfully defied. I think we must infer that he spent the evening making full preparations for the following day, and that the six officers, as well as the bartering groups so closely allied to the military, were consulted as to the general nature of the next steps. During the evening Johnston still remained in retirement. When he fell out of his chaise after the uproarious mess dinner of the Sunday night he injured his arm slightly, but it is absurd to suppose that his life was ever in danger or that his physical condition was the real reason for his not going to the Governor.

CHAPTER XXX

THE ARREST OF BLIGH

THE next day, 26 January, happened to be the twentieth anniversary of the foundation of the colony. The six officers reassembled at the court room at 10 a.m. On the previous afternoon they were without the Judge-Advocate. Now they were without either a judge-advocate or a prisoner, for at 9 a.m. Gore and the constables had re-arrested Macarthur from the custody, so-called, of Blaxcell and Bayly, his supposed bail, and had lodged him in the jail of the town. As I have already mentioned, the keeper of the jail was Reily, a friend of Macarthur. At ten o'clock the officers placed on record the fact that Gore's deposition making application to the magistrates for an escape warrant was false in fact. They wrote to Bligh, again asking him to appoint an acting judge-advocate and to restore Macarthur to his former bail so that the Court might proceed with the trial. Bligh ignored this impertinent communication. At three o'clock in the afternoon the officers again assembled, announced that they were still functioning as the Court and that they intended to take steps to bring Gore to justice. From a legal point of view the conduct of the six officers was outrageous; the law was so clear that they must have known that they were in the wrong, and their systematic defiance of the law over a period of twenty-nine hours can only be reasonably explained upon the hypothesis of a preconcerted plan.

Bligh now decided to consult the magistrates as to whether some action could not be taken against the six officers who were bringing the civil administration into open ridicule. The magistrates attended at Government House, and Atkins, as Judge-Advocate, presented a memorial to the Governor setting out an account of the facts of the case. He stated that on the previous day when he (Atkins) was leaving the court, Macarthur, addressing the military who were present,

exclaimed: "Am I to be cast forth to the mercy of a set of armed ruffians—the police."¹

Atkins submitted that the conduct of the six officers amounted to an unlawful usurpation of the judicial power, and was calculated and intended to incite to actual rebellion. Bligh decided to act. He immediately sent a note to each of the six officers, summoning them to attend before the Governor at Government House at nine o'clock on the following morning, 27 January. At the same time the Governor wrote, informing Johnston of what he had done, and adding dryly: "I received a verbal message by my orderly from you that you was rendered by illness incapable of being at Sydney. I apprehend the same illness will deprive me of your assistance at this time."² Bligh added the pungent observation: "I leave it for you to judge whether Captain Abbott should be directed to attend at Sydney to command the troops in your absence."³

The situation was now approaching a final crisis. Bligh's letter to Johnston suggested that Atkins's memorial against the officers had alleged "practices which he conceives treasonable."⁴ Thus, the six officers had now replaced Macarthur as the object upon which the first penalties of the law would, or might, be visited. Their conduct was so utterly illegal and high-handed that the strongest case of seditious conspiracy might be established against them.

But it was probable that the rebel *camarilla* entertained a deeper fear. They could hardly imagine that the six officers would subsequently be convicted before another Criminal Court consisting of the Judge-Advocate and six other military officers. For one thing, if we omit Johnston and Abbott, only eleven officers were eligible to serve on the Criminal Court, so that a full panel could not be summoned, unless Johnston or Abbott was prepared to sit. In any case, a conviction from such a tribunal could never be obtained. But the absence of danger in this direction only accentuated a graver danger from another direction. They feared that Bligh might decide to act through the magistrates, the majority of whom were civil officers and intensely loyal to the Governor. Whatever their legal powers might be, they might act first and argue afterwards. And so might Bligh himself. The rum traffickers

¹ *H.R. of N.S.W.*, vol. vi, p. 432.

² *ibid.*, p. 433.

³ *ibid.*

⁴ *ibid.*

remembered that Bligh had not condoned the offences of the *Bounty* mutineers. Moreover, Macarthur probably caused the officers to be told, or told them himself, that Bligh had power to execute martial law and either ruin or even destroy all six of them.

It is also to be seen that Macarthur had manoeuvred himself into a far better position than had earlier seemed possible. His object had been to unite the officers, at any rate for the time being, together with the leaders of the trading group. And he had succeeded so well that those who were in the forefront of danger consisted of nearly half of the total strength of the regimental officers. We shall see that Abbott, who was at Parramatta, knew what was going on and approved, while Johnston's actions showed that he would side with the officers against Bligh. Adventurers like Harris and Lord were all ready to join against the Governor so long as no immediate personal risk was involved. Macarthur's strategic position had reached its most favourable point. Bligh's summons to the officers showed that he intended to strike on the morning of the twenty-seventh. While the regiment might be prepared for extreme measures even after Bligh had suitably dealt with the six officers some dissensions might take place. Therefore, Macarthur knew that if he struck on the evening of the twenty-sixth he would have, even if only for a short time, all the officers united amongst themselves and also supported by the rank and file of the regiment, who were prepared for anything, short of actual military service, which would secure them additional rum. Accordingly, a decision was taken. Not only must Bligh be overthrown by force, but the event must take place before the morning of the twenty-seventh.

Macarthur himself was still at the jail in the nominal custody of Reily. But his relationship with the jailer was such that, had he chosen to do so, he could have walked out. However, such a course would at once have conveyed a warning to Gore, and so to Bligh. Further, it was necessary to Macarthur that, before he left the jail, Johnston should be irrevocably committed. The six officers, having received the summonses for Wednesday morning, would not have been anxious to order Macarthur's release on their own responsibility. Accordingly, the first step was to obtain direction from Johnston himself that Macarthur should be released, and,

this having been done, Johnston would be compelled to go further, place Bligh under arrest, and take over the reins of government.

On any view of this matter, Johnston's conduct was most treacherous. On the Monday, when Bligh sent for him, his excuse was illness. Now, on the Tuesday when he was well enough to visit the town, why did he not go to Government House and at least endeavour to compromise a dispute which was calculated to cause the disgrace and ruin of six of his officers? His own version of the matter (given six weeks later) was that:

. . . information was brought to me at four o'clock by Mr Harris, Surgeon of the New South Wales Corps, that an insurrection of the Inhabitants was to be feared. In a few minutes after I had received this intelligence a Dragoon arrived with a letter from the Governor, in which I was informed that six of the Officers of the New South Wales Corps had been charged with treasonable practices, and were summoned to appear before the Governor and the Magistrates at nine o'clock the next morning. The communication of such extraordinary measures occasioned temporary forgetfulness of my bruises, and I immediately set off in a Carriage to the Town.⁵

But this statement must be seriously discounted, for, as I shall show, Johnston's credibility is seriously affected by his misleading and lying accounts of important aspects of the rebellion.

Towards the evening of Tuesday, 26 January, Johnston was well enough to be driven from Annandale to Ultimo, where he joined a small but select dinner party at the home of Harris. After an early dinner, Minchin, one of the six officers, drove Johnston to the barracks situated near the present Wynyard Square. At once the drum was beaten and the soldiers were summoned to arms.

Johnston next signed an order to jailer Reily, directing him to deliver the body of Macarthur to Blaxcell and Bayly: "it having been represented to me by the officers composing the Court of Criminal Judicature that the bail bond entered into . . . remains in full force."⁶ This extraordinary document contained the last pretence of legality in the actions of the rebels. It constituted an attempt to suggest that the six officers had authority to remit Macarthur to his original bail, so that

⁵ *H.R. of A.*, series i, vol. vi, pp. 211-12.

⁶ *H.R. of N.S.W.*, vol. vi, p. 433.

his present detention was unlawful. But Johnston's direction was also an overt act in the rebellion, for he signed the document as Lieutenant-Governor as well as officer commanding the regiment. Bladen argues that, as Macarthur was in jail on Tuesday the twenty-sixth from 9 a.m. until his release by Johnston's order, he could not have been a party to Bligh's subsequent arrest.⁷ It is curious to note that while Bladen suggests that Johnston acted independently of Macarthur, others assert that Johnston was merely Macarthur's tool. The argument of Bladen is: How could Macarthur have been a party to this part of the conspiracy when he was in jail throughout the day? Bladen adds this even more extraordinary comment: "As if to set the matter completely beyond doubt, we have Johnston's express admission that he was entirely influenced by the representations made to him *before* Macarthur joined the party at the barracks."⁸

The use of the word "admission" by Bladen is amazing. A.B. is charged with conspiracy with C.D. and "admits" that he did not conspire with C.D. Such is the "argument," which entirely overlooks the fact that Johnston's evidence at his court martial was false in important respects. It seems absurd to argue that the mere fact that Macarthur was in jail during nine or ten hours on the twenty-sixth exonerates him from complicity in the organization of the rebellion. For one thing, he had been in the closest touch with the officers on the Sunday and the Monday, as well as during the early morning of Tuesday, the twenty-sixth. Furthermore, control is none the less effective because it is remote. A room in jail where the jailer is most hospitable and anxious to please is as satisfactory a place as any other to put the finishing touches on a seditious conspiracy, especially as some persons will be sure to argue: "He could not have been mixed up in such a business—he was in jail."

Johnston's direction to release Macarthur was at once obeyed, Reily's complaisance being very remarkable. Macarthur at once went to the barracks and consulted with Johnston privately. There is in existence a document addressing itself to Johnston and asking him to place Bligh under arrest and to assume the command of the colony. On the face of the document all the signatories pledged themselves: "at a moment of less agitation, to come forward to support

⁷ *ibid.*, intro., p. lix.

⁸ *ibid.*

the measure with our fortunes and our lives."⁹ According to Bligh's definite assertion, this document, which ultimately contained the signatures of over one hundred persons "some of whom are the worst class of life,"¹⁰ had been signed by only six or seven "when the troops marched from the barracks."¹¹ Bligh understated the truth. Certainly there were no more than seven signatures, and, in spite of the contentions to the contrary, it is very doubtful whether, prior to Bligh's arrest, any one but the first signatory—Macarthur himself—had signed it. It is only an assumption that even Macarthur signed it on 26 January. The writing shows no trace of hurry or excitement. Possibly the body of the document was prepared by Macarthur while he was Reily's guest at the jail. Fortunately, it is clearly proved that, at the most, only very few individuals could possibly have signed it on the night of the twenty-sixth, because, at the court martial of Johnston, one of the first of the signatories gave evidence that he signed it long after the twenty-sixth. Further, all the witnesses who stated or suggested that the document was signed on the twenty-sixth even by four or five persons, were utterly unreliable.

Later, in the course of their report to Castlereagh as Colonial Secretary, Macarthur and Johnston handled the matter of this requisition somewhat gingerly, because they both knew that Bligh and some of the loyalist party strongly suspected its authenticity. However, the document could not be overlooked, so Johnston's dispatch stated:

In a short time after, a letter was presented to me imploring me instantly to put Governor Bligh in Arrest, and to assume the Command of the Colony. This letter was also approved of by all the Officers of the Corps present at Head Quarters: and as the events I had myself witnessed left me no cause to doubt the propriety and necessity of complying with this requisition, I immediately ordered the Corps under Arms, and directed four Officers to proceed to Government House and summon Governor Bligh to resign his Authority.¹²

The theory that Johnston's action was inspired by this supposed requisition of the "respectable inhabitants" is demonstrably false. That such a document was ever brought into existence is cogent evidence that it was intended to be used as a blind so as to conceal the fact that it had already

⁹ *ibid.*, p. 434.

¹⁰ *ibid.*

¹¹ *ibid.*, p. 619.

¹² *H.R. of A.*, series i, vol. vi, pp. 212-13.

been determined to carry a rebellion into execution. Yet some of Bligh's opponents have argued that the fact that signatures to the document were obtained after the event should be regarded as immaterial, and that its value is the same as if the signatures had been obtained before Bligh's arrest.

It is difficult to be patient with such an argument. The document was meaningless except as a *prior* request to Johnston to arrest Bligh, so that every one who knowingly signed it after the arrest became a party to a misleading, and practically a false, document. That many who signed it subsequently did so in terror of the rebel party is certain. But the main guilt is that of Macarthur and Johnston and the rebel leaders who are convicted of manufacturing a false document in order to bolster up the case that there was a spontaneous demand by all the colonists that Bligh must be arrested in order to prevent civil war and bloodshed. The existence of such a spontaneous demand was the defence advanced by Johnston at his court martial. The defence was false, and found to be false. Document or no document, popular approval or no popular approval, Bligh had to be overthrown on the evening when Johnston unlawfully released Macarthur.

After the New South Wales Corps—officers and men—was placed in formation, it proceeded to carry out the sole military exploit of its short but disgraceful career. There is evidence that, on the Sunday or Monday night, several of the officers interfered with the small piece of artillery at Government House so as to make it useless against any troops advancing from the direction of the barracks. Their precautions turned out to be unnecessary, though perhaps their fears were real. The corps had only a short distance to traverse from the barracks to Government House—a distance of not more than 700 yards. Everything pointed to a triumphant assault. If we omit the few magistrates, including the loyal Robert Campbell and Bligh's personal servants, the enemy at Government House consisted of two only—Bligh himself and his daughter Mary Putland. On the other hand, the regiment advanced many hundreds strong, though very many of its members rolled or staggered rather than marched. By their side marched Macarthur and those of the rum traffickers who dared show their faces.

The only obstacle which this intrepid regiment had to overcome consisted of the small guard always provided by the regiment itself for the personal defence of the Governor. This obstacle was surmounted, not by force, but by the guard's treacherous desertion to the enemy. Mary Putland alone attempted to resist by force the intrusion of these drunken and half-drunken troops who were walking along with guns loaded, bayonets fixed, and the fife and drum giving a feeble imitation of "The British Grenadiers." One eyewitness says:

The fortitude evinced by Mrs Putland on this truly trying occasion merits particular notice, for, regardless of her own safety, and forgetful of the timidity peculiar to her sex, her extreme anxiety to preserve the life of her beloved father prevailed over every consideration, and with uncommon intrepidity she opposed a body of soldiers who, with fixed bayonets and loaded firelocks, were proceeding in hostile array to invade the peaceful and defenceless mansion of her parent, her friend, her protector, and as she then believed to deprive him of his life. She dared the traitors "to stab her to the heart, but to respect the life of her father." The soldiers themselves appalled by the greatness of her spirit, hesitated how to act, and that principle of esteem and respect which is inherent in the breast of every man who sees an amiable woman in distress, and is not himself a most consummate villain, deterred them from offering any violence to her.¹³

Afterwards it was claimed that the arrest of Bligh was conducted with the approval of all "the respectable inhabitants." That is not true. It requires courage to oppose yourself to organized violence, and it is useless to do so when you are unarmed. In the evening of that long summer's day there was much drinking in the town, the most infamous sections of which boisterously announced that they were on the side of the bigger battalion. In the circumstances, one is not overpowered with surprise that a famous victory was gained. It was the first victory of the New South Wales Corps, and also its last. Bligh was placed under arrest.

The events which immediately followed the rebellion were quite in keeping with the rebellion itself. According to Caley there were:

illuminations, bonfires, burning effegies, roasting sheep, and . . . all manner of riotous dissipation. The minds of the vulgar were now poisoned with prejudices artfully circulated, and the tongue under no

¹³ *H.R. of N.S.W.*, vol. vi, p. 558.

restraint but that of its own faction. Some of His Majesty's subjects were exposed to the grossest insults, with the danger of their lives. This scene of wild extravagance, sanctioned by such usurpation, is a sure forerunner of oppression, decay of public credit, the unprotection of individuals and their property.¹⁴

The description of Gore should also be quoted:

Liquor was liberally, and indeed profusely, served to the soldiers; bon-fires blazed in all parts of the town; and those scenes of riot, tumult, and insubordination that are ever incident to the subversion of legitimate government and authority ensued. McArthur, the hero of the day, paraded the streets, in the most publick parts of which he was always conspicuous; and those individuals who had not lighted their houses were compelled to illuminate them by the serjeant-major and some chosen soldiers, who were detached on that particular service. The most insulting conduct and epithets were encouraged by the junto to be applied to the Governor and to his faithful officers, and such of his adherents as had persisted in refusing to exhibit outward demonstrations of their joy and approbation were carefully marked as the victims of future prosecution.¹⁵

The local balladist, despite the limitations of his rhythm and rhyme, thus described the arrest:

This dastardly Junto—disgrace to the sword
Which dangles beside them, ne'er before drawn in anger
Till the King's Captain General to them did accord
A discipline more brisk than their grog-selling languor—
They then caught flame
Of revenge out of shame
In a body assembled their cowardly swords drawn
'Gainst the person of Bligh
Whose station is high
Involved in his seizure the rights of the Crown.¹⁶

¹⁴ *ibid.*, pp. 687-8.

¹⁵ *ibid.*, p. 560.

¹⁶ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.)

CHAPTER XXXI

THE CHARGE OF COWARDICE

I SHALL NOW deal with the charge that Bligh displayed cowardice on the night of the Rum Rebellion—26 January 1808. *Prima facie* the charge appears fantastic, because great personal courage was shown by Bligh at the great sea battles of Camperdown, where he was led by Admiral Duncan, and of Copenhagen, where he served under Lord Nelson. At Copenhagen, Bligh was captain of the *Glutton*, and, after that bloody battle, Lord Nelson hailed him to come on board the flagship to receive personal thanks for the conduct of the *Glutton*. In George Borrow's description of Bligh's behaviour on the *Bounty's* launch during the long voyage to Timor he says: "Bligh was one of the best seamen that ever trod deck, and one of the bravest of men."¹

Since Bligh's record covered these great events, how did his personal courage come to be questioned? Although the charge of cowardice does not bear directly on the causes of the Rum Rebellion, it was reiterated for propaganda purposes both in England and the colony, and an examination of it is required, not only as bearing on Bligh's character, but as affecting that of his opponents.

What is the precise allegation? Wentworth's statement of it is very highly coloured:

Dreading the resentment of the people whom he had so often and so wantonly oppressed, and having on his back that uniform which was never so dishonoured before, he skulked under a servant's bed in an obscure chamber of his house, but was at length discovered in this disgraceful hole, and conducted pale, trembling, and covered with flue, before the officer who had commanded his arrest.²

What I have called the official Macarthur book endeavours

¹ Quoted by Mackness in *Life of Vice-Admiral Bligh*, vol. ii, p. 345.

² Wentworth, W. C., *A Statistical, Historical and Political Description of the Colony of New South Wales*, pp. 171-2.

to perpetuate the slander, though in general terms. Johnston, after having had sufficient time—a period of two and a half years—to ponder over the matter, used vague language in his demand for a court martial: “I will prove, that he [Bligh] has been guilty of heretofore unheard of and disgraceful cowardice.”³ Previously, in his dispatch of 11 April 1808, which clearly emanated from Macarthur, Johnston had alleged that, on the night of his arrest, Bligh had been found by the soldiers “in a situation too disgraceful to be mentioned.”⁴

The Macarthur book also discloses that General Tench, a close friend of Macarthur, wrote in September 1808, that:

The concealment under the feather bed made me smile, but did not surprise me in the least, as I had long possessed the strongest testimony from a friend who had served with Governor Bligh that he was not only a tyrant, but a poltroon.⁵

At the court martial of Major Johnston in 1811, Johnston persisted in the charge of cowardice. Presumably Macarthur thought that it was good anti-Bligh propaganda, for to all intents and purposes he was in charge of Johnston's defence. Even if the charge had been substantiated, it could not have assisted Johnston's defence to the charge of mutiny. This point was made by Bligh in the striking comment:

As to the situation in which it is said I was found, I can prove by two witnesses that it was utterly impossible; and I should have done so in the first instance, had I not thought that Colonel Johnston was incapable of degrading his defence by the admission of a slander which, if true, affords him no excuse, and, if false, is highly disgraceful. I know that Mr Macarthur wrote the despatch in which the circumstance is mentioned with vulgar triumph; but I could not anticipate that Colonel Johnston's address to the Court would be written in the same spirit, and that, after being the victim of Macarthur's intrigues, he would allow himself to be made the tool of his revenge. It has been said that the circumstance would make the heroes of the British Navy blush with shame and burn with indignation. I certainly at such a suggestion burn with indignation, but who ought to blush with shame I leave others to determine.⁶

Stripped of irrelevant vituperation, the charge was that Bligh hid in terror under a bed in order to shelter himself

³ *Early Records of the Macarthurs of Camden* (1914 ed.), p. 210.

⁴ *H.R. of N.S.W.*, vol. vi, p. 580.

⁵ *Early Records of the Macarthurs of Camden* (1914 ed.), p. 164.

⁶ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 391.

from injury or death at the hands of the rebellious regiment. It is undoubted that, for some time after the regiment had reached Government House, Bligh could not be found, and admittedly was concealing himself. He said that he wanted: first, to retain papers that might be important for the future protection of his character, and, second, to destroy valuable documents which might otherwise fall into the hands of his enemies. As the documents included private and confidential letters to the Secretary of State reporting very unfavourably on the conduct and character of several persons in the colony, including Atkins, the Judge-Advocate, Bligh's action was quite understandable. He retired to an inner room, where, finally, he was broken in upon by an officer and one or two of the soldiers. Bligh also hoped that, during the night, he might be able to escape and seek the assistance of the settlers in the Hawkesbury district who were his supporters almost to a man, so that he might rally behind him all the loyal forces in the colony. In such circumstances and for such purposes, concealment is no evidence of cowardice, for, as even the rather unsympathetic Bladen notes, "a coward would have surrendered without an effort."⁷

Bladen also dealt with the evidence tendered at the court martial and pointed out that: "there is a remarkable discrepancy between the accounts given by the two soldiers (Sutherland and Marlborough) who alleged they discovered Bligh . . . which robs their evidence of much of its value."⁸

In my opinion, it is unnecessary to elaborate such discrepancy, for both the soldiers were discredited witnesses, and one of them certainly, both of them probably, told deliberate untruths. Their motive was to please the officers by a concerted attempt to slander and injure Bligh.⁹ It is more important to note that Bligh's object in concealing or destroying papers was to some extent achieved because, at the court martial, he was able to confront several of the witnesses against him with documents which they thought were no longer available and which completely destroyed their testimony.

⁷ *H.R. of N.S.W.*, vol. vi, intro. p. lxvii.

⁸ *ibid.*, pp. lxvii-lxviii.

⁹ One of the soldiers, Marlborough, a "noted character in the rebellion" (*ibid.*, p. 681), was the personal servant of Minchin, who, as a leading rebel, had been lampooned as "This pease cask poltroon." (Notes on "Song on New South Wales Rebellion," Bligh Papers: Mitchell Library.)

As his authority for the repeated assertion that Bligh was guilty of cowardice, W. C. Wentworth had the hardihood to refer to the court martial proceedings against Johnston. But if Wentworth had set out the relevant portion of the court martial proceedings, his charge of cowardice would have been completely refuted. He carefully refrains from informing his readers of the evidence, apparently lest they should form a judgment on the matter more favourable to Bligh.

Naturally, Bligh was extremely concerned at the direct imputation on his honour as a naval officer. And he was greatly relieved by the intervention in his favour of a leading member of the Court Martial. Writing at the time to Banks, Bligh said:

Sir David Baird has appeared eminently just in his investigation and at last took up my absence and not giving myself up, much to my honour—saying, what would any man do when opposed by so many hundred men under arms; at the same time not inferring any such conduct to fear but to the contrary, presence of mind and deliberation.¹⁰

In my opinion, Bligh's address during the course of the court martial finally disposes of the charge of cowardice. He said:

For 21 years I have been a Post-Captain, and have been engaged in services of danger, not falling within the ordinary duties of my profession; for four years with Captain Cook in the "Resolution," and four years more as a Commander myself, I traversed unknown seas, having difficulties more terrible because less frequently encountered. In subordinate situations I fought under Admiral Parker at the Dogger Bank, and Lord Howe at Gibraltar. In the battle of Camperdown the "Director," under my command, first silenced and then boarded the ship of Admiral de Winter; and after the battle of Copenhagen, where I commanded the "Glatton," I was sent for by Lord Nelson to receive his thanks publicly on the quarter deck. Was it for me then to sully my reputation and to disgrace the medal I wear by shrinking from death, which I have braved in every shape? An honourable mind will look for some other motive for my retirement, and will find it in my anxiety for those papers, which, during this enquiry, have been occasionally produced to the confusion of those witnesses who thought they no longer existed.¹¹

John Dunmore Lang subsequently suggested an analogy which has been adopted by several historical writers without much acknowledgment to its originator. Lang's opinion was

¹⁰ Bligh to Banks, 31 May 1811. (Banks Papers: Mitchell Library.)

¹¹ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 391.

that, as Bligh concealed himself for the very purpose of avoiding immediate capture by his enemies, his conduct was not one whit more disgraceful to his character "than it would have been disgraceful to King Charles II, to have been discovered and apprehended by the soldiers of Cromwell, when concealed in the thick foliage of the royal oak.¹² It is somewhat singular," he adds, "that the world reserves all its sympathy for what is merely splendid in action, and will scarcely allow the award of common justice to what is merely right."¹³

Perhaps Lang might have added that the teaching of many historians is that it is only on one condition that you are justified in concealing yourself from your armed enemies, whom you reasonably suppose are about to destroy you. That condition is that your concealment must be successful. If it is, you are clever and resourceful. If it is not, you are a coward as well as a captive or a corpse.

¹² Lang, Rev. J. D., *An Historical and Statistical Account of New South Wales*, vol. i, p. 115.

¹³ *ibid.*, p. 114.

CHAPTER XXXII

"JACK BODICE'S TOOL?"

As we have noted, the tradition has been to represent Johnston as a mere instrument of Macarthur, a contemporary lampoon declaring that:

That Turnip head fool
Jack Bodice's tool
Stepped into Bligh's station—he dared not oppose.¹

Undoubtedly, during the period between Johnston's assumption of the "Lieutenant-Governorship" and his being relieved by Foveaux, Macarthur, who acted as Johnston's colonial secretary, was practically in control of the colony. Further, the following self-portrait was painted by Johnston at the court martial:

My life had been private before the 26th of January; it was not less so afterwards; my public duties alone could draw me from my retirement. With reluctance I assumed the command of the colony with joy I resigned it as soon as Colonel Foveaux arrived.²

It is very dangerous to accept this estimate as correct. The matter depends on Johnston's veracity, which is open to the gravest question. Although he is to be regarded as the second, and not the chief, actor in the rebellion against Bligh, his conduct was very disgraceful having regard to his duty as the officer commanding. Had he even remembered the claims of honourable dealing between man and man he could never have acted as he did. At his court martial in London he was still co-operating with, and largely guided by Macarthur, and again he made himself party to a series of most unfounded charges against Bligh's character. Indeed, wherever Johnston's credibility can be fairly tested, it breaks under the

¹ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.)

² *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 155.

strain. Before the Court Martial he swore that he wanted Paterson to hurry over from Port Dalrymple to take over the governorship:

I sent without delay and a week after the event of the 2nd February to Colonel Paterson, to come and take the command; he demanded a better vessel; I sent her immediately; but while he paused Colonel Foveaux arrived, and into his hands I most joyfully resigned an authority I never wished to possess.³

Before this evidence had been given, Paterson was dead. But documents with which we can now test the matter show that Johnston did *not* wish Paterson "to come and take the command." The actual terms of Johnston's letter of 2 February 1808 are not available⁴, but the subsequent letters between them⁵ make it plain that Johnston gave the ailing Paterson as little information as possible and, as late as 18 April, he wrote: "I therefore shall not attempt to give you any detail of what has occurred since the 26th of January, because an imperfect one would more tend to perplex than to inform you."⁶

The same letter of 18 April shows that Johnston pretended to believe that, after Paterson's appointment to Port Dalrymple, Foveaux alone was armed with a commission authorizing him to act as Lieutenant-Governor of the whole colony. All the later letters between Johnston and Paterson suggest that Johnston could not possibly have written on 2 February in the terms which he suggested to the Court Martial. Indeed, Paterson, in May, wrote to Johnston as follows:

I must, however, at the same time also add that it did appear to me somewhat wanting of explanation why, at a moment of such serious suspension of the Supreme power, and from such Causes as have actuated it, it did not immediately occur to require the presence and the Assistance in so unprecedented a juncture, of the Officer who by such Suspension unquestionably from two evident reasons became the Chief in Command.⁷

This correspondence shows Johnston attempting to explain why he had *not* asked Paterson to return to Sydney. In truth, Paterson, despite definite weaknesses of character, had pre-

³ *ibid.*, p. 155.

⁵ *ibid.*, pp. 536, 595.

⁷ *H.R. of A.*, series 1, vol. vi, p. 636.

⁴ *H.R. of N.S.W.*, vol. vi, p. 536.

⁶ *ibid.*, p. 595.

viously shown some sense of independence and a very critical attitude to Macarthur; and, although their fears turned out to be groundless, Paterson's conduct being very complaisant, both Macarthur and Johnston feared that he might be found sufficiently loyal to his King and country to attempt to suppress the usurpers and restore the rightful Governor to his position.

In the year 1800 there had been a bitter feud between Paterson and Johnston, the latter being charged by the former (possibly at Macarthur's instigation) with paying the soldiers in spirits reckoned at a price per gallon enormously higher than the rate at which the officers had monopolized its purchase from the importer. Paterson also charged Johnston with contempt to himself. Governor Hunter had ordered a court martial in England, where, for lack of witnesses, the case was dropped.⁸

It was not Paterson, but Foveaux, who took over from Johnston and then as late as 31 July 1808. Paterson did not succeed Foveaux until 9 January 1809. Thus Johnston and Foveaux each administered the colony for about six months, and Paterson's period of *de facto* control lasted for twelve months until Macquarie arrived at the end of 1809.

By testing his evidence along the lines I have illustrated, Johnston's credibility is inevitably shattered. In the words of George Caley, the celebrated naturalist, who was in New South Wales at the time of the rebellion, Johnston "lurked behind the curtain" while every preparation was being made for his "appearance on the stage."⁹ But his actions were not those of a mere tool. On the contrary, he was very deeply implicated, but, fortunately for him, the full facts never became known to the Court Martial. Frederick Watson takes a very different view, asserting that his character was "an admirable one." But the evidence in favour of Johnston's "diffidence and fairness"¹⁰ is extremely weak, consisting mainly in the fact that Johnston shrank from making a particularly unfair attack on Bligh during the latter's governorship.

After the rebellion, Johnston's administration showed a lack of scruple, and his dispatches to England were characterized by unfounded charges and lying statements.

⁸ *ibid.*, intro. p. xxxi.

⁹ *H.R. of N.S.W.*, vol. vi, p. 687.

¹⁰ *H.R. of A.*, series i, vol. vi, intro. p. xxxii.

CHAPTER XXXIII

WAS THE ARREST PRECONCERTED?

HERE we must examine the vital question whether there was a pre-existing plan or conspiracy to arrest Bligh and supplant his government. After Johnston, the officer who would command the regiment was Abbott; and it was very important to Macarthur that, for the time being at least, he should remain on the friendliest terms with Abbott, who, as we have seen from the Wentworth court martial, was officer commanding in the Parramatta district. There is convincing evidence that, in relation to Bligh's arrest, Macarthur, Johnston and Abbott not only acted in close collaboration but were carrying out a preconceived plan.

After the rebellion, when Bligh was under arrest, Abbott wrote to ex-Governor King as follows:

I certainly gave my hearty concurrence to the measure of arresting the Governor. . . . You may naturally conclude that, from my being the next officer in seniority to Johnston, that if I did not possess his confidence I am at least one of the *leading characters* and advisers of all the measures that have been carried on since the Governor's arrest; the fact is, that I am not, but considered as dissatisfied by the present *Ruler*,¹ because I disapproved of several things in the early stage of the business. It was on the 26th January last the Governor was put under an arrest. I was at Parramatta at the time, where I had the command, but was to be relieved by the Governor's direction at my own request (some days before it had been resolved to arrest him) on the 27th . . .²

The last part of the passage I have quoted indicates that the decision to arrest Bligh had been reached "some days before" it actually took place, and that Abbott, although at Parramatta, was a party to the conspiracy. And the matter is

¹ A reference to Macarthur whose relationship with Abbott had become unfriendly.

² *H.R. of N.S.W.*, vol. vi, pp. 831-2.

concluded by another portion of the same letter which says of Johnston:

Had he followed the advice I gave him previous to his taking the step, that in that case—meaning of arresting ye Governor—to send for Colonel Paterson immediately afterwards and to go Home with the Governor to account for his conduct, it would shew that he had not done so to obtain the command, instead of oversetting everything and styling himself Lieutenant-Governor, which he has done.³

This letter was written at a time when Abbott was extremely critical of the administration of the rebel government of Johnston and Macarthur—a bitterness which was then fully reciprocated by the two “rulers.” Despite his existing dislike of Macarthur and Johnston, Abbott’s letter affords conclusive evidence against himself that he and Johnston had discussed the question of the arrest of Bligh “previous to his taking the step,” and that Abbott advised Johnston that Paterson should then (i.e. after the arrest) be recalled from Port Dalrymple.

Abbott’s letter, addressed to ex-Governor King (whom, incidentally, it reveals in a somewhat ghastly light) was not delivered in London until after King’s death. Accordingly, the document never became available until the King papers were published; and, of course, at the court martial of Johnston in 1811 the existence of such a letter was not dreamt of by Bligh or by the members of the Court Martial. But, none the less, Abbott was asked the following question by Johnston: “Had you, before the arrest of Governor Bligh, any communication or information that such an event was likely to take place?” Abbott’s answer was “No.”⁴

It is vital to note that, except on one hypothesis, this was an extraordinary question for Johnston to ask, for it might have exposed him to the risk of Abbott’s disclosing to the Court Martial matters damaging to Johnston without necessarily being dangerous to himself. But Macarthur was practically in control of Johnston’s defence, and we must conclude that Johnston, before he asked the question, was certain that Abbott would deny prior knowledge of a conspiracy to overthrow the Governor.

I emphasize this evidence of Abbott’s, first, in order to

³ *ibid.*, p. 832.

⁴ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 362.

show how very erroneous is Bladen's judgment as to Abbott's complicity in a pre-existing conspiracy to overthrow Bligh. Bladen says, correctly, that Abbott was absent from Sydney on 26 January (the day of Bligh's arrest). He first received news of the success of the rebellion late on that night, when Johnston sent a trooper to Parramatta ordering Abbott to proclaim: (i) the arrest of Bligh; (ii) the fact of Johnston's assuming the government, and (iii) the declaration by Johnston of martial law.⁵ In my view it is ridiculous to suppose that Abbott would have carried out these seditious orders on the mere message of Johnston unless he knew previously: (i) that Bligh was to be arrested; (ii) that Johnston was to declare himself Lieutenant-Governor, and (iii) that Johnston was to proclaim martial law. Yet Bladen appears to draw an inference of innocence merely because Abbott was absent from Sydney on 26 January. Further, when faced with the damning admissions in Abbott's letter to King, Bladen says:

This admission by Abbott is somewhat discountenanced by his evidence at the trial of Johnston in May, 1811, when he stated on oath that he had no knowledge whatever of any intention on the part of Johnston or the officers to arrest Bligh.⁶

This comment is almost fatuous. The admission by Abbott never came to light until the long subsequent disclosure of King's private correspondence. The logical inference is, not that Abbott's evidence cuts down or weakens his clear and circumstantial admission to King, but that his evidence at the court martial was deliberately false, and false to the knowledge both of Johnston and Macarthur. Macarthur well knew the danger that encompassed *him* at the time of the court martial, and he also knew the mingled feelings with which he was regarded by Abbott who might possibly be induced to make a full disclosure against all his co-conspirators. In my view, the overwhelming probability is that Johnston's question to Abbott was asked and answered in accordance with a prior arrangement between the three parties concerned, so that, although Abbott would exculpate himself from the utterly fatal imputation of pre-knowledge, he would also be finally pinned down to a statement on oath which would effectually prevent him from subsequently inculpating his fellow conspirators.

⁵ *H.R. of N.S.W.*, vol. vi, p. 435.

⁶ *ibid.*, intro. p. lx.

Watson, in his discussion, treats the matter far more realistically. He points out that it was proposed by Johnston that Abbott should be transferred from Parramatta to Sydney as from 11 January. At the time Abbott was still a magistrate, and, as Watson notes: "this change would have given the military party a preponderancy on the bench of magistrates at Sydney. This plan was checkmated by Bligh, who sanctioned the change to take place on the 27th of January, but dispensed with Abbott's services as a magistrate."⁷

So far as Macarthur is concerned, it seems that, on the exciting evening of the rebellion, when Griffin (Bligh's secretary) and others were being examined by the rebel committee, Macarthur said: "Never was a revolution so completely effected, and with so much order and regularity."⁸ This piece of evidence is important, but the inference of careful preparation and organization is otherwise established from the circumstantial evidence. The defiant attitude towards Bligh which was assumed by the six officers from the very commencement of Macarthur's plan is quite inconsistent with mere persistent folly. On the contrary, the proper conclusion to draw is that, by the Sunday evening of the mess dinner, Bligh's fate had been determined.

In my opinion, the conclusion to be drawn is that, prior to Monday 25 January, arrangements had been completed between Macarthur, Johnston and the leading military officers that, at the proper moment, Bligh would be placed under arrest and the executive government subverted. Almost certainly the precise manner and time of the arrest would be left to the discretion of Johnston and Macarthur. But that there had been a pre-existing arrangement to arrest Bligh is certain.

Bladen, as editor of the *Historical Records of New South Wales*, shows a very curious disinclination to draw clear inferences of fact from the evidence which was available to him. Indeed, he went so far as to criticize the very mild and conservative opinion prepared by Harris—an official legal adviser of the English Government—which suggested that the surrounding circumstances themselves proved the existence of a carefully planned plot to overthrow Bligh.⁹ This opinion

⁷ *H.R. of A.*, series i, vol. vi, intro. p. xxiii.

⁸ *H.R. of N.S.W.*, vol. vi, p. 618; (cf. *ibid.*, vol. vii, p. 212).

⁹ *ibid.*, vol. vii, intro. p. xxxix.

of Harris, Bladen suggests, is "rather unconvincing."¹⁰ To my mind, every inference made by Harris is sound. Further, the case of a prior conspiracy is enormously strengthened by the evidence which we now possess. Fortunately for the conspirators, the English authorities did not possess it at the proper time.

¹⁰ *ibid.*

CHAPTER XXXIV

GUILTY OF HIGH TREASON

APART altogether from the question of preconcert, the very important question remains: what offence was committed by Johnston, Macarthur and the officers and men of the regiment when they marched from the barracks and forcibly ejected Bligh from his government, placed him under arrest and set up a rebel government in Bligh's place? First, we have to take account of the overriding principle established in the Imperial Statute 27 Geo. III, c. 2, upon which the jurisdiction of the Criminal Court of the colony was based. Its jurisdiction extended to the trial and punishment "of all such outrages . . . as, if committed within this realm, would be deemed and taken, according to the laws of this realm, to be treason or misprision thereof, felony or misdemeanour." In spite of suggestions to the contrary effect, I am of opinion that, from the combined operation of 27 George III, c. 2 and the laws of England as existing on 26 January 1808, Johnston, Macarthur and all associated with them in the actual overthrow of Bligh were guilty of high treason, irrespective of whether they arranged to act together before, or only on, the evening of 26 January.

That "memorable enactment,"¹ the Treason Act (25 Edw. III, Stat. 5 c. 2), that "venerable Statute,"² includes among the crimes declared to be treason: "if a man do levy war against our lord the King in his realm." At first sight, nothing seems more remote from this declaration than the forcible overthrow of Governor Bligh. In the first place, there was not any "levying of war" in the popular sense, because it is

¹ Stephen, J. F., *History of the Criminal Law of England*, vol. ii, p. 249. Stephen gives a somewhat cynical explanation of "the popularity of the Statute," which "has become the subject of a sort of superstitious reverence." (*ibid.*, pp. 250-1.)

² Erskine, Lord, *Speeches* (ed. High), vol. i, p. 90.

absurd to describe the march against Government House as being in the nature of warfare. In the second place, the regiment's attack was not directed against the King himself, but merely against a subordinate officer of his in a far distant penal settlement. How could this amount to war "against our lord the King"? Thirdly, it was quite well established by law, whether any popular belief existed on the matter or not, that New South Wales, though undoubtedly a part of the King's dominions, was not a portion of the King's realm.

The answer to the popular impression as to the first two points lies in an application of the doctrine of "constructive treason," for, as Stephen says: "the words 'levy war' in the Statute of Edward III have been made the occasion of nearly as strange interpretations as the words 'imagine the king's death'."³ On the "levying war" portion of the Statute, the leading case occurring prior to Bligh's overthrow was the prosecution of Lord George Gordon in 1780. As the accused was acquitted, it was supposed by many persons that the doctrine of "constructive treason" had been destroyed. Thus, J. L. High, an editor of Erskine's *Speeches*,⁴ says of Gordon's case:

This case has been, not inaptly, called the "Case of Constructive Treasons"; and it is not too much to say, that in connection with the efforts of the same intrepid advocate in defence during the state trials during the "Reign of Terror," a dozen years later, it sounded the death-knell of the pernicious doctrine of constructive treason.⁵

Boswell makes mention of Dr Johnson's rejoicing that Lord George Gordon had escaped: "rather than a precedent should be established of hanging a man for constructive treason."

The popular impression was quite erroneous in law, as Stephen has clearly shown⁶ for, although the cases suggested the difficulty of persuading English juries to convict of high treason unless the agitation was both unpopular and accompanied by organized physical force, the legal principles laid down in Gordon's case by Lord Mansfield and Mr Justice

³ Stephen, J. F., *History of the Criminal Law of England*, vol. ii, p. 268.

⁴ Erskine appeared for Lord George Gordon in 1780, and, in 1794, for Thomas Hardy and Horne Tooke, whose endeavours to obtain parliamentary reform through the organization of corresponding societies aroused the anger and terror of the Pitt administration.

⁵ Erskine, Lord, *Speeches* (ed. High), Memoir, p. ii.

⁶ Stephen, J. F., *History of the Criminal Law of England*, vol. ii, p. 272 *et seq.*

Buller were not only in strict accordance with the doctrines previously enunciated by Hale, but were actually invoked by Erskine during portion of his speech in defence of Hardy. Erskine said of Lord George Gordon's case:

That the multitude were actually assembled round the Houses, and brought there by the prisoner, it was impossible for me, as his counsel, even to think of denying, nor that their tumultuous proceedings were not in effect productive of great intimidation, and even danger, to the Lords and Commons, in the exercise of their authority; neither did I venture to question the law, that the assembling the multitude for that purpose, was levying war within the statute.⁷

Mansfield and Buller had directed in accordance with the doctrine of Hale, and Lord George Gordon had escaped merely because, so far as he was concerned (so the jury found), he had not taken part in the assembling of the mobs for the general purpose of obtaining the repeal of the Act to which he and they objected. Then what were the elements deemed necessary in 1808 to constitute this branch of the crime of high treason?

Hawkins thus states the position:

Those also who make an insurrection in order to redress a public grievance, whether it be a real or pretended one, and of their own authority attempt with force to redress it, are said to levy war against the king, although they have no direct design against his person, inasmuch as they insolently invade his prerogative, by attempting to do that by private authority which he by public justice ought to do, which manifestly tends to a downright rebellion; as where great numbers by force attempt to remove certain persons from the king; or to lay violent hands on a privy councillor; or to revenge themselves against a magistrate for executing his office; or to bring down the price of victuals; or to reform the law or religion; or to pull down all bawdy-houses; or to remove all inclosures in general, &c. But where a number of men rise to remove a grievance to their private interest, as to pull down a particular inclosure intrrenching upon their common, &c, they are only rioters.⁸

The position is put analytically by Hale as follows:

1. There must be a "levying of war." This is "partly a question of fact."⁹ A mere riotous assembly is not enough. There must be "such an assembly as carries with it *speciem belli* as if . . . they be formed into companies, or furnished with mili-

⁷ Erskine, Lord, *Speeches* (ed. High), vol. ii, p. 469.

⁸ Hawkins, *Pleas of the Crown* (8th edn), vol. i, p. 11.

⁹ Hale, Sir M., *Pleas of the Crown* (ed. Wilson), vol. i, p. 149.

tary officers, or if they are armed with military weapons . . . and are so circumstanced, that it may be reasonably concluded they are in a posture of war, which circumstances are so various, that it is hard to define them all particularly."¹⁰ Accordingly, the indictment always alleges an overt act from which a "levying of war" may be inferred, and in Gordon's case it alleged that the multitude assembled "armed and arrayed in a warlike manner."¹¹

So far as the attack on Bligh by the regiment is concerned, it answered precisely this definition of the requirement of the Statute. It was, in fact, an organized attack, not only in military array, but by the officers and soldiers with loaded guns, fixed bayonets and all the panoply of war. Indeed, nothing could more accurately serve to illustrate the interpretation of this part of the Statute than the regular march of an armed regiment in military formation.

2. The levying of war must be against the King. As the passage cited from Hawkins shows, the words "against the King" have been interpreted as including, not only a war levied against the person of the King, but also a "constructive or interpretative levying of war . . . against his government: if men assembled together *more guerrino* to kill one of his majesty's privy council, this hath been ruled to be levying of war against the King."¹² Erskine illustrated the point in Gordon's case when he asked rhetorically, whether the accused had assembled the multitudes: "to take the law into his own hands by main force, and to dissolve the constitution of the government, unless his petition should be listened to by Parliament."¹³

There can be no doubt that, upon the assumption made necessary by the Statute 27 Geo. III, c. 2, the acts of Macarthur, Johnston and the New South Wales Corps would—supposing them to have taken place in England—have amounted to an insurrection "in order to redress a public grievance,"¹⁴ the purpose of the attack on the Government being the redressing of a number of public grievances "of their own authority . . . with force."¹⁵ In Hawkins's words,

¹⁰ *ibid.*, p. 150.

¹¹ Erskine, Lord, *Speeches* (ed. High), vol. i, p. 96.

¹² Hale, Sir M., *Pleas of the Crown* (ed. Wilson), vol. i, p. 152.

¹³ Erskine, Lord, *Speeches* (ed. High), vol. 1, p. 103.

¹⁴ Hawkins, *Pleas of the Crown* (8th edn), vol. i, p. 11.

¹⁵ *ibid.*, p. 11.

they "insolently invaded his [the King's] prerogative, by attempting to do that by private authority which he by public justice ought to do."¹⁶ Not only was their attack on Governor Bligh characterized by a rebellious purpose and object, but they carried it out by superior force, arrested the King's representative, and actually set up a new government, again purporting to override the King's prerogative. These reasons show clearly that the "levying of war" amounted to a "levying of war against the King" within the meaning of the Statute of Edward III, as authoritatively interpreted.

3. Under the Statute of Edward, the levying of war against the King must take place "in his realm." Formerly, the realm included neither Scotland nor Ireland, and even later, although those countries were brought within the Treason Act of 1351, the colonies were never included. Mr Justice Darling expressed great surprise at this apparent anomaly during the argument before the English Court of Criminal Appeal in Sir Roger Casement's case, although the "levying war" limb of the Statute was involved only indirectly:

MR JUSTICE DARLING—Do you say that if a man levied war against the King in one of his Colonies he would not be guilty of treason, if he raised an armed force and levied war against the King, say, in Australia?

MR SULLIVAN—In every one of the Colonies he would now be guilty of treason. There is no doubt about it.

MR JUSTICE DARLING—Guilty of treason under this Statute. Never mind other legislation.

MR SULLIVAN—The levying of war was confined by this Statute to the realm for the reasons I have pointed out.¹⁷

At Sir Roger Casement's trial at bar, Mr Justice Horridge seemed to entertain for a moment the heretical notion that the Statute of Edward might be interpreted so as to cover the levying of war outside, as well as inside, the realm.¹⁸ But it can be taken as indisputable that the levying of war "must be by acts done within the realm."¹⁹ The argument of Serjeant Sullivan in Casement's case showed that, so far as concerned the treason of adhering to the King's enemies, much "construction" had been undertaken by the sages of the law;

¹⁶ *ibid.*, p. 12.

¹⁷ *Trial of Sir Roger Casement* (Notable English Trials), p. 243.

¹⁸ *ibid.*

¹⁹ Halsbury, *Laws of England* (2nd edn), vol. ix, p. 293.

but the Statute was too unyielding for the "levying of war" provision to be similarly extended.

It follows that those concerned in the actual overthrow of Bligh were not guilty of treason by the direct force of the Statute of Edward III, because New South Wales, although it was part of the King's colonies and dominions, was not part of his realm.

This fact, which cannot be doubted, appears to have been seized upon by Ellis Bent, Governor Macquarie's Judge-Advocate, as a reason or excuse for carrying out that Governor's policy of condoning most of the criminal and illegal acts associated with, and consequential upon, the rebellion.²⁰ Bligh was very anxious that the law should be vindicated, and in a dispatch to England dated 9 March 1810, he reported:²¹

Under the existing circumstances, the Judge-Advocate not having determined finally what is to be done with respect to bringing the persons here to trial who have been assisting in the subversion of my Government, I regret extremely that I cannot inform your Lordship of any proceedings against them. It at present appears that the Judge-Advocate is of opinion that high treason does not attach to this territory, and doubts and difficulties have arisen from this circumstance as to what other charge an indictment can be laid.

It is quite true that high treason did not "attach to this territory," and Ellis Bent was correct in so advising. He was a well qualified lawyer, so I think it is impossible to suppose that, whatever he said to Bligh, this was his complete opinion on the matter.

For it is equally undoubted that those taking part in the suspension of Bligh could have been punished locally for high treason by the combined operation of the Statute of Treason and 27 Geo. III, c. 2, which not only made punishable in New South Wales all misbehaviours which, if committed within the King's realm would have been there punish-

²⁰ On 14 March 1809, Macquarie was instructed to allow proceedings to be taken against Macarthur in the colony. The spirit of this instruction was that, at the very least, all non-military persons concerned in the overthrow of Bligh should be prosecuted locally. Macquarie, however, actually issued an indemnity order the effect of which was to prevent prosecutions being brought, and then "recommending Peace and Harmony and Forbearance to all parties." (*H.R. of A.*, series i, vol. vii, p. 247.) Of course, the effect of this was to protect the rebels.

²¹ *H.R. of N.S.W.*, vol. vii, pp. 309-12.

able, but expressly included and referred to treason as coming within the class of misbehaviour contemplated.

Therefore, all taking part in the march and arrest of 26 January 1808, could have been convicted of high treason within the colony and made to suffer death in the peculiarly horrible and revolting manner still in force under the laws of England.²²

Insufficient attention has been paid to the legal aspects of the report prepared for Lord Castlereagh by T. G. Harris in September 1809.²³ Bladen ventured to criticize certain portions of it.²⁴ Harris's opinion on the legal question I have discussed is very baldly stated:²⁵

In this realm any acts of violence or intimidation to force the repeal of a law, the dismissal of counsellors, or the endeavour to redress by force real or pretended grievances, would be treason, as levying of war against the King in his realm. I conceive that the same Acts which would constitute this species of high treason here, under 25 Ed. 3, if done within this realm, must, when carried into effect in this colony, be taken to be treason there, by 27 G. 3, c. 2.

Fortunately for Macarthur and Johnston, Castlereagh fought his famous duel with Canning during the same month—September 1809; this forced the former's resignation of the secretaryship of war and the colonies, and he was out of office until 1812, by which time the New South Wales affair had blown over. Castlereagh was succeeded by the milder Liverpool, who caused another legal opinion to be obtained from Gibbs and Plumer. This was furnished in November 1809. It was not so carefully prepared as that of Harris, and it avoided any expression of opinion as to high treason. None the less, it stated:

We think Major Johnson, Mr McArthur, and the persons concerned with them, were guilty of a conspiracy and high misdemeanour in the arrest and imprisonment of Governor Bligh, and in the assumption of the Government of the colony of New South Wales on themselves.²⁶

²² Until the year 1814, a man found guilty of high treason was sentenced to be drawn on a hurdle to the place of execution, there hanged by the neck, then cut down while still alive; then his bowels were taken out and burned before his face, then his head was severed from the body which was divided into four quarters, which were to be at the King's disposal. It was not until 1870 that the drawing on a hurdle, the beheading and quartering were abolished by law. By the prerogative of mercy, the King could omit portions of the torture.

²³ *H.R. of N.S.W.*, vol. vii, pp. 209-14.

²⁴ *ibid.*, intro. p. xxxix.

²⁵ *ibid.*, p. 213.

²⁶ *ibid.*, p. 229.

Despite Harris's failure to state the reasons for his opinion, his conclusion is correct,²⁷ and I think that, if the two senior barristers had differed from it in any respect they would not have hesitated to say so. As it was, they stated at a minimum the offence committed by those engaged in the armed rebellion.

²⁷ Bligh reported that: "Sir Henry Brown Hayes, a person under sentence of transportation, who had been living in a retired manner on a little estate about seven miles from Sydney, and who seldom came into town, being in the habit of conversing with the officers, and having expressed his loyalty and disapprobation of their measures, asserting they would be capitally punished for their traitorous acts, was likewise sent to the coal-mines. Thus, *in terrorem*, the usurpers held up punishment to those who dared to speak in favour of my administration against their treasonable practices. . . ." (*H.R. of N.S.W.*, vol. vi, p. 673.)

CHAPTER XXXV

REBEL LEADER

ONE interesting question is: Why did not Bligh anticipate the attack upon him and effect an early escape to the Hawkesbury so as to rally the loyalists and offer armed resistance to the rebels? It is certain that the great majority of the small settlers would have supported him against the officers, rum traffickers and monopolists. But the answer to the question is to be found in Bligh's essential simplicity of character. He could not believe that it was possible that men in the position of Johnston and the other officers of the Corps could so debase themselves and their uniform as to attack the person of the King's representative and place him under arrest. As Gore said of Johnston:

I could not entertain the most distant idea that Major Johnston, who commanded the Corps, on account of the independent property he had acquired in the country, and of the many years services by which he had obtained his rank in the Army, and lastly I considered that the fidelity he owed to his gracious sovereign would all have concentrated in his breast to check the least spirit of insubordination that would have manifested itself among his officers.¹

Indeed, even to imagine that Johnston was a possible rebel and traitor, Bligh would have had to be closely acquainted with the manoeuvres of the traffickers as, thanks to subsequent disclosures, we are to-day. Now, we can trace, over a period of twenty years, the pernicious influence of the Rum Regiment on the colony. Through the selfishness and scheming of the officers, Phillip becomes disappointed,²

¹ *H.R. of N.S.W.*, vol. vi, pp. 553-4.

² On 15 April 1790, Governor Phillip wrote to Under Secretary Nepean that he would have no objection to returning to the colony, "but some little change would, I hope, be thought necessary—I mean respecting myself" (*H.R. of A.*, series i, vol. i, p. 172), and referring to the colony's supplies, he said: "we shall not starve, though seven-eighth of the colony deserves nothing better" (*ibid.*).

Hunter insulted and degraded, and King overwhelmed. All through the period, man after man falls victim to the powerful blows of Macarthur, who is the ablest of the officers and by no means the most scrupulous. Hunter is his enemy; he procures Hunter's recall. Hunter is fully aware of Macarthur's conduct, yet subsequently Hunter gives evidence in support of Macarthur's claim for a free grant of land for the pasturing of his sheep. Next, Macarthur carries his feud with King to the point where King has to send him out of the colony under arrest; yet Macarthur pulls the strings in England, resigns his commission in the Corps, and returns to the colony with a valuable grant in his pocket, and with increased influence on the officers, though technically he is no longer one of them. King is mortified, and yet, during the short space of life remaining to him, whether through corruption, jealousy or some more subtle influence, takes sides against Bligh in England and supports the interests of Macarthur and his associates.

The character of Macarthur is fascinating. He was an outstanding man, possessed of a belief in the future greatness of the little settlement, but identifying, on all occasions and for all purposes, his personal advancement with the advancement of the colony. He was utterly opposed to the encouragement of the small agricultural interests. He amassed a small fortune, mainly through the opportunity presented by the traffic in rum and the forestalling of all commodities. But he had a nobler vision too, and sought to lay the foundations of a pastoral industry. He was without scruple and without pity.

Except in the case of his own family, I see not a trace of compassion for others evidenced in any of his letters or acts. His conduct after the rebellion will have to be referred to, and we shall find that he denounced one after another of his old associates in the rebellion and, finally, when the Rum Regiment was drummed out of the colony early in 1810, after Macquarie's proclamation declaring the illegalities of the usurpers, Macarthur actually agreed that the regiment had been a disgrace to the colony.

Macarthur's striking determination was as great as his reckless courage, his ambitious energy and his skill as a schemer. The evidence as to Macarthur's character may not yet be quite complete—there may be other documents which

have not yet been produced which will qualify, or even destroy, some of the more unfavourable strictures which, upon the available evidence, must be passed upon him. In the official Macarthur book there are admitted expurgations, but I suppose that, in the end, the students of Australian history will not be denied the privilege of perusing the documents unedited. Obviously, there are other Macarthur documents which have not yet been published. But the probabilities are that they will not greatly improve Macarthur's case against Bligh, even if they do not actually weaken it.

Immediately after the arrest of Bligh, Johnston, taking Macarthur as his chief adviser, caused all the available official papers to be seized. Confidential reports sent by Bligh to England were shown to all those whom Bligh had criticized or condemned, even including the "infamous" Atkins, who was not too infamous for this purpose. All the civil officers and magistrates who remained loyal to Bligh were replaced by the leaders of the rebellion or their close associates. Macarthur's very valuable friend, the Sydney jailer, was elevated to a more remunerative position in the Parramatta area, and, in his place, Macarthur appointed McKay, who, in the previous year, had taken a prominent part in the conspiracy to bring false charges against his superior officer Gore, and who had been dismissed the service by Bligh.

CHAPTER XXXVI

MOCK TRIAL

MACARTHUR believed or feared that his sudden and well paid for popularity in the town of Sydney would be replaced by extreme unpopularity. His expectations were sound. Almost at once, some settlers openly objected to his being appointed Colonial Secretary and petitioned Johnston as follows:

We believe John McArthur has been the scourge of this colony by fomenting quarrels between His Majesty's officers, servants and subjects. His monopoly and extortion have been highly injurious to the inhabitants of every description.

We most earnestly pray that the said John McArthur may be removed from the said office of Colonial Secretary, from all other offices, and from all public councils and interference with the government of this colony.¹

In May 1808, Macarthur denounced his rebel associates by declaring that "the whole of the public property would not have satisfied them."²

Accordingly, soon after the rebellion, Macarthur decided that the indictment against him for sedition must be tried before a Court. Whether the Court was lawful could be determined subsequently. Therefore Macarthur organized his own trial, and it was held on 2 February, only seven days after the rebellion. The substance of the three charges has already been examined from the point of view both of the law and of the facts. The pretended Criminal Court which was set up consisted of Grimes as Judge-Advocate (Abbott was already becoming estranged and refused to act), together with the six officers whom Bligh had nominated and who had leagued themselves with the accused in overthrowing the Governor.

¹ *H.R. of N.S.W.*, vol. vi, p. 597.

² Macarthur to Piper. (Piper Papers: Mitchell Library.)

But, instead of the Court's properly investigating the three charges and strictly confining the evidence to facts relating in some way to Macarthur's conduct in the impeached transactions, an amazingly different course was followed. The witnesses who gave evidence were Atkins, Griffin (Bligh's secretary), Robert Campbell Junior, Palmer, Glenn and Oakes. Each witness was called by Grimes, and was then cross-examined by Macarthur at great length. But his questioning referred, not so much to facts relating to the charges, as to the general and particular conduct of the whole of Bligh's administrative work. Even the promissory note case of Macarthur *v.* Thompson was dragged in by Macarthur. The proceedings take up forty-six pages of small print in the *Historical Records*.³ The form of procedure thus resembled a Commission of Inquiry acting without lawful authority and conducting a Star Chamber investigation. Its purpose was not to impugn the conduct of the "accused" Macarthur, who was present, but to defame and humiliate Bligh who was absent and still under arrest at Government House. Macarthur was thus a prosecutor of an accused person who had no defender. The matter is so important that it is necessary to show the kind of questions which the Court allowed Macarthur to ask. The following examples are sufficiently illustrative. Atkins⁴ was asked the following questions:

Was not the indictment or information framed by Geo. Crossley, a person sent into this country as a convict under the sentence of the law for perjury?

Did you receive the information so prepared by George Crossley because you approved of its contents or because you was commanded so to do by the Governor?

Were you induced to give it as your opinion that Crossley could be admitted to advocate any cause in a Court of Justice because you really thought so or because you was obliged to give that opinion from the terror you was under from the threats of the Governor?

As you knew it was criminal for any attorney who had been convicted of perjury to practise as an attorney or agent in any suit at law, what induced you to consent to Crossley being employed as an agent to prepare the information which now causes me to stand in the degraded and humiliating condition of a criminal at the bar of this Court?

Has the late Governor ever expressed his displeasure to you for acting in a manner that you knew to be right, in indecent and outrageous invectives?

³ *H.R. of N.S.W.*, vol. vi, pp. 465-510.

⁴ *ibid.*, pp. 468, 469, 473.

Did he never so operate on your feelings by his threats and by his violence as to induce you to declare that if you knew His Excellency's opinion you would take care to make your own conform to it?

Have you not, through fear of his vengeance, been induced to give opinions and to decide on causes contrary to what you knew to be just?⁵

Griffin,⁶ Bligh's secretary, was asked the following:

Now, sir, as you have acted as counsel to the Governor, are you not acquainted that the property of an Englishman cannot be taken from him without lawful authority in writing?

Have you not always seen the Governor polite and attentive to me? Do you not know that during this apparent friendly intercourse that the Governor was taking measures, both by his speeches and his letters, to distress and ruin me?

Has not the Judge-Advocate been terrified by the threats and violence used towards him at Government House into a declaration that he would take care that his opinions should always agree with the Governor's—or words to that effect?

As you have stated that my words and manner before the Bench of Magistrates was in your opinion calculated to excite the hatred of the people against His Majesty's Government, did it never occur to you that degrading and abusing the only judge in the colony was more likely to bring the Government into contempt than any words or looks of mine?

Was it not intended to favor me with a little fine and imprisonment before they sent me away?

Was it not also thought a little flogging would be beneficial?

Do you know the principal cause of the Governor's dislike to me?

When it was found that the officers who were appointed to sit on the Criminal Court on the 25th Jan'y would not allow Mr Atkins to sit as judge of the Court, what did the Gov'r determine to do with me?

When it was determined to charge the officers of the Criminal Court with treasonable practices, was it not also determined to charge me with the same?

None of the above questions related to the credibility of the witness or to any issue material to the charges which were supposed to be under investigation. That they were allowed to be asked proves beyond doubt that the "trial" was used in order to vindicate Macarthur and assail Bligh. The "verdict" was Not Guilty: Macarthur was not even called on for a defence. Bligh's own criticism upon this caricature of a criminal trial is unanswerable:

It was easy to foresee what would be the event of this trial, when the persons who sat as judges had contributed their joint efforts in perpetrating the crime to which the charges laid against him were only an incitement. As they by their actions approved of overthrowing His

⁵ *ibid.*, p. 473.

⁶ *ibid.*, pp. 482, 484, 485, 490, 491, 492.

Majesty's Government, his offences would, of course, to them appear meritorious. Through the whole it appeared they were trying the Governor and that McArthur, instead of being prisoner at their bar, directed the prosecution, for he brought forward my letter-book—which contained my correspondence with the Secretary of State—out of which he read such passages as suited his designs, and audaciously browbeat and interrogated my secretary to divulge all conversations he might have heard me enter into, in which he was supported by the lawless members of that tribunal, who at last acquitted him on the evening of 6th February.⁷

Divine intervention having operated in order to transfer to Macarthur possession of the copy of the indictment which was in the lawful custody of Crossley, steps were taken to ascribe the "victory" over Bligh to the same benign source. On 27 January Johnston issued a proclamation to that effect, and on 31 January a special divine service of thanks was held. Nor were humbler human assistants forgotten. In another proclamation, Johnston thanked the gallant soldiers of the regiment for their conduct and implored them to: "persevere in the same honourable path and you will establish the credit of the New South Wales Corps on a basis not to be shaken."⁸ In such a context, the postscript "God save the King" possessed more than a formal significance. After Macarthur's acquittal, "a great number of soldiers assembled as a mob, and with Sergeant-Major Whittle at their head carried Macarthur in a chair fixed on a stage which they bore on their shoulders in triumph, with loud huzzas, round a part of the town of Sydney."⁹ There was a general illumination of the town for the evening, and for once the supply of rum was sufficient to meet the demand.

After his "acquittal" on 6 February, Macarthur decided to carry out the essential part of his plans before opposition to him had time to develop. On Sunday 7 February, it was announced that: "if the officers and respectable inhabitants are desirous to purchase a moderate supply of spirits for their domestic uses, the Lieutenant-Governor will readily grant them permission."¹⁰ Accordingly, on Monday 8 February, in the morning, "at a time when the soldiers and townspeople were filled with spirituous liquors, the bellman was ordered to cry through the streets that a meeting would be held in the church at eight o'clock at night."¹¹

⁷ *ibid.*, p. 666.

⁸ *ibid.*, p. 658.

⁹ *ibid.*, p. 666.

¹⁰ *ibid.*, p. 511.

¹¹ *ibid.*, p. 667.

There was a fairly large gathering at the church, though it consisted mainly of soldiers. It was proposed by Bayly that Macarthur should be sent to England as a delegate of the colonists in order to state to the King's ministers the list of grievances against Bligh.¹² Macarthur was asked to come to the meeting, where he indulged himself in a bitter attack on Bligh. He stated that:

notwithstanding the injuries he had received from the Governor and Magistrates, *yet he did not wish a hair of their heads to be injured*. He then concluded by thanking the Populace for the Honor they conferred on him by appointing him their Delegate, and said, however repugnant it was to his wishes to embark for England at that time, and notwithstanding his want of capacity, to fulfil the arduous task imposed on him, yet in gratitude to his friends he would devote the last hour of his existence to their service, would immediately settle his affairs, proceed to England, and lay before His Majesty's Ministers the very heavy grievances under which the Inhabitants of these Settlements laboured during His Excellency Governor Bligh's administration that they might be redressed.¹³

Next, Blaxcell (Macarthur's partner) arose and suggested that a subscription list should be opened in order to defray the delegate's expenses. This was agreed to, and a formal document drawn up,¹⁴ which was signed by the proposed contributors. Over £1000 was promised, Simeon Lord's firm signing for £500, Bayly for £100, the Blaxland brothers for £200 and Blaxcell himself for £100. Although the meeting was also attended by Minchin, Lawson, Wentworth, Moore, Harris, Jamison, Townson and other leading rebels, they promised exactly nothing. None the less, their promises were equal to the performances of those who had signed up, for not a penny was received.

But again the evening was a bright and merry one for Sydney: "great quantities of wine and spirits were distributed by Mr Macarthur to the soldiers and populace,"¹⁵ and "the Night ended in a great scene of drunkenness."¹⁶ When Bligh heard of the meeting, he feared that the violent speeches were intended to provoke an attack upon himself, but the three sentinels¹⁷ who guarded him throughout his long imprisonment were not called on to defend their prisoner. This meeting is of importance as evidencing the early commence-

¹² *ibid.*, p. 513.

¹³ *H.R. of A.*, series i, vol. vi, p. 531.

¹⁴ *ibid.*, p. 550.

¹⁵ *H.R. of N.S.W.*, vol. vi, p. 514.

¹⁶ *H.R. of A.*, series i, vol. vi, p. 532.

¹⁷ *H.R. of N.S.W.*, vol. vi, p. 711.

ment of a reaction against Macarthur. However, Johnston remained subject to his influence, and, on 12 February, Macarthur was formally appointed a magistrate and also "Secretary to the Colony"—the latter office being entirely novel.

There were now two possible sources of danger to the rebels: Johnston might be supplanted either by Foveaux, who was expected to return soon from England, or Paterson, who was at the comparatively short distance of Port Dalrymple. Macarthur at once sent his friend Davidson to Paterson, and, by the time the latter assumed the government of the colony, Davidson had fully impregnated him with the desirability of his following the precedent set by Foveaux who after taking over from Johnston soon decided to continue Bligh's arrest.

The rigours and, at the same time, the difficulties of the three rebel administrations are best shown by an analysis of the three most important legal cases which came before the bodies acting as Criminal Courts of the colony. Bligh was a prisoner throughout 1808 and, as no precept issued from him, every such Court was, in law, a mere pretended court, and none of its decisions or sentences had any legal validity. None the less, punishments were ordered and enforced. The cases also bring out the factional differences which arose, especially under Johnston's administration.

CHAPTER XXXVII

THE CASE OF OLIVER RUSSELL

OLIVER RUSSELL was the master of the *Brothers*, of which Hulletts of London were part owners. Macarthur's relationship with Hulletts was never defined with precision. The sheep which he had purchased at the Kew sale of George III's merino sheep were embarked on a vessel named the *Argo*, a ship which, according to the Macarthur records book, "Macarthur had bought, and on which he appropriately placed a Golden Fleece as figure head."¹ An illustration of the fact that merchant ships smuggled convicts out of the colony has already been given, and, during Bligh's time, the *Argo* was also found at fault. Bligh then reported: "This Ship belongs to the House of Hulletts and was consigned here to Mr MacArthur."² The vessel *Dart* was owned partly by Hulletts and partly by Macarthur,³ but, as in the case of the *Argo*, the owners' name as shown in the colonial shipping papers was merely "Hulletts and Co." Similarly, during Bligh's government, Macarthur was part owner of the *Parramatta*,⁴ the case concerning which has already been analysed.⁵ But again the official shipping documents mentioned only "Hulletts and Co." This deceived Bladen, who said that "it was *alleged* Macarthur was owner or part owner."⁶

So far as the vessel *Brothers* is concerned, John Blaxland owned a half interest and Hulletts the other half, the latter being managing owners. Under the agreement between them, Hulletts brothers were "the agents of this concern in Eng-

¹ *Early Records of the Macarthurs of Camden*, p. 100.

² *H.R. of A.*, series i, vol. vi, p. 159.

³ *ibid.*, p. 160.

⁴ *H.R. of N.S.W.*, vol. vi, p. 494. John Glenn swore that Macarthur was part owner (*ibid.*, p. 504) and Macarthur's two letters to Glenn and Atkins of 7 and 14 December 1807, make this fact quite evident.

⁵ *Ante* Chapter XXI.

⁶ *H.R. of N.S.W.*, vol. vi, p. 632*n* (cf. *H.R. of A.*, series i, vol. vi, pp. 381-2)

land," and agreed to man the vessel, but Blaxland was to have the management and direction of the ship until she was in Port Jackson. The main object of the adventurers was that of seal fishing in New Zealand waters. The voyage prosecuted by the partnership proved successful, nearly 40,000 skins being obtained. As master, Russell came into conflict with Blaxland, who desired that he should not take the vessel home to England. Blaxland's desire might have been produced by good, bad or indifferent reasons, but it had nothing to do with Macarthur. Yet we find that the latter "earnestly advised Mr Blaxland not to make an attempt that would detain the ship in port at a heavy expense, and certainly terminate in the disappointment of his expectations; for, on an investigation of Mr Blaxland's authority over the vessel, it appeared to be very circumscribed."⁷

That Macarthur was concerned to give "earnest advice" in such a matter is very curious indeed. Johnston reported to England that Macarthur had been accused of "endeavouring to frustrate Mr Blaxland's wishes from interested motives,"⁸ in that Macarthur was "interested conjointly with the house of Hulletts Brothers and Co. in other speculations of a nature similar to that on which the ship *Brothers* had been engaged,"⁹ and that, for such reasons, Macarthur was taking sides with Russell against Blaxland. The facts of the case show to what extent Macarthur was prepared for active interference with the course of justice, while he occupied the position of Colonial Secretary. It also shows how the rebel leaders disagreed amongst themselves. Incidentally, it shows the lack of genuineness of the complaint that Bligh had improperly interfered with the course of justice.

On 29 February 1808, Macarthur, writing on behalf of Johnston, informed John Blaxland that certain requests of Blaxland in relation to the three great instruments of wealth production, "land, men and cows," would be favourably considered. On 2 March Blaxland informed Russell that "for the benefit of the other owners concerned and for himself" he dismissed Russell from the command, conceiving it unsafe to trust him with the ship on the voyage to England. In the event of non-compliance, Blaxland threatened to make a series of charges against Russell, including charges of mal-

⁷ *HR. of N.S.W.*, vol. vi, p. 632.

⁸ *ibid.*, p. 632 and note.

⁹ *ibid.*

versation of part of the cargo and fittings, smuggling rum to Sydney and selling it to one Thomas Ivory. On 2 March Russell refused to accept dismissal out of "justice to my employers in England."¹⁰ On 3 March Blaxland forwarded to Johnston the list of charges against Russell, asking him to investigate them and inquire "on what Authority he presumed to resist Memorialist's Orders."¹¹ Already Blaxland is conveying more than a hint that Russell is being encouraged to disobey his orders and that Macarthur (though he is not openly named) is the person concerned.

On the same day, Macarthur wrote to Blaxland rebuking him for not having addressed his letter to him as Secretary, and requiring Blaxland to transmit the authority on which he claimed to be entitled to an investigation of Russell's conduct.¹² Blaxland ignored Macarthur and wrote to Johnston, stating: (i) that "Mr McArthur is concerned in the same house and therefore liable to be prejudiced against me,"¹³ and (ii) that Grimes (now Acting Judge-Advocate) had been shown his (Blaxland's) authority as part owner, and (iii) that "from the late fortunate change which has taken place, I make no doubt but that Your Honour will see impartial Justice administered."¹⁴

On 4 March Macarthur wrote a reply which was characteristic. It stated that Johnston "felt the greatest surprise" at Blaxland's letter having been addressed to him, Blaxland having now "committed this irregularity a second time." It suggested that the courts of justice were open and that, while Johnston would listen to any complaint of prejudice on Macarthur's part, the Lieutenant-Governor: "will not permit wanton attacks to be made with impunity upon a Public Officer, who has no other reward for his services, than what arises from the consciousness of intending to do everything in his power for the advancement of the happiness, the prosperity and the Security of the Colony."¹⁵

On the same day, Blaxland again wrote to Johnston, urging that his (Blaxland's) private concerns should not have to be disclosed "when there might be a chance of its being injurious to him."¹⁶

On 5 March Blaxland instituted proceedings against

¹⁰ *H.R. of A.*, series i, vol. vi, pp. 380-1.

¹¹ *ibid.*, p. 377.

¹⁴ *ibid.*

¹² *ibid.*, p. 378.

¹⁵ *ibid.*, p. 379.

¹³ *ibid.*

¹⁶ *ibid.*

Russell before a Bench of Magistrates consisting of Jamison, Symons, Harris and Minchin. The prosecutor's memorial to the bench referred to Russell's having promised him, in the presence of Simeon Lord, that he would neither sell nor smuggle the ship's spirits and would properly conduct himself, and alleged that Russell had deliberately delayed coming to Sydney by purchasing provisions at Norfolk Island which cost an exorbitant price. The transcript of the evidence in Russell's case is available only through Johnston's dispatches to England, and, on a number of occasions, what Frederick Watson calls "the insurrectionary record" is devoid of veracity. So far as we can see, Blaxland had considerable difficulty in proving the taking of the rum from the ship's stores, the actual recipient (Thomas Ivory) sheltering himself from answers under the significant plea of self-incrimination.¹⁷ In the end, the evidence was insufficient and the magistrates declined to commit Russell for trial.

On 10 March Blaxland petitioned Johnston for the removal of Russell from the command. He complained¹⁸ that the Bench of Magistrates had not allowed him to tender his evidence in full, and that he would have been able to establish a case of barratry against Russell. On 14 March Macarthur answered curtly that: "His Honour is convinced that he has no power to interfere in such a business."¹⁹ Blaxland replied that he was compelled to protest against the master "and all others it may concern,"²⁰ and to proceed himself to England in the *Brothers* in order to protect his property. This letter produced a threateningly interrogative letter from Macarthur,²¹ and Blaxland replied by withdrawing somewhat from his innuendoes against Macarthur and by asking Johnston to accept his (Blaxland's) resignation from the Civil Court. Macarthur replied that the Lieutenant-Governor would accept the resignation from the position of magistrate, but he could not: "without violating the laws, sanction your quitting the Colony, until the whole of the causes now pending before the Court of Civil Jurisdiction (of which you are a Member) are decided upon, Unless any of the Parties who have commenced Actions shall voluntarily consent to withdraw them."²²

Blaxland reiterated the necessity for his leaving the colony

¹⁷ *ibid.*, p. 387.

²⁰ *ibid.*, p. 391.

¹⁸ *ibid.*, p. 388.

²¹ *ibid.*

¹⁹ *ibid.*, p. 390.

²² *ibid.*, p. 392.

on the *Brothers*, and stated his intention of doing so: "unless I am detained in the Colony a Prisoner."²³ Macarthur in reply again adopted a threatening tone, cautioning Blaxland to: "depend more upon your own unbiassed judgement in the steps you may adopt than upon the advice of any person you can at this time have an opportunity to consult."²⁴ Blaxland next produced a letter from Grimes as Acting Judge-Advocate suggesting that another eligible person might be appointed to replace Blaxland on the Civil Court, and, on 23 March, Blaxland's request to resign was acceded to.

Throughout this part of the controversy it appears that Macarthur was using the name and *de facto* position of Johnston to intimidate Blaxland, and was actively assisting Russell in his resistance to Blaxland's authority as part owner.

On 17 March Russell had written to Blaxland asking him to honour a bill for £89 for ship's accounts; otherwise he would have to draw to that amount before leaving the colony.²⁵ On 18 March Russell wrote a long letter to Blaxland demanding provisions for the ship so as to enable Russell "to procure a full cargo," for which purpose the master now threatened to "Cruise two Months longer on the Coast. . . . thence to proceed to England."²⁶ In the same letter, Russell threatened that he would report a Captain Scott to the Governor before he would admit him on board as an officer (a course desired by Blaxland). Finally, on 18 March, Russell wrote to Blaxland demanding payment of the bill on ship's account, adding that: "if you will not honour them I positively declare they must be paid—therefore should be sorry to be compelled to have recourse to the Keel, *Likewise the Bill for the Wood.*"²⁷

Blaxland's retort was to order the printer to prepare for general publication a notice cautioning the public against receiving or negotiating Russell's bills without his (Blaxland's) approbation, otherwise they would be protested.²⁸

The terms of this correspondence support the inference that Russell's course of action was now being controlled entirely by Macarthur. On 19 March a fracas occurred which led to the important Criminal Court proceedings. In the afternoon the two Blaxlands and Simeon Lord went on board

²³ *ibid.*

²⁶ *ibid.*, p. 475.

²⁴ *ibid.*, p. 393.

²⁷ *ibid.*, p. 478.

²⁵ *ibid.*, p. 474.

²⁸ *ibid.*, p. 466.

the *Brothers* to inspect the accommodation desired to be made for John Blaxland's voyage to England. Russell then told Blaxland that, if he occupied the master's sleeping room, he would have to pay for the privilege.²⁹ The amusing and exciting details of the visit are not of sufficient importance to elaborate here. It seems that Macarthur had urged Russell to defy Blaxland's authority as part owner, but that Blaxland wanted the ship to carry additional skins to England. But Russell was unwilling to do so and was determined both to retain the command and to make the voyage most unpleasant for Blaxland if he persisted in his intention of sailing.

During the visit Russell insulted Blaxland, stating that he wished "he had a Billy Goat to Beat Mr J. Blaxland";³⁰ and, later, when Lieutenant Ellison came on board to investigate, he made no complaint of an assault.³¹ Further, Russell admittedly insulted Simeon Lord, calling him a liar.³² Subsequently, an assault on Russell by one of the Blaxlands was practically admitted; but the whole affair was so trumpery that the decision of Russell to prosecute the two Blaxlands and Lord must be regarded mainly as a move in the contest which had developed between Macarthur and Blaxland.

After the affair of 19 March, Russell at once repaired to Macarthur, who had already obtained from the printer the notice ordered by Blaxland warning the public against accepting any of Russell's bills.³³ While the case of assault against the Blaxlands and Lord was being organized by Macarthur, the latter gave a more serious turn to the dispute by suggesting that there was a plot to assassinate him. On 27 March Kemp signed a deposition to the effect that on 24 March Gregory Blaxland had told him (Kemp) that:

there was a Plan laid at the Hawkesbury to assassinate Mr McArthur, and that there were people employed, who would willingly sacrifice their lives to accomplish it, that Deponent said he thought it was impossible, that Mr Blaxland replied there were a number of Hawkesbury Settlers at Sydney, and that there would be a great number there shortly, and told deponent that Mr McArthur had used him and his Brother very ill, in interfering with their Shipping concerns, but that he could not bear the Idea of murder being committed.³⁴

It will be remembered that shortly before Bligh's overthrow Macarthur had suggested the existence of a similar plot to

²⁹ *ibid.*, p. 461.

³² *ibid.*, p. 477.

³⁰ *ibid.*, p. 471.

³³ *ibid.*, pp. 465-6.

³¹ *ibid.*, p. 472.

³⁴ *ibid.*, p. 397.

assassinate him. Now another report was circulated that: "if any efforts were made to prejudice the minds of the people against your [Johnston's] administration, you [Johnston] would immediately put the country under martial law, and hang the offenders."³⁵

In this atmosphere of charge and countercharge the trial of the Blaxlands and Lord for the assault on Russell commenced on 28 March. Russell opened the proceedings by reading a long address. It was full of colourful rhetoric and a number of learned references to legal authorities such as Hawkins and Blackstone. An important point was made that John Blaxland's letter dismissing him from the command contained threats of criminal prosecution if Russell did not comply. Russell said:

I am truly confident that all the Paint and Oil in the 3rd Charge will not be Sufficient to give this Letter that black complexion with which it was intended. Here the Cloven Foot is discovered. Criminal Charges were to be exhibited, because It was the determination of Mr John Blaxland to dispossess me of the Command of the Ship *Brothers* for purposes justifiable to his own mind; And, Gentlemen, you will discover, that provided I had complied with that threatening Letter, he was well disposed to drop those Criminal accusations which was tantamount to compound Felony.³⁶

The point was a substantial one, but quite irrelevant to the particular charge of an assault on 19 March. The verbiage of the address is unmistakably that of Macarthur. We notice in Russell's words a familiar echo of Macarthur's speech against Lieutenant Marshall many years earlier.³⁷ Now he said, referring to John Blaxland as magistrate:

But this Magistrate, considering the Authority derived from his Commission as paramount to any other Species of Authority, with a Temerity approaching turpitude itself placing himself at the Head of two Persons, who had not even been admitted into the Sydney Watch, in a daring tempestuous Manner, laid violent hands on the astonished Prosecutor, while Simeon Lord, like the renowned Bobadil, danced round him with a brandished Cane.³⁸

Having delivered this opening harangue, Russell proceeded to read another. This second instalment contained the state-

³⁵ *H.R. of N.S.W.*, vol. vi, p. 688.

³⁶ *H.R. of A.*, series i, vol. vi, p. 465.

³⁷ See *ante* Chapter VIII.

³⁸ *H.R. of A.*, series i, vol. vi, p. 467.

ment that it was: "a Maxim of British Law, that an Agent cannot be examined against his principal because he is bound to keep his Secrets."³⁹

The second speech was introduced to convey a warning to the Court that no evidence involving Macarthur's name should be introduced. The Court consisted of Grimes (Acting Judge-Advocate), Symons, Moore, Draffin, Brabyn, Laycock and Bell. The only one of these on whom Macarthur could entirely rely was Draffin; but he evidently supposed that the majority could be intimidated, and that the defendants would also respect his threat. But Simeon Lord cross-examined Russell very severely and elicited that the latter had received advice from Macarthur before making a complaint to the magistrates.⁴⁰ Other questions suggesting Macarthur's particular interest in the case were asked by Lord, and, after objection, allowed by the Court.⁴¹ To most of them Russell answered quite brazenly that Macarthur had no concern in the matter, but, like all liars whose reasoning power is deficient, he entrapped himself and admitted that Macarthur had agreed to put him in funds if Blaxland refused to pay the ship's account.⁴² The day's proceedings concluded with Russell still under cross-examination by Lord.

On the following morning, 29 March, Russell opened by reading another address, objecting to the "irrelevances that have already been obtruded" upon the Court's patience.⁴³ He added:

The Defendants have already endeavoured by an enquiry perfectly Foreign to the Subject to bewilder the Evidence upon a plain and Simple fact, it is very far from my wish Gentlemen that a Single circumstance should go unravelled that can in any wise benefit the Defendants—but as the ends of Justice only bring me forward, I crave your countenance and trust that I may be So far protected as to be defended from Insult before this Honorable Court.⁴⁴

Having regard to the precedent established by Macarthur at his own mock trial, this objection, though legally unassailable, was very inconsistent. Its being taken shows that Macarthur was making a last attempt to regain control of the Court. But the second day's hearing was no more satisfactory to him than the first. Russell was admonished by the Court

³⁹ *ibid.*, p. 469.

⁴² *ibid.*, p. 474.

⁴⁰ *ibid.*, p. 472.

⁴³ *ibid.*, p. 475.

⁴¹ *ibid.*, p. 473.

⁴⁴ *ibid.*, p. 476.

for his "shameful prevarication," not amounting to wilful perjury, and, being no doubt very tired at the long questioning, he admitted to John Blaxland that Macarthur had advised him as to certain matters of fact which, on the day before, he had positively denied. He was then asked whether he did not admit having sworn inconsistently and at once sought that *refugium peccatorum*, the objection to answer on the ground of self-crimination.⁴⁵ The next day ended disastrously both for Russell and for Daniels, his acting chief officer. No less than five witnesses of the fracas on the vessel gave positive evidence that, despite his oath and that of Russell, Daniels was not on the quarter-deck at all during any part of the period when the disturbance took place.

The court was cleared and, on resuming, it was announced with respect both to Russell and Daniels that:

the Perjury is clearly proved particularly in the instance of Daniels not being on the Quarter Deck during the Affray between Captain Russell and the two Blaxlands—And Sentence Oliver Russell and Robert Daniels to be transported for Seven Years, but Strongly recommend both to the clemency of the Governor.

Prior to the Court being cleared Mr Oliver Russell Strongly expressed the unfortunate situation in which he was involved and wished to withdraw the Indictment.⁴⁶

But neither Russell nor Daniels was placed under immediate restraint. On the next morning, 31 March, the Court formally convicted Gregory Blaxland of assault, fining him only £5. It acquitted both John Blaxland and Lord.

⁴⁵ *ibid.*, p. 478.

⁴⁶ *ibid.*, p. 484.

CHAPTER XXXVIII

AFTERMATH OF THE RUSSELL CASE

THE so-called convictions of Russell and Daniels for perjury were illegal because no indictment had been laid against either of the two worthies, and the law could not permit of their being convicted summarily by the same Court before which they were alleged to have perjured themselves. In convicting them out of hand, the tribunal played right into Macarthur's hands. On 1 April a memorial to Johnston was prepared and signed by Russell. On the same day, John Blaxland wrote to Johnston stating that he had demanded the ship's papers from Russell, "now a Convict," but he had not received them.¹ He asked that Johnston should direct the papers to be handed over. Receiving no answer, Blaxland made a similar request on 2 April, when Russell signed a second memorial of protest covering Daniels's conviction.² On the same day, Macarthur informed Blaxland that the ship's papers: "are in the hands of Government, where they will be taken care of until a determination can be formed on the extraordinary case of Mr Russell."³

On 1 April Bayly, as personal secretary to Johnston, wrote to Grimes asking to be informed on what portion of the evidence the two men had been convicted and what reasons operated to induce the Court to recommend the two men to mercy if they were satisfied of their having committed "so abominable a crime" as perjury;⁴ also why the two convicts were not in custody. Grimes replied that the judgment was in accord with the opinion of the majority of the Court, but he declined to divulge individual opinions on the question of clemency.

On 2 April Bayly wrote pointing out that, under the Statute 2 Geo. II, c. 25, an indictment was necessary, and

¹ *H.R. of A.*, series i, vol. vi, p. 394.

² *ibid.*, p. 504.

³ *ibid.*, pp. 394-5.

⁴ *ibid.*, pp. 397-8.

asked Grimes to forward it. Obviously, Bayly's letters came from Macarthur. Moreover, the two "memorials" of Russell contained skilful attacks upon the course of proceedings adopted at the Blaxland-Lord trial. Thus our blunt sea captain said:

That under the whole of the preceding Statement, Your Honor's Memorialist supplicates your interposition by rectifying these Errors in such Manner as your Honor shall Judge expedient for his Relief: And he most respectfully Concludes this long Intrusion upon Your Time and Condescension by obtruding thereon an Observation by that venerated Commentator on the British Laws, Mr Justice Blackstone, Vol. 3, p. 390.⁵

Macarthur was also the author of this screed, a fact which is none the less obvious because of the deliberate omission of his own name from Russell's petitions. On 3 April, Johnston signed a proclamation annulling and declaring invalid the sentences on Russell and Daniels upon the ground that there had never been a formal charge or indictment against them.⁶ The proclamation unctuously stated that:

His Honor the Lieutenant Governor, actuated by an anxious desire to preserve the Rights and Liberties of Englishmen inviolate, and to convince Strangers resorting to this Colony, that they have nothing to apprehend from the oppression of power, from whence soever proceeding, Hereby annuls and declares invalid the Sentence of Transportation pronounced against the said Oliver Russell and Robert Daniels.⁷

Grimes immediately called on Johnston to resign his situation of Acting Judge-Advocate, to which Johnston acceded because: "desirous to conciliate the hostile Spirit displayed by this Gentleman and his Friends, thanked him for having undertaken the Office."⁸

The bitterness of the main combatants did not lessen, Johnston directing Bayly to inform Grimes that the thanks accorded him: "related only to your undertaking to discharge the Duties of Judge Advocate not to the manner in which those Duties have been executed."⁹

On 4 April Grimes alleged that Macarthur had (i) accused him of having taken down the evidence incorrectly, and (ii) asserted that he would finance Russell in bringing an action against him (Grimes).¹⁰ On 5 April Bayly, on behalf

⁵ *ibid.*, p. 503.

⁸ *ibid.*, p. 399.

⁶ *ibid.*, p. 277.

⁹ *ibid.*, p. 400.

⁷ *ibid.*

¹⁰ *ibid.*, p. 401.

of Macarthur, denied Grimes's account of Macarthur's conversation, and said that:

it appeared to be your [Grimes's] principal Object to suffer irrelevant matter to be brought forward, entirely calculated to cast a Stain upon Mr McArthur's Character—that this if true was in his opinion such an unjustifiable and dishonorable step, he was determined to exert himself to the utmost to call you to account for your Conduct before the Court of King's Bench, and that he would expend his last Guinea rather than Justice should be perverted with impunity.¹¹

On 4 April Blaxland appeared before Harris, Symons, Minchin and Lawson as magistrates complaining that, on 3 April, Russell, Daniels and others had returned to the *Brothers* and informed the crew that they were now in command, whereby the crew removed one Hasselburg (whom Blaxland had previously placed in charge), that Hasselburg was now afraid to direct that the additional seal skins should be received on board, that Russell had wrongfully handed the ship's papers to Macarthur and was guilty of wilful perjury on the trial of assault. The application to commit for perjury was supported by the oaths of Blaxland and Lord. The magistrates referred the case to a full Bench of Magistrates to be heard on the next day, 5 April. On that day Macarthur procured Johnston to dismiss Grimes, Harris, and Symons from the position of magistrate so that they could not sit on the case. Thereupon, Minchin, Blaxcell, and Lawson adjourned the proceedings.

On 7 April Russell appeared before Lawson and Blaxcell only, and read another long paper,¹² again a characteristic product of Macarthur. Its style cannot be mistaken, and its motley aggregation of legal saws both good and bad, relevant and irrelevant, is a close approximation to his address of 25 January, when he objected to Atkins. *Inter alia*, the address stated: "Gentlemen, I stand upon my Country's Laws. As Englishmen, a suppliant Stranger craves your Protection by the preservation of those Laws inviolate. You must See, Gentlemen, that my persecutors are interested in my ruin."¹³

But Blaxcell and Lawson declined to dismiss the charge and, after hearing the evidence of Blaxland and Lord, committed Russell for trial at the next Criminal Court upon the charge of perjury. On 18 April bail was forthcoming, but

¹¹ *ibid.*, p. 403.

¹² *ibid.*, p. 507.

¹³ *ibid.*, p. 509.

Russell at once petitioned Johnston, using the language of Macarthur and making the strongest charges against his prosecutors.¹⁴ The petition to Johnston asked that Russell be admitted to bail in the sum of £2000 upon his personal recognizance to report to the English Government to answer any charge that might there be preferred against him. Previously, on 6 and 7 April, Lord and Blaxland had formally asked that certain witnesses should be subpoenaed to attend Russell's trial for perjury. But the subpoenas had to be issued by the Judge-Advocate and, as yet, no one was appointed as a substitute for Grimes. They received no satisfaction: in fact, the next person to act as Judge-Advocate was not appointed until May.¹⁵

On 11 April John Blaxland executed a "public instrument of protest" against: (i) Russell, (ii) Johnston "now administering the office of Governor as Lieutenant Governor, as Governor or otherwise of the Territory of New South Wales," and (iii) against Macarthur "now acting in the nominal Office of Colonial Secretary, as Secretary or otherwise,"¹⁶ and (iv) against the magistrates who took cognizance of the charge of perjury only and refused to take cognizance of the charge of piracy against Russell and the other men who had forcibly retained possession of the ship.

On 19 April Blaxland addressed Johnston as "Lieutenant Governor etc. etc. etc.," informing him that he had transmitted his protest to England, that immense loss was being sustained because of the high price of seal skins in England, and that he (Blaxland) should be allowed to prove the charge of perjury on which Russell stood committed. But on 21 April Macarthur gave a favourable answer to Russell, in the course of which he emphasized: "the total impossibility there is of bringing you to trial in the Colony for want of a sufficient number of officers who can be considered by you disinterested."¹⁷

Finally, Russell's departure from the colony was authorized on the sole condition of his executing a bond to surrender himself to His Majesty's Government on arrival in England. This bond was executed, and the bond previously entered into by Russell for his appearance before the local Criminal Court was returned to him. Of course, the new bond was

¹⁴ *ibid.*, p. 515.

¹⁵ *H.R. of N.S.W.*, vol. vi, p. 648.

¹⁶ *H.R. of A.*, series i, vol. vi, p. 487

¹⁷ *ibid.*, p. 493.

quite worthless, the alleged offence of perjury having been committed locally and being triable only within the colony. The device was tantamount to stifling the prosecution and every one knew it. Blaxland was very angry indeed and sent another petition to Johnston as "Lieutenant Governor etc. etc. etc." He rubbed into Johnston and Macarthur that they were making an imputation of partiality against the officers of the New South Wales Corps, stating:¹⁸

altho' your Petitioner can have nothing to say about the New South Wales Corps, yet for their honor and the Cause so lately embarked in together with Your honor's Proclamation. Your Petitioner most respectfully hopes that Your Honor will not suffer such an insinuation to go abroad that it is possible such men of known Integrity could be at all prejudiced against any person brought before them for trial much more Oliver Russel in whose fate they could not be interested.

Blaxland also took the point that no Court in England could take cognizance of the charges, the method of trial being provided for by the local patent. Simeon Lord also addressed a memorial to Johnston pointing out that Abbott, Kemp, Minchin, Lawson, Kent and Ellison were all available to try Russell and were not members of the Court by which he was previously found guilty, and that Johnston should not suffer "so vile a suggestion to be spread abroad as that any Officer of the New South Wales Corps could or would be guilty of forswearing himself."¹⁹

By this time, the anti-Bligh leaders had split into hostile factions, and Blaxland, Lord and Harris had all openly combined with some of the officers against the continuance of the Macarthur regime. As a result, Johnston, on 4 April, directed Harris to go home in the *Brothers* with dispatches, as an officer "well acquainted with the causes which have occasioned the supersession of Governor Bligh."²⁰ Johnston added significantly that: "no person can be more competent to give such explanation, than one of those who have called upon him to assume the Command, and pledged their lives and fortunes to support the measure."²¹ Harris replied that he was ready to go at once; adding with equally hostile intent: "I trust I shall be able to explain to His Majesty's Ministers many things which otherwise might never have reached them."²²

¹⁸ *ibid.*, pp. 491-2.

²¹ *ibid.*, p. 517.

¹⁹ *ibid.*, p. 494.

²² *ibid.*

²⁰ *ibid.*, p. 516.

Johnston replied, requiring "an explicit explanation upon this obscure observation"²³ of Harris. Harris stuck to his guns, replying that: "it is very probable I may be in possession of many transactions which may not have come" to Johnston's knowledge—a reference clearly aimed at Macarthur. On 7 April Johnston seized the last word by directing Harris to inform His Majesty's Ministers in England as to "the Tyranny and Oppressions of Governor Bligh over the Officers, Soldiers and Inhabitants of this Settlement," concluding: "You will naturally explain your own reasons for joining with the Officers and Inhabitants in calling upon me to assume the Command, and to put Governor Bligh in arrest."²⁴

Next, on 5 April, as we have seen, Harris, Grimes and Symons were all dismissed from the magistracy. By 25 April, after the public protests by Blaxland and Lord, both Johnston and Macarthur were becoming gravely concerned as to their own position. No sufficient rewards for their treachery had been distributed among the rebels. On the other hand, Macarthur had abused his new position for certain private purposes and was actively interfering with the administration of justice. The great rebel seizure of the public lands had not yet been authorized, and very many hopes were being too long deferred. The Macarthur book says that: "No doubt the economical system of the interim Government occasioned much murmuring on the part of greedy and discontented individuals."²⁵

Macarthur decided once again to try and obtain declarations of loyalty from those who had joined with him in the rebellion. Accordingly, on 26 April, Johnston caused both the military and civil officers of the insurrectionary Government to assemble at Sydney. He had written to each officer, stating that he had observed their growing discontent with the gravest concern and he had: "unquestionable Evidence that this discontent has entirely arisen from the confidence I have reposed in Mr McArthur."²⁶ The letter was cunningly written, and it was certainly Macarthur's composition. It referred to the: "party spirit that has unfortunately too much prevailed, almost ever since the day

²³ *ibid.*

²⁴ *ibid.*, p. 518.

²⁵ *Early Records of the Macarthurs of Camden*, p. 160.

²⁶ *H.R. of A.*, series i, vol. vi, p. 518.

when You all urged me to assume the Government, and pledged your words of Honor to support me in the measure."²⁷ It suggested that possibly Macarthur's offence was that he had been too efficient, and prevented "the improper distribution of the public servants and property," and concluded: "If so, let me assure you that he has only obeyed my Orders, and that, had he acted differently, I should have been as ready to withdraw my Confidence from him as I know some of you are desirous that I should."²⁸

Despite the tone of this threatening communication, the assemblage studiously refrained from endorsing or joining in Johnston's praise of Macarthur. They contented themselves with the paltitude that they could not question the propriety of Johnston's consulting whomsoever he wished "either publicly or privately," and that all they would do "as Officers serving under him" was to obey orders.²⁹

Thus the manoeuvre failed to restore confidence in Macarthur, Johnston admitting that "in this attempt I was also entirely disappointed by their answer."³⁰ Further, five of the eighteen officers who had been summoned to attend declined to sign even the qualified resolution. These five were Harris, Brabyn, Bell, Jamison and Mileham. On 30 April Johnston's dispatch, sent by the *Brothers*, referred to the Russell Case, declaring it to be: "a mask under which a few officers have displayed a vexatious opposition to my Government."³¹ The dispatch added that, as he had resolved to send to England "the most active" of his opponents, Grimes had been sent in the *Dart*, and now, as Harris's illness prevented his going, Minchin would replace him. The *Brothers* sailed on 2 May. Johnston revealed more of the truth than he intended when he said:

Had Mr Russel been tried a second time, I know not what might have resulted, for there are abundance of Evidences to be found here who will swear anything; and I am concerned to report to Your Lordship that there are a few persons in the Colony who are more influenced by Mr Lord and his associates than by a regard to justice, or by a desire to support me in the detection and punishment of Frauds or other Crimes.³²

The real objections of the malcontents were: (i) Mac-

²⁷ *ibid.*, p. 519.

³⁰ *ibid.*, p. 457.

²⁸ *ibid.*

³¹ *ibid.*, p. 450.

²⁹ *ibid.*, p. 520.

³² *ibid.*

arthur's employment of the public resources for his own purposes, and (ii) a desire, due partly to fear of punishment, to separate themselves from Johnston and Macarthur as the acknowledged leaders of the rebellion against Bligh. As to the former, the type of action to which the rebels furiously objected was well described by Bligh on 30 April:

They have issued the stores wantonly and improperly to their private purposes; they have sold a large ten-oared boat which was kept for the Governor's use; they are giving away and disposing of Government cattle to their own party; they have renewed and given leases of several places in the town; they are employing in their private concerns artificers and labourers and Government cattle; they have let out the Government brew-house, factory, and Government garden at Parramatta. . . . They have even sold from the store three pairs of mill-stones which were intended to be sent to the out-settlements, and McArthur has taken two pair of them to himself, as likewise thirty stand of arms, which there is no doubt were sent in the *Parramatta* to barter for pork in the South Sea, and their vessels have been fitted out with the canvass and sails of His Majesty's ships.³³

It is a profound mistake to regard the Russell Case as proving either that Macarthur was right or that Blaxland was right. The importance of it is that each was playing his own game, using every means to hand, fair or unfair, right or wrong, legal or illegal. Later on, the selfishness of the Blaxlands was denounced by Macquarie in vehement terms.³⁴ The substance of Macquarie's denunciation was that, instead of contributing to the general welfare by improving farming and agriculture, the brothers merely grazed their sheep and cattle upon their valuable grants of land, and, for that purpose, obtained an unfair share of the convict labour. But the same criticism was equally applicable to Macarthur. On the other hand, Macarthur's motives against Blaxland were undoubtedly selfish, and it is a fair inference that his intervention in the curious affair was not caused by any disinterested desire to assist a sea captain in distress, but was due to the situation of the London market for seal skins. To these motives Macarthur added that of jealousy, for, as Dr Townson said, he considered every newcomer as a hostile rival:

whom it is the common interest to oppose; and as settlers at first have to receive everything from Government, their land, stock, labourers,

³³ *H.R. of N.S.W.*, vol. vi, pp. 627-8.

³⁴ *H.R. of A.*, series i, vol. vii, p. 559

stores, &c., these may be refused or delay'd, given with a liberal or sparing hand, and under such circumstances as not to be worth accepting. A new settler may meet with opposition at every step; and so great a discretionary power is vested in the Governor that he cannot prosper without his consent.³⁵

The case of Russell has not been understood by the editor of the *Historical Records of New South Wales* who omitted the proceedings "in the interests of space."³⁶ The Australian records set out the proceedings, which are of considerable importance. Russell's case evidenced the first open break in the ranks of the anti-Bligh group. It helped to isolate Johnston and Macarthur from the remainder of the rebels. It gave Lord, the Blaxlands and Harris an opportunity of currying favour in the event of the decision of the English authorities proving adverse or ruinous to Macarthur and Johnston. It again demonstrated that Macarthur had no real appreciation of the importance of administering justice, for he either dismissed or opposed any judicial officer who would not yield to his desires. By contrast, Russell's case showed that Bligh's supervision of the administration of justice was pure and honourable.

The internecine struggle between the bartering groups gave considerable pleasure to the loyalists, who rejoiced in the discomfiture of the Acting Judge-Advocate, Grimes, of whom the rhymester said:

A pragmatikal monkey tho' biped in shape
 Next comes on the list of this Cabal profound.
 He skipped and he danced like a new shaven Ape
 When thus elevated the laws to expound.
 But Russell's hard case
 Soon changed his grimace.
 Jack Bodice proclaimed him and out he did go.³⁷

Surgeon Harris was whipped by the same lash:

Pat Ultimo's Pill
 With all qualms in them kill
 That mountebank, empiric, vile knave and cheat.³⁸

The rhymester believed that, on their arrival in London with their respective dispatches, both Grimes and Minchin

³⁵ *H.R. of N.S.W.*, vol. vi, pp. 738-9.

³⁶ *ibid.*, p. 631*n*.

³⁷ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.)

³⁸ *ibid.*

had been, or would be, imprisoned. Hence the ballad current in 1809:

The valorous Adjutant next claims a place,
In the temple of Reason his Fiz must be shewn;
This pease cask poltroon hath at length run his race
And in New Gate with G-r-ms he is softly set down.³⁹

³⁹ *ibid.* The current story was that, on the transport *Lady Jane Shore*, Minchin concealed himself in a pease cask during a mutiny inspired or even led by the female convicts.

CHAPTER XXXIX

THE CASE OF WILLIAM GORE

THE circumstances of the trial of Provost-Marshal Gore by the rebels also illustrate their method of administering justice. On 25 January, at 3.30 p.m.,¹ the six officers, Kemp, Brabyn, Moore, Laycock, Minchin and Lawson had written to Governor Bligh, asking that he would: "be pleased to order such protection to be given Mr McArthur as in our humble opinion the nature of the complaint stated by him before us merits."² The "complaint" was enclosed as a deposition from Macarthur, claiming the protection of the Court against: "a large body of men . . . armed with orders to carry into execution a Warrant from the Judge-Advocate against him for exercising his lawful Right of Challenge."³ Macarthur's affidavit further stated that: "from the information he has received he considers his life in danger . . . he therefore declines giving any Bail, and entreats the Court will be pleased to put him under the protection of a Military Guard, they being the only persons in whose hands he could consider himself Secure."⁴

Bligh's only answer to this letter from the six officers was to point out that Macarthur's signature as deponent was unattested by the six officers. At 5 p.m. Gore and Griffin (who had attended with Gore throughout the day) returned with the affidavit duly attested.⁵

The editor of the *Historical Records of Australia* has pointed out that when the rebels transmitted to England

¹ The time is stated in the letter itself (see *H.R. of N.S.W.*, vol. vi, p. 426).

² *H.R. of A.*, series i, vol. vi, p. 546.

³ *ibid.*, pp. 546-7. This assertion of Macarthur was an invention: Atkins had issued no such warrant. (See Bligh's dispatch of 30 April, *H.R. of N.S.W.*, vol. vi, p. 615.)

⁴ *H.R. of A.*, series i, vol. vi, p. 547.

⁵ *H.R. of N.S.W.*, vol. vi, p. 427.

copies of the letters passing between Bligh and the six officers, some alterations had been made, presumably with the authority of Macarthur and Johnston.⁶ One omission in particular Dr Watson regards as "prejudicial to the veracity of the insurrectionary record."⁷ Therefore, when the *Historical Records of New South Wales* printed Bligh's own dispatches, merely incorporating his copies of the correspondence,⁸ it must be remembered that the result of the omission is a version which does not reproduce Bligh's actual dispatch. In particular, the rebel record of the proceedings of 25 January states the following:

Four o'clock p.m.—The prisoner, John McArthur, Esquire, is remanded to his former bail, and Mr William Gore, the Provost-Marshal, acquainted therewith by the senior member of the Court.⁹

This record must have been compiled subsequently in order to corroborate or establish a case against Gore. On 1 March Kemp, examined by Macarthur before a bench the rebel magistrates (Jamison and Blaxland) swore that on 25 January he "made a particular point of acquainting Mr Gore, that the Court had remanded the Prisoner . . . to his former bail, he signified his assent by making a Bow."¹⁰ On being interrogated by Gore, Kemp swore that he had so "acquainted" Gore between 3 and 4 p.m.¹¹ Everything points to the fact that Kemp's evidence was deliberately false. The correspondence of 25 January tells against it with very great strength. The truth is that, as the six officers and Macarthur knew, in the absence of the Judge-Advocate, no bail could lawfully be allowed. As only six members of the court were present, plainly they were seeking a pretext for remitting Macarthur to a military "guard," and that suggestion was made by them. Yet Macarthur's affidavit expressly recognized that he was still a prisoner of the Court. As Bligh stated: "He knew while the trial pended he could not be admitted to bail but by the will of the prosecutor, under a bond to the Provost-Marshal, which prosecutor was Mr Atkins, whom he had so vilified a few hours before."¹²

The object of the subsequent manipulation of the records

⁶ *H.R. of A.*, series i, vol. vi, p. 741

⁸ e.g. *H.R. of N.S.W.*, vol. vi, p. 614.

¹⁰ *H.R. of A.*, series i, vol. vi, p. 235.

¹² *H.R. of N.S.W.*, vol. vi, p. 615.

⁷ *ibid*

⁹ *ibid.*, p. 428.

¹¹ *ibid.*, p. 236.

was to establish a plausible ground for the allegation that Gore, when late on 25 January he made the affidavit of escape by Macarthur, was guilty of wilful perjury. Certainly, he swore that Macarthur had duly surrendered to the Court of seven, that Macarthur's deposition correctly stated that he was still a prisoner but that as he was absent from the custody of Gore as Provost-Marshal, he was (in the belief of Gore) chargeable for illegal escape.¹³ In order to prove perjury, Kemp asserted that, at the time of making his affidavit, Gore knew that the six officers had purported to act as a Court and had remitted Macarthur to his former bail.

Throughout the proceedings against him, Gore denied that Kemp had ever stated that Macarthur had been formally bailed.¹⁴ Gore was corroborated by Griffin (Bligh's secretary) who was present at the time of the alleged conversation with Kemp. It will be noticed that the rebel record of proceedings states merely that Gore had been acquainted by Kemp of the fact that Macarthur had been remitted to his former bail.¹⁵ But, on the very evening of the rebellion, although many of the loyalists were under the influence of terror, Griffin was examined before Kemp, Lawson, and Grimes and declared both courageously and most convincingly that there was no basis whatever for the suggestion, made by the six officers on 26 January,¹⁶ that Gore had been guilty of perjury.

Arrested on the same night, 26 January, Gore immediately demanded to know what was the charge against him. Bayly, acting as secretary to Johnston, said that the charges were: "conspiring against the lives of the members composing the late Criminal Court" and for his false oath.¹⁷ Gore was released for the time being and the absurd charge of conspiracy was never again mentioned.

On 30 January Grimes, though hopelessly unfitted for the position, was induced to accept the acting appointment of Judge-Advocate, Abbott having declined it.¹⁸ On 7 February Grimes wrote to Gore intimating that the Criminal Court would be sitting on the next day, to which Gore replied that he had not yet been committed by magistrates to stand his trial.¹⁹ Accordingly, on 1 March, Macarthur himself

¹³ *H.R. of A.*, series i, vol. vi, pp. 234-5

¹⁴ *H.R. of N.S.W.*, vol. vi, pp. 560-1.

¹⁶ *H.R. of A.*, series i, vol. vi, p. 235.

¹⁷ *H.R. of N.S.W.*, vol. vi, p. 561.

¹⁸ *ibid.*, p. 458.

¹⁵ *ibid.*, p. 428.

¹⁹ *ibid.*, p. 562.

appeared before the Bench of Magistrates as prosecutor.²⁰ Kemp was called as a witness and gave the evidence referred to above. The Bench at once committed Gore for trial. Objections were made by Gore to the bail bond, but finally, on 6 March, he executed it. On 21 March he appeared for "trial" before Grimes (Acting Judge-Advocate) and six officers including Abbott, Moore, Laycock and Draffin. On 26 January Moore, Laycock and Draffin had alleged that Gore was guilty of perjury, yet they thought it proper to sit on his trial.

Gore objected to the jurisdiction on the ground that Johnston had no authority to issue any precept, the lawful Governor being neither dead nor absent from the colony.²¹ Gore's objection was put into writing.²² It is not only well expressed, but legally unassailable, because Bligh was the only lawful representative of the King in the colony, so that all orders and precepts proceeding from Johnston as Lieutenant-Governor were obviously null and void. This fact was so well known to the rebels that if the soldiers executing governmental orders during the regime of the usurpers were asked by what authority they were acting, they adopted the practice of answering, "by the colour of my cloth."²³

Gore submitted to the tribunal that his trial should take place: "Before His Majesty's Court of King's Bench in England," as the only body where he could be guaranteed a just trial.²⁴ On Gore's concluding, the court room was cleared and he was asked whether he desired to make any particular challenges. He thereupon objected to two naval members as not holding the necessary rank and to Abbott as having prejudged him.²⁵ Grimes announced that the trial would be deferred, but ordered Gore to be confined to jail pending his trial. There he remained:

under circumstances of extreme and peculiar rigour, being buried in a cell 12 feet long and 6 wide, the door of which is locked on me thirteen hours and a half out of the twenty-four hours, during which time no friend is permitted to have access to me, and no aperture by which the daylight can be admitted.²⁶

²⁰ Subsequently, Macarthur substituted Bayly for himself as prosecutor, Bayly at the time being a "confidential agent" of Macarthur. (ibid., pp. 604-5.)

²¹ *H.R. of A.*, series i, vol. vi, p. 536.

²² *ibid.*, pp. 555-7.

²³ *H.R. of N.S.W.*, vol. vi, p. 675.

²⁴ *H.R. of A.*, series i, vol. vi, p. 556.

²⁵ *H.R. of N.S.W.*, vol. vi, p. 563.

²⁶ *ibid.*, p. 563.

Meanwhile, an important witness for Gore, Sir Henry Brown Hayes, was removed from Sydney. At the preliminary investigation, Hayes

deposed that he heard the prisoner McArthur declare in the open Court-house, and that he afterwards saw him swear, that he would decline giving any bail, and entreated the officers to give him the protection of a military guard, they being the only persons in whose hands he could consider himself secure. This unhappy gentleman [Hayes] was a few days after abruptly seized and taken by a constable from his dinner and sent to the Coal River as a place of punishment. His candour and veracity, when honestly delivering his testimony on oath, I fear, were at this time his only, his immediate offence.²⁷

On 5 April Grimes was removed by Macarthur from the position of Acting Judge-Advocate for his actions in connexion with the case of Oliver Russell, master of the *Brothers*. Thus the tribunal constituted for the fresh trial of Gore was presided over by a new Acting Judge-Advocate. This was none other than Kemp,²⁸ although he had been the chief witness against the accused Gore. The six officers were Lieutenant Kent of the Navy, and five military officers, Abbott, Moore, Laycock, Lawson and Draffin. Four of the five had officiated at the trial of Macarthur on 25 January. In all the records of the colony there is nothing which exceeds in impropriety the convening of such a tribunal.

As Acting Judge-Advocate, Kemp read the indictment. It charged wilful and corrupt perjury on the occasion we have specified. The proceedings which followed were short:

Kemp: Are you guilty or not guilty?

Gore: I have a few observations to make; I believe I have them in my hat.

Kemp: We do not wish you to say anything. We do not wish you to speak; are you guilty or not guilty?

Gore: I deny your jurisdiction.

Kemp: We are not to be harangued by you, Mr Gore; we are not come here for you to harangue us.

Gore: I will not plead; I deny your jurisdiction.

Kemp: It is not for you to deny our jurisdiction; I will pass sentence on you if you will not plead.

Gore: You are an unlawful assembly, and illegally constituted; the most disgraceful, the most rigorous sentence you can pronounce on me I shall receive as the greatest honor you can confer on me; I shall not acknowledge your authority; I deny your jurisdiction.

²⁷ *ibid.*, p. 561.

²⁸ Appointed to act as Judge-Advocate on 28 May.

Captain Abbott: Mr Gore, you can challenge any member—you can challenge any member.

Gore: No, possessing my fealty and my allegiance to my King, I deny your jurisdiction; I will not plead—for you are an unlawful assembly.

Kemp: Clear the Court; clear the Court.

After an adjournment of twenty minutes, the case was resumed:

Kemp: We have recorded that you have refused to plead.

Gore: I have; I do.

Kemp: And we have sentenced you to be transported for seven years.

Gore: You have conferred on me the greatest honor you are capable of conferring—the only honor I could receive from such men. Loyalty and treason could not unite; treason and loyalty could not associate, could not agree.

Kemp: Take him away; take him off; take him away; take him away.²⁹

Gore was removed to his cell. On 4 June he was sent to the Coal River at Newcastle to serve his sentence, leaving behind, according to Bligh: "his affectionate Wife and four fine Children, the eldest of whom is about eight Years of Age, wholly dependent on his friends for support. Thus they have treated a loyal Officer of the Crown who had always done his duty with attention and great humanity."³⁰

Judged from a legal angle, the treatment of Gore was perfectly outrageous. He was committed although there was no corroboration of the evidence of Kemp to the effect that he had informed Gore that Macarthur had been remitted to his former bail. Further, all the surrounding circumstances and the direct testimony of Griffin negatived Kemp's allegation. The documents were manipulated so as to afford some basis for the prosecution. Kemp was permitted to preside at the trial where, if Gore had pleaded not guilty, he would have been the chief witness.

Kemp's action angered the settlers, the lampoon describing him thus:

A grinning tobacco boy next did succeed.
 His prolific learning they praised to the skies,
 He had Blackstone and Burns as pat as his creed
 Than Hardwicke more subtle, than Mansfield more wise.
 He retailed out the law
 Like magpie or daw
 Without sense or Statute he made each decree
 But he soon was withdrew
 By the apostate crew
 And Janus Silenus now fingers the fee.³¹

²⁹ *H.R. of N.S.W.*, vol. vi, pp. 648-9.

³⁰ *H.R. of A.*, series i, vol. vi, p. 536.

³¹ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.) "Janus Silenus" is a double-barrelled reference to Atkins' duplicity and drunkenness.

Abbott's intervention during the Gore proceedings rather invited Gore to challenge the personnel of the tribunal. This again evidences that the dissension amongst the rebels was not removed by the tactics adopted by Macarthur during the Russell Case. It seems very probable that the decision in Gore's case was a majority one, the majority comprising Kemp, Kent, Lawson and Draffin; and that Abbott and Laycock, and possibly Moore also, dissented. On 24 May Macarthur had written very critically of Abbott and Laycock, adding:

In short, if I exempt Kemp, Lawson and Draffin, there is not a man that affords Johnston the least support, and most of them oppose everything, although the whole called upon him to assume the government, and pledged their words of honor to support him. Pretty pledge, you will say.³²

When Foveaux succeeded Johnston, he attempted to justify the sentence by attacking Gore's character. This was irrelevant to the specific charge, and the attack was made apparently without the slightest foundation.³³ In the same part of his dispatch home, Foveaux audaciously added:

It is with the utmost satisfaction I am enabled to confirm to your Lordship the high character which all former Governors have justly given of the good conduct and strict discipline of the New South Wales Corps, and that I can assure you, with the utmost truth, that their claim to approbation has not been in the slightest degree shaken by the late events which have agitated the Colony.³⁴

Even after Paterson succeeded Foveaux, Gore was still detained at Newcastle. Foveaux had sheltered behind the illegal sentence of the pretended Court and Paterson himself was a mere tool of his cunning predecessor: "There is now two Lieutenant-Governors here—Paterson—but F. is king and supreme; P. is only a cypher."³⁵

Gore was restored to his office in January 1810 soon after the arrival of Governor Macquarie. He was required by Bligh as a witness in England and received his full salary during his absence for such purpose. While in England, Gore issued

³² *H.R. of N.S.W.*, vol. vi, p. 644.

³³ *H.R. of A.*, series i, vol. vi, p. 629

³⁵ *H.R. of N.S.W.*, vol. vii, p. 217.

³⁴ *ibid.*, pp. 629-30.

writs against Abbott and Kent, and also against Minchin who had arrested him on the night of the rebellion. Minchin, in a petition to Liverpool dated 17 June 1811, stated that he had only acted as Johnston's adjutant. But he also said:

I must also beg to remark to your Lordship that, previous to the civil officers being placed under arrest, I expressed a hope, in the presence and hearing of Colonel Johnston, that they would not be disturbed, when Mr Macarthur interfered, and very warmly urged their arrest, saying they were a vile combination and the Governor's advisers, upon which the Colonel gave the order.³⁶

This statement of Minchin produced a retort from the official Macarthur camp, a firm of solicitors writing to state that Abbott denied the insinuation against Macarthur, and suggesting that government interests required the scotching of actions like those of Gore.³⁷ In a memorial of his own, Abbott asked for a bill of indemnity and a stay of proceedings, which, as the Attorney-General pointed out, was an impossible request in a civil action.³⁸

What happened to the civil actions does not appear, but they must have been either compromised or abandoned as they never came to actual trial.

The Gore Case is of great importance. It proves the disgraceful manner of administering justice under Johnston and Macarthur. Bladen's treatment of the Gore Case is very inadequate. He seems to think that Gore should have been pleased at his treatment,³⁹ stating: "In the seclusion of his prison cell, Gore appears to have devoted most of his time to the composition of lengthy letters to Bligh and the British Government, and to the (apparently) congenial task of reviling the enemy." But Gore's credibility is not shaken, and the facts he narrates are damning to the anti-Bligh malcontents.

³⁶ *ibid.*, p. 548.

³⁷ *ibid.*, p. 550.

³⁸ *ibid.*, p. 547*n*.

³⁹ *ibid.*, vol. vi, p. 648*n*.

CHAPTER XL

THE CASE OF GEORGE SUTTOR

THE third case which should be considered in connexion with the rebels' administration of justice is that of Suttor. As Grimes failed to prove amenable to Macarthur's will, he was thrown out of office, advantage being taken of his legal "howler" in condemning Oliver Russell without charge or trial. Kemp, his successor as Acting Judge-Advocate, displayed his character in the cruel and vindictive punishments illegally inflicted upon Gore, partly because of Gore's having challenged the legality of the usurping tribunal. Kemp was unwilling to remain indefinitely in the office, and it fell to Foveaux to replace him. The person selected as his successor was none other than the "infamous" Atkins. In reporting his selection, Foveaux said:

I had no choice left but to restore Mr Atkins, or expose the public to the serious inconveniences which must inevitably have followed from leaving so indispensable a department vacated.

I had previously offer'd it to such persons as I thought capable of properly discharging its various and important functions; but the great trouble and responsibility attached to it, the inadequate recompense, and the uncertainty of its duration, induced them to decline it, and necessity alone obliged me to have recourse to Mr Atkins.¹

The new appointment took effect on 13 December 1808.²

George Suttor had come to the colony in 1800 as a free settler, Sir Joseph Banks having considered that his knowledge of agriculture might prove of advantage. He became a leader among the Hawkesbury settlers, and, like the great majority of such settlers, he was loyal to Bligh. In August 1808, after Foveaux had replaced Johnston, a representative of the settlers wrote to Bligh, stating that all the evils of the bartering system had returned, but that:

¹ *H.R. of N.S.W.*, vol. vii, pp. 39-40.

² *ibid.*, vol. vi, p. 812.

The settlers collectively, and without exception (excepting a few who are employed as agents and pedlars, directly or indirectly, for the present magistrates and officers), are to a man decidedly in your favour, and highly approve of your administration; and most earnestly wish for an opportunity to express their loyalty and gratitude. It has been proposed by the settlers to send Home two persons as their agents to state to His Majesty's Ministers the situation the colony was in at your arrival, the advantages it has experienced under your Government, and the flattering prospect that every prudent and industrious man had of becoming independent of a set of locusts, by receiving money for his property, which enabled him to go to the best market and to point out the ruinous system that is now adopted.³

The writer of the letter added:

Mr George Suttor and myself have been applied to to undertake their mission to Europe, our expences and support for our families to be defrayed by a voluntary contribution among the settlers. We having informed ourselves as fully as possible what seems to be the general wish of the inhabitants and their motives for sending us, viz., 1st, to give full information by answering such questions as may explain the rise and progress of abuses in the colony, and enable His Majesty's Ministers to apply such remedies as in their wisdom may seem meet; 2ndly, to assure His Majesty's Ministers that the settlers had neither fore-knowledge, act, or part, in what was done on the 26th day of January last, and that their signatures were extorted under threats, terrors, and menaces; 3rdly, To pray that sufficient force may be sent out to reinstate you in your full authority and take such measures with the guilty as may prevent a repetition of the like acts of rebellion.⁴

As Foveaux began to reveal his animus against Bligh more openly, the small settlers became increasingly hostile to the rebel administration. On 4 November they prepared a petition to the English Government. They said that the overthrow of Bligh had reacted disastrously both on Church and State: "in the Church, by silencing the only regular clergyman in the colony for his adherence to His Excell'y Gov'r Bligh at the time of his arrest; in the State, as order is thrown into confusion, and many of the inhabitants have just reason to complain of a partial administration of the law."⁵

The oppressions suffered by the settlers were stressed:

The cultivators of the land labour under the greatest inconveniences, as they can get no cash for their grain, from which circumstance they are not able to discharge their debts or get necessaries for their families. Upon a moderate calculation, there are 2000 acres less wheat sown this year than when His Excell'y Gov'r Bligh was in power, owing from

³ *ibid.*, p. 703.

⁴ *ibid.*, pp. 703-4.

⁵ *ibid.*, pp. 803-4.

the officers monopolizing the labouring men, and that for various other purposes than agriculture, which must, in the end, be the total ruin of the colony, as the planters will not be able to grow grain sufficient to support themselves and families.⁶

The first signatory to this petition was George Suttor. Later in the same month, Foveaux issued an order requiring all persons holding land to attend at a general muster. Suttor refused to attend the Hawkesbury muster, explaining that:

I conceived that I should deviate from my duty should I comply with it, knowing that His Majesty's Governor was a close prisoner within the Territory, and forcibly and unjustly withheld from the exercise of his lawful Authority. I therefore resolved to follow the dictates of my own conscience and feelings, and steadily to persevere in my Loyalty. On the day of the Muster I remained at my Farm with my Family.⁷

Following upon his defiance, a constable called on Suttor and threatened that, if he failed to attend Foveaux's next muster, he would be brought before the Sydney magistrates. At this time Suttor's wife was very ill. Next, Suttor was cited to appear before the Sydney Bench, but he addressed a letter to Kemp (then Acting Judge-Advocate) asking that the case be deferred until after the harvest. This request was refused. Suttor repaired to Sydney, all persons in his employ having been ordered to attend Foveaux's muster at Parramatta. Then, according to Suttor:

before I left my Home, I thought it a duty due to my Family to address a few lines to Colonel Foveaux, remonstrating with him and setting forth that the persevering in such severe measures against me was likely to bring my Family to distress and ruin; that the depriving me of my Men employed in the Cultivation of my Farm and in taking care of my Sheep, Cattle, &c., and that in the time of Harvest, was calculated to bring about the destruction of my Property and deprive my Wife and Children of the means of support. The letter was addressed to his humanity and good sense; notwithstanding, he persevered in his unrelenting disposition, and gratified his resentment by depriving me of all my Servants, and left my defenceless Wife and five young children, together with my Crops, Stock, &c., to the mercy of the Savages of New Holland, and the worse than Savages—the abandoned and desperately depraved part of the Convicts, who, from the present state of things, are under little or no control.⁸

Foveaux took umbrage at Suttor's letter and placed it

⁶ *ibid.*, p. 804.

⁷ *H.R. of A.*, series i, vol. vii, p. 132.

⁸ *ibid.*, p. 133

before the Sydney magistrates. Suttor was committed for trial, but liberated on bail. During his absence from the farm, certain convict servants, realizing his unpopularity with the *de facto* government, drove away some of his cattle.

Suttor was then brought to trial in respect of his letter of protest to Foveaux. The proceedings proved extremely summary. When called on to plead, he said:

Gentlemen,—I deny the legality of this Court. You may do with myself as you please; my unfortunate wife and family I leave to the mercy of God, until peace shall be restored in the colony. I have nothing more to say.

The *Judge-Advocate* then addressed the prisoner as follows: Mr Suttor, you are called upon to plead to your indictment; and whatever you have to offer in your defence will be attentively considered of. I again ask you, are you guilty or not guilty?

Prisoner: Sir, all I have to say I have already said. I deny the legality of this Court. My allegiance is due to Governor Bligh, and Governor Bligh alone; and every drop of blood within my veins prevents me from ever acknowledging the legality of this Court. You may do with me as you think proper.

The *Judge-Advocate:* Mr Suttor, it is my duty to acquaint you that it is provided by Act of Parliament that in case a prisoner shall refuse to plead to his indictment, the effect shall be the same as if he pleaded guilty. Once more I call upon you—are you guilty or not guilty?

Prisoner: I stand as before; I have said all I have to say. You are to do with me as you think proper.

The Court ordered to be cleared, and in about twenty minutes reopened, when

The *Judge-Advocate* addressed the prisoner as follows: Prisoner at the bar, in consequence of your refusal to plead to your indictment, the Court, in conformity to Act of Parliament, have found you guilty, and sentenced you to be imprisoned six calendar months, and to pay a fine of one shilling.⁹

The Court consisted of Atkins and six officers, including Johnston, Laycock and Draffin. Bligh regarded the appointment of Atkins as indicating a plan of the rebels: "to gain over those persons who had been turned out of office to accept their former appointments,"¹⁰ but, added Bligh, only two had become apostates, one being Atkins. The Suttor Case was an "opportunity . . . to Mr Atkins to show his principles as a rebel judge."¹¹ While Suttor was sentenced to six months imprisonment, four other Hawkesbury settlers who had

⁹ *H.R. of N.S.W.*, vol. vi, p. 802n.

¹⁰ *ibid.*, vol. vii, p. 169. The other "apostate" was Jamieson, Superintendent of Stock. See later Chapter XLIII.

¹¹ *ibid.*

refused to attend the muster were each sentenced to one month.¹²

Lying in jail, Suttor wrote down an account of the causes of his own punishment and of the rebellion. As to the first, he said:

I would ask any unprejudiced Man what chance of Justice I could expect, when, out of respect and duty to your Excellency I had given offence to Colonel Foveaux; he appoints Six of his Officers to try me, Men immediately under his Command. This is contrary to every principle of Justice. It is true, while there is a Governor independent of the Military, there is an appeal beyond them; but in the present unfortunate State of the Colony there is none, and all causes, both Civil and Criminal, will be decided agreeable to their Interest.¹³

His analysis of the broader causes of the rebellion is not without importance:

One of the first causes of our present evils was the Officers of the Establishment connecting themselves with the Convict women, with whom they think it no disgrace openly to co-habit and appear in public as though they were their lawful wives; and, indeed, these Women have a much greater influence over them than a Virtuous Woman, and instigate them to things which a Virtuous Woman would be ashamed of. This brought on a connection with the other Class of the Convicts, and laid the foundation for dealing and extortion, and made the Interest of the Officers and Convicts inseparable. Another evil had its root in the enlisting Convicts into the New South Wales Corps. How is it possible that Men who have for the most part, from the earliest period of their lives, been accustomed to violate Law and Property can become the Guardians of either?¹⁴

The Suttor Case shows the success of the methods adopted to wean Atkins from Bligh. First, he was intimidated by the bombardment of Macarthur at the January trial. Next, at the mock trial of Macarthur in February, he was induced to put an unfavourable construction on several of Bligh's actions, the object of Macarthur being clearly to induce Atkins to desert Bligh and join the rebels, a fact which would be used to influence the English Government. Foveaux was not under the direct influence of Macarthur and actually aroused the latter's hostility. But he also appreciated Atkins's desire for liquor, so, by a bold stroke, he was able to employ Bligh's Judge-Advocate in punishing the enemies of the rebel

¹² *ibid.*

¹⁴ *ibid.*, p. 136.

¹³ *H.R. of A.*, series i, vol. vii, p. 137.

government. But Atkins knew perfectly well that all the actions of the insurrectionary government were legally indefensible. He ranged himself against Bligh mainly because of the stringent observations as to the judicial establishment which Bligh had made in his confidential dispatches to England.

It seems probable that Atkins, alias Janus Silenus, two-faced and drunken, received other inducements from the rebels, for the records show that, in August 1809, when Paterson was in charge of the administration, Atkins received a free grant of 500 acres of land in the Minto district.¹⁵ As it turned out, Atkins's evidence at Johnston's court martial assisted Bligh; but the witness had previously been in close touch with the Macarthur group, a fact which is not surprising to us, but which was not disclosed by Johnston to the tribunal. Macarthur wrote immediately prior to the court martial that: "Atkins is no where to be found, and his written evidence will not I fear be admitted—the other party I suspect have been somehow instrumental in smuggling him away, well knowing that his testimony would be most powerful against them."¹⁶

This statement of Macarthur, although intended to be inculpatory of Bligh, is inculpatory of the rebel case, and shows that Atkins's evidence, actually favourable to Bligh, is not open to criticism upon the ground of bias. The bias was in the other direction.

¹⁵ *ibid.*, p. 313.

¹⁶ *Early Records of the Macarthurs of Camden* (1914 ed.), p. 219.

CHAPTER XLI

FIRST REBEL ADMINISTRATION (JOHNSTON)

TOWARDS the end of Johnston's administration, great discontent prevailed among the rebel group. Promises had been many, but performances were insufficient. So far as the civilians were concerned, the Blaxlands and Lord had signed the incriminating document dated 26 January purporting to appeal to Johnston to arrest Bligh. Moreover, Townson, Blaxcell, Grimes, Lord and John Blaxland had been prominent at Government House on that evening.¹ The military officers (including Harris) had also signed the letter of thanks to Johnston, supposed to bear date 27 January.

As the disputes between Macarthur and the Blaxland-Lord group were accentuated, evidence gradually accumulated as to the falsity of the main rebel document, Harris stating openly, even to Bligh's supporters, that not even one signature had been affixed prior to Bligh's arrest.² Moreover, several months after the rebellion, even those who signed these documents *after* the arrest:

declare they did it at the point of the bayonet, which declaration Wentworth made three days afterwards. Constables were sent to that part of the town called the Rocks, and the other parts, to drive people to subscribe their names to this paper to Major Johnston, after the act of rebellion was done; and emissaries were sent with papers through the interior of the colony for the same purpose.³

To the alarm caused by the growing belief that the gravest crime known to the law and it alone accurately described the conduct of the leaders of the rebellion, the daily conflicts between the Blaxlands, Grimes, Harris and Lord on the one hand, and Johnston and Macarthur on the other, greatly added. Macarthur could not possibly retain proper control

¹ *H.R. of N.S.W.*, vol. vi, p. 619.

³ *ibid.*, pp. 619-20.

² *ibid.*, p. 619*n.*

of a very delicate situation without co-operation, and this was not forthcoming. Every one was accepting the position that Johnston largely depended upon him, and it was openly declared that "the Ruler" of the colony was Macarthur. Among the loyalists, hope was turning towards Paterson or Foveaux.

Peace and good order were being flouted. On 16 May the brig *Harrington* (from which Johnston had permitted to be landed large quantities of rum)⁴ was openly seized by certain convicts led by one whom the rebels had liberated. He was assisted by forty other convicts—and the vessel got clear away. According to Bligh, the master of the vessel, in defiance of the orders of the vessel's owners:

connected himself with McArthur and proceeded to the Fiji Islands for a Cargo of Sandal-Wood, and from thence to China, where he procured a valuable Cargo in exchange; but as he there could not clear out for this Colony, he sailed to Malacca for that purpose and brought the Cargo to McArthur since my confinement. McArthur well knew, under these circumstances (particularly not having gone to her lawful Owners), had the brig returned here while I had the power of acting, she would not have been permitted to land her cargo. One would almost pronounce as a certainty from this circumstance that McArthur had calculated the exact time when the Government would be subverted, for the additional purpose of bringing on illegal communications with the East Indies.⁵

No doubt, as Caley emphasized in an "open letter" to Johnston, when Bligh was still under arrest: "the office of Judge-Advocate being vacant, owing to your having set aside the legal one, and the one you had appointed being dismissed and quitted the colony, the rabble of the vulgar had imbibed a notion, let them commit almost any crime there would be no capital punishment, which greatly lessened your authority."⁶ Inevitably, according to Caley: "The motley crowd which were encouraged, instead of being instantly suppressed, and the numbers you have let loose upon the public, would evidently open a source for the greatest evils; and from this I may attribute the numerous thefts and robberies which have of late been committed."⁷

These evils were accompanied by a general resumption of the old rum traffic.⁸ Macarthur also established a practice by

⁴ *H.R. of A.*, series i, vol. vi, p. 644.

⁶ *H.R. of N.S.W.*, vol. vi, p. 689.

⁸ *ibid.*, vol. vii, p. 170.

⁵ *ibid.*, p. 535.

⁷ *ibid.*

which grain was received by the government stores, and, in return, Government gave neither cash nor government bills—the latter being deemed of uncertain value—but cattle belonging to the government herds. This practice was rightly denounced, Caley declaring that:

This was an artful, cunning scheme towards supporting and strengthening your authority. The stores were in want of grain the settlers had it to dispose of; they were in want of cattle, and you took the advantage. . . . You are not justifiable in the number of bullocks you have constantly killed for to supply the public stores; this is done to feast the soldiers and others, to keep them true to your interest at the expense of Government. It is lavishly wasting what all Governors hitherto have been desirous to preserve and propagate. It is highly detrimental to the interests of the colony at a future period.⁹

⁹ *ibid.*, vol. vi, p. 690.

CHAPTER XLII

SECOND REBEL ADMINISTRATION (FOVEAUX)

UPON Johnston's replacement by Foveaux, Macarthur disappeared from the formal public life of the rebel administration. Foveaux was very unpopular personally, and the ballad declared:¹

And the cub of a Cook
His allegiance forsook
To become "His Honor" new crimes to disclose.

Foveaux never overcame the detestation which had been aroused by the cruel punishments which he inflicted at Norfolk Island, particularly in 1801, when, upon the disclosure of a conspiracy to seize the Government, he refused to give the supposed delinquents any trial or investigation, but summarily hanged them: "without ever being told their crime, much less confronted with their accuser, or desired to prepare during the short interval between them and eternity for that awful event . . . merely upon the private information of a vagabond convict."² Foveaux's action was condoned by the English authorities who assumed the truth of his version of the Norfolk Island affair. Judging by his New South Wales activities, this was a generous assumption. His first proclamation of 31 July 1808 was a cunning and deceitful document. He said that he conceived it: "to be beyond his authority to judge between Captain Bligh and the officer whom he [Foveaux] found in the actual command of the colony."³ Accordingly, he announced his decision to adopt sound measures, etc., etc., etc., for the tranquillity, etc., etc., etc., including "a system of the strictest oeconomy and the most

¹ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.)

² Bligh Papers: Mitchell Library.

³ *H.R. of N.S.W.*, vol. vi, p. 701.

impartial justice."⁴ Caley's comment on this document was biting:

it is rumoured that with whom he found the command of the colony he shall treat them as friends, but shall not listen to their advice in administering the Government. This is like two old acquaintances meeting after a long absence, whereby in the meanwhile one is become a notorious villain; the other says, "I shall still keep your company, as before, but shall not allow you to interfere with my integrity."⁵

To some extent, therefore, Foveaux necessarily dissociated himself from the administration of Johnston and Macarthur. Finucane was appointed to act in the latter's stead. Foveaux realized that, by his seniority, Paterson was entitled, in the absence of Bligh, to administer the colony. On 16 August he wrote Paterson a letter which contained a series of untruths and misrepresentations. It referred to the "great difference of opinion" entertained as to Johnston's administration, but alleged that the colonists were unanimous that Bligh's suspension was justified. It suggested that Campbell, Palmer, Fulton and Bligh had combined to monopolize the stores and revenues of the colony, and that they occasioned "universal terror amongst all classes of people from the highest to the most obscure," so that he (Foveaux) had no choice "but to maintain the Government in the way I found it."⁶

While Foveaux's letter insinuated the difficulties of administration in order to discourage Paterson from coming to Sydney, it also assured Paterson that Foveaux had: "already perfectly satisfied myself that Captain Bligh has been acting on a settled plan to destroy and ruin the better Class of Inhabitants, and that Major Johnston is in possession of incontrovertable proofs of his being guided in the most important concerns of the Colony by the advice of Crossley."⁷

This letter is quite irreconcilable with the terms of Foveaux's proclamation already mentioned. The letter to Paterson was almost identical with Foveaux's dispatch to England sent in September, which contained the false charge that Bligh, "in the execution of a plan to improve his own fortune, had sacrificed the interests of Government by a wasteful expenditure of the Public Stores, and the most

⁴ *ibid.*

⁵ *ibid.*, p. 798.

⁶ *H.R. of A.*, series i, vol. vi, p. 633.

⁷ *ibid.*, pp. 633-4.

glaring appropriation of the Live Stock and labourers of the Crown to his own private purposes."⁸

Foveaux's lying did not stop here. He actually suggested to the Colonial Office that Bligh had encouraged the bartering of spirits in order to give financial benefits to Campbell and Palmer.⁹

The amiable Foveaux endeavoured not to disclose his hand to Bligh himself. In August, his letters to Bligh fenced with the latter's very specific questions, requests or commands, Foveaux's main object being to induce or compel Bligh to leave the colony.¹⁰ He endeavoured to refer the responsibility for all his actions either to Paterson or to Johnston. Foveaux allowed the officers of H.M.S. *Porpoise* to call on Bligh, but refused Bligh permission to embark except on terms of his returning to England immediately. For a while Foveaux sought to conciliate Macarthur,¹¹ and Macarthur, on 5 August, became the "first possessor of a land grant within the city of Sydney."¹² Foveaux, however, wished even more to conciliate the powerful anti-Macarthur faction among the rebels, and, towards the end of 1808, he approved a grant to Thompson and appointed Simeon Lord to the position of "vendue-master," to the fury of Macarthur. After Macarthur left the colony in 1809, Lord's influence increased, and Foveaux was bitterly denounced by Macarthur as "that unprincipled man"¹³ whose "matchless effrontery" had been "the principal cause of all the mischief that hangs over the colony."¹⁴

8 *ibid.*, pp. 624-5.

10 *ibid.*, pp. 713-21.

12 *H.R. of A.*, series i, vol. vi, p. 744.

13 *Early Records of the Macarthurs of Camden* (1914 edn), p. 203.

14 *H.R. of N.S.W.*, vol. vii, p. 525.

9 *H.R. of N.S.W.*, vol. vi, p. 754.

11 *ibid.*, p. 711.

CHAPTER XLIII

REBEL PECULATIONS

FOVEAUX's charge that Bligh not only allowed, but benefited from, speculation of government property is incorrect. The charge was a daring one, having regard to the public policy pursued both under his own personal administration and under that of Paterson. Foveaux subsequently boasted both to Macquarie and to the Home authorities that he had succeeded in making savings.¹ In one sense his claim was true: he drew bills on the English Government as little as possible, fearful that the bills would not be honoured and that he must be visited with ruinous personal liability. But he drew very heavily on portion of the capital assets of the colony, i.e. the government herds and the Crown lands.

During Johnston's regime, John Jamieson, Principal Superintendent of Stock, complained to Bligh that he (Jamieson) found that Macarthur: "wanted the whole of Government Stock to be removed to Broken Bay, amongst rocks and barren ground, to the great detriment of the Cattle, that he might have the whole range of land where they now graze for his own Stock to run in."² Jamieson then refused to act, but Macarthur and Fitz (the latter being Deputy Commissary) at once appointed as "curator" of the stock an ex-convict named Hume, of "notoriously bad character," who had been previously involved in speculation of government property.³ Jamieson subsequently found that his predictions were verified. In the first place:

The Stockmen well know the Characters of their Superintendants, Messrs McArthur, Fitz and Hume, with whom they can take any Liberty to the great detriment of His Majesty's Service and the destruction of the Cattle. This was what I plainly foresaw would be the Case from the

¹ e.g. *H.R. of N.S.W.*, vol. vii, p. 557.

² *H.R. of A.*, series i, vol. vi, p. 551

³ *ibid.*, p. 741.

orders that were given respecting the Stock by Major Johnstone and Mr McArthur; they seem to aim at nothing but its total ruin and the destruction of the Colony.⁴

Jamieson's second complaint was even more serious. He referred to:

the unwarrantable distribution of them amongst the Officers, the Non-Commissioned Officers of the New South Wales Corps, and other Individuals; Officers that have never raised a Single Bushel of Wheat in the Colony, and sorry I am to say some of the Officers in Your Own Department have followed their pernicious Example. The Officers that have received them got from Six to Ten and Seventeen Cows, besides Bullocks; for which it is *said*, they are to pay in grain. In the following way they obtain *Spirits* to what amount they please, which they sell from five hundred to a Thousand Per cent for Grain to the unthinking Settlers who have been deprived from procuring a single Drop by any other Channel, since the unfortunate day of the unjust Arrest of His Excellency Governor Bligh. There are also many of the most undeserving Characters that received Cattle; the Serjeants had One, two and three Cows each; The Serjeant Major I am told had five on account of his having been very Serviceable. I cannot forbear mentioning Mr Fitz (Deputy Commissary) who has been so officious in the Cause, Mr McArthur has rewarded him with *Seventeen Picked Cows*, and some Bullocks; and yet it is well known, that he has not the means to pay for them, With every other Indulgence that it is in his power to give.⁵

The system of speculation introduced by the three rebel administrations is naively referred to in the Macarthur records as giving rise to a valuable reduction in public expenditure: "Macarthur exchanging surplus cattle from the government herds for grain, large quantities of which were required for troops and convicts in Van Diemen's Lands, as well as in New South Wales."⁶ Curiously enough, the accounts set forth in the same work⁷ and vouched for by Fitz and Williamson, both of whom were subsequently dismissed the service for malversation of the government property, really corroborate the charges made, first by Jamieson, and later by Palmer, the Commissary under Bligh, that every one of the bills drawn on Government (and subsequently honoured) was in favour of one or other of the rebel leaders, including Macarthur himself; and they also show⁸ that practically all the recipients of government cows and oxen were military officers and

⁴ *ibid.*, p. 612.

⁵ *ibid.*, pp. 612-13.

⁶ *Early Records of the Macarthurs of Camden*, p. 154.

⁷ *ibid.*, pp. 154-60.

⁸ *ibid.*, pp. 155-6.

officials or supporters of the rebel administration. Mr Commissary Palmer's three reports on the rebel method of speculation are most elaborate and convincing. They are dated 31 August 1808, 4 November 1808, and February 1809.⁹ The first two documents have been either deliberately censored or completely misunderstood by the editor of the *Historical Records of New South Wales*,¹⁰ who has made vital omissions in printing them. The third report is omitted altogether. Bladen almost dismisses Palmer with the comment that: "there is little doubt that many of the charges made by Palmer and others were founded purely on hearsay."¹¹ A careful analysis of the three reports suggests their substantial accuracy, though, of necessity, Palmer was not an actual eyewitness of every incident which he describes. Using every means by which it is possible to check Palmer's charges, confirmation for them is forthcoming. They were based largely upon the official returns made by Macarthur and Fitz.¹² Typical of Palmer's charges are:

(1) the improper receipt by Macarthur, Blaxcell, and Kable of large quantities of public stores, including mill-stones, arms, canvas, clothes, etc.;¹³

(2) the distribution of government cattle to the military and their associates without there being any prospect or expectation of payment;

(3) the distribution of rum from the stores to military officers and favoured civilians, the rum being subsequently bartered at the rate of £3 per gallon;¹⁴

(4) the impoverishment of the poor settlers by depriving them of cattle to assist in tilling the soil;¹⁵

(5) the manipulation of grain receipts by Blaxcell (Macarthur's partner) taking improper advantage of his position as official auctioneer;¹⁶

(6) the mishandling by Macarthur himself of the transactions in government stock;

(7) Macarthur's appropriation to himself of supplies of fresh beef;¹⁷

⁹ *H.R. of A.*, series i, vol. vi, pp. 603, 686.

¹⁰ *H.R. of N.S.W.*, vol. vi, pp. 721, 800.

¹¹ *ibid.*, p. 802n.

¹² *H.R. of A.*, series i, vol. vii, p. 107.

¹³ *ibid.*, vol. vi, p. 605.

¹⁴ *ibid.*, p. 606.

¹⁵ *ibid.*, p. 607. (See also *ibid.*, p. 639.)

¹⁶ *ibid.*, p. 607.

¹⁷ *ibid.*, p. 610.

(8) the total malversation of government stock and stores to the value of £11,000 and £3300 respectively;¹⁸

(9) the practice of purchasing grain from the settlers at 3s. per bushel, paying for it in spirits reckoned at the value of £2 10s. per gallon, and the use of grain receipts for the subsequent discharge of the obligation to pay Government for the cattle;¹⁹

(10) the receipt by Macarthur and Johnston of large quantities of government stores, the intention being either not to pay at all or to pay for only a part;²⁰

(11) the payment of money to rebel supporters for carrying provisions to Coal River, carriage not being paid for previously as ballast was necessary;²¹

(12) allowing the malversation of stores to fit out the *Pegasus*;²²

(13) the deliberate failure to use the salt provisions sent out to the colony at government expense in order to enable rebel favourites to dispose of their own supplies of fresh pork;²³

(14) the misuse of the government stores by Harris, Surgeon Jamison and Blaxland at a time when supplies of grain could not be received. They pretended that they owed money to Government in order to obtain government credits at a time when the settlers were forced to accept payment either in rum or other unnecessary merchandise;²⁴

(15) the attempt to prevent Palmer from balancing his accounts by jockeying with grain receipts;²⁵

(16) the revival of the old practice of forestalling and monopolizing all imports for the benefit of the rebel leaders;²⁶

(17) the purchase by the rebel administration of worthless houses belonging to their own supporters.²⁷

A very significant part of Palmer's charges is the detailed account he furnishes as to the distribution of government cattle.²⁸ Foveaux continued, and even extended, the scheme of speculation which Johnston had inaugurated. Foveaux certainly dismissed Hume, but he retained Fitz, reporting to England that: "the integrity and diligence of Mr Fitz makes me feel confident that the public interest will derive great

18 *ibid.*, p. 611.

21 *ibid.*, p. 688.

24 *ibid.*, p. 109.

27 *ibid.*, p. 113.

19 *ibid.*, pp. 686-7.

22 *ibid.*, p. 689.

25 *ibid.*, pp. 110-11.

28 *ibid.*, pp. 113-14.

20 *ibid.*, p. 687.

23 *ibid.*, vol. vii, pp. 108-9.

26 *ibid.*, p. 112.

advantages from his management."²⁹ The Hawkesbury settlers knew Fitz quite well, Martin Mason having reported:

Mr Bell, the Magistrate, and Mr Fitz, the Deputy Commissary at the Hawkesbury, keep regular chandlers' shops, buy pigs and other property with wine and spirits, and turn the grain they and their agents receive into His Majesty's stores on the Green Hills, while the grower is obliged to send his to Parramatta or Sydney at an expense of eighteen pence per bushel, to pay for the cattle they were allowed to purchase from the Government herds.³⁰

Fitz was much disliked by the poor settlers, the indictment of his lampooner including a threat that he too must prepare to be hanged as a traitor:

And if baboon faced Fitz
Can still mind his wits
He will soon be released from this world of woes.

It was also alleged that, while he had been paymaster of another regiment in Ireland, Fitz had "absconded, taking with him a considerable proportion of the property of the regiment."³¹ In July 1809 he actually received from Paterson grants of land amounting to 1700 acres.³² Later in the same year Paterson suspended him for "malversation in the discharge of the important trust reposed in him."³³ Fitz's accounts from September 1808 to November 1809 were investigated by the Audit Commissioners in England, and they emphasized that: "Mr Fitz is charged, in the paper delivered by Col. Foveaux, with very corrupt practices in regard to the re-issuing of Paper Currency, which ought to have been cancelled."³⁴

Previously, in September 1808, Foveaux reported that: "satisfactory proof has been obtained of the Acting Commissary Williamson having applied provisions from His Majesty's Stores to his private use, I have therefore placed him under Arrest."³⁵ Williamson³⁶ having turned out to be dishonest,

²⁹ *ibid.*, vol. vi, p. 627.

³⁰ *H.R. of N.S.W.*, vol. vi, p. 703.

³¹ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.)

³² *H.R. of A.*, series i, vol. vii, p. 306.

³³ *ibid.*, p. 179.

³⁴ *ibid.*, p. 703.

³⁵ *ibid.*, vol. vi, p. 653.

³⁶ The "pipe" about Williamson ran as follows:

"And those who swine per pound for sixpence put in store
Shall have what cows and calves and bulls, or more
Than will them thrice repay, provide the vouchers state
To Ministers at Home how much reduced is meat."

Foveaux put Fitz in his place. Next, marvel of marvels, Foveaux recalled to the position of Superintendent of Stock John Jamieson, who had previously reported the misconduct of Fitz and Macarthur to Bligh, and of whom Foveaux now said that his: "undisputed character for honesty has induced me to restore him to an employment which I could find no other person better qualified to fill."³⁷ To some extent, the riot of malversation must have influenced the standards of Jamieson. In March 1809 this ex-"loyalist" received a grant of 300 acres from the rebel administration.³⁸ Subsequently he was dismissed by Macquarie for incompetency, his honesty not being in dispute.³⁹

Palmer charged Foveaux himself with malversation in relation to a bill drawn in favour of a woman who was reputed to be Foveaux's mistress. This was a payment by Government for fresh meat.⁴⁰ It was also asserted that:

[Foveaux's] woman, a Jewess, offered to sell, since he went, 1000 weight of kidney fat—taken out of Government bullocks—at 2s. 6d. per pound. This she saved during his government. These are proper peculations, and I hope such delinquents will be brought to condign punishment.⁴¹

It was known that Palmer was keeping the speculators under close observation so that it is not surprising to find that, early in 1809, during Paterson's command, opportunity was taken to punish him. In March 1809, before sailing from Sydney in the *Porpoise*, Bligh had given Palmer and several other loyalists copies of a proclamation signed by him and declaring the New South Wales Corps to be in a state of rebellion. After Bligh left, Palmer distributed some of these proclamations, and occasion was taken to prosecute him before the pretended Criminal Court, Atkins presiding.⁴² Palmer denied the Court's jurisdiction, but he was sentenced to three months' imprisonment, not being released until the following June. Bligh commented:

that such loyal subjects should be under the persecution of these monsters of iniquity is truly deplorable. They have borne their imprisonment with great fortitude, looking forward to that return of justice from their country which alone has supported their minds under a

³⁷ *H.R. of A.*, series i, vol. vii, p. 2.

³⁸ *ibid.*, p. 308.

³⁹ *ibid.*, p. 716.

⁴⁰ *ibid.*, p. 109.

⁴¹ *H.R. of N.S.W.*, vol. vii, p. 217.

⁴² *ibid.*, p. 87.

long trial of resistance to unlawful measures put in severe course against them.⁴³

Despite the vindictiveness of his enemies, they were quite unable to sheet home to Palmer any charge of dishonesty, and it is especially noteworthy that, in his first dispatch, Paterson, though anxious to injure Bligh's supporters by every possible means, limited his criticism of Palmer to the complaint that he had refused to certify the sums due to those who had delivered grain to the government stores.⁴⁴ Palmer's attitude was plain and clear. Bartering had been forbidden by Bligh's order. Most of the outstanding grain receipts were now in the hands of the traffickers, and Palmer said:

many of these receipts altho' expressed for Payment of Debt have found their way to McArthur, and have been actually received as payment for Cattle distributed by him and not in the person's name the receipt is made out for,—Thus your Excellency will observe the justness of McArthur and his party receiving grain receipts for payment when the same has been set off against each Individual's debt, and what has not been appropriated to the payment of Cattle they now require cash for.⁴⁵

It was all very well for Paterson to complain that: "Mr Palmer has been solely required to certify whether the Sums are to his knowledge due the applicants; but careless of the disgrace he thus attaches to the Government Securities, he persists in refusing."⁴⁶ Palmer's action was justified. And the important point is that Palmer's honesty was not challenged.

⁴³ *ibid.*, p. 183.

⁴⁴ *H.R. of A.*, series i, vol. vii, p. 23.

⁴⁵ *ibid.*, p. 111.

⁴⁶ *ibid.*, p. 23.

CHAPTER XLIV

THIRD REBEL ADMINISTRATION (PATERSON)

ALTHOUGH Paterson's health was by no means good, he was a very disillusioned man, and there is no escaping the conclusion that his remaining at Port Dalrymple for nearly twelve months after the rebellion was due to his desire to keep out of trouble at Sydney. Paterson's previous contest with Macarthur had ended disastrously. His main interest was in botanical collection. During his earlier days he was an acquaintance of the notorious William Hickey, who speaks with frankness of money affairs in which Paterson had failed to distinguish between *meum* and *tuum*.¹

Paterson arrived in Sydney on 1 January 1809, in H.M.S. *Porpoise*, more than eleven months after Bligh's arrest by Johnston. The new rebel administrator landed without ceremony, and was driven to town by Lawson. Davidson had so infected Paterson with the rebels' virus that the latter never even called upon Bligh. Bligh at once asked Paterson to direct the return of his papers and articles, but Paterson—inspired by Foveaux—adopted the latter's formula of temporizing pending the decision of Whitehall. But Bligh's presence was now becoming most embarrassing to the rebels. His continued confinement at Government House was at once the grievance and the rallying cry of the poor settlers and other loyalists. Further, the rebels feared, either that succour would come to Bligh direct from England, or that the officers of the *Porpoise* would recognize his lawful authority as Commander of all the King's ships in the South Pacific.

Accordingly, Paterson ordered Captain Porteous to sail to Norfolk Island to assist in the evacuation of the inhabitants to the Derwent. Bligh then commanded Porteous to remain at Sydney. Paterson replied by forbidding communication between Bligh and the ship and required Bligh to sign an order directing Porteous to sail to Norfolk Island. Bligh refused despite a threat to put him in close confinement

¹ Hickey, William, *Memoirs*, vol. ii, pp. 226-7, 267, 290.

pending his being sent to England. Bligh believed that the possibility of his restoration by means of the naval force should not be surrendered and refused to comply with the rebels' order, which was delivered by Abbott and Johnston, who was still in the colony. Bligh was forcibly removed to the barracks in a one-horse chaise and his daughter Mary Putland "ran after the carriage, at a time of intense heat, under the rays of a vertical sun, and accompanied him into his prison, panting and almost fainting, though she could not obtain admission but by promising that she would submit to the same confinement which they had imposed on her father."²

Bligh was compelled to come to an agreement with Paterson who threatened that, unless he agreed to return to England in the *Porpoise*, he would be sent in a much smaller vessel. The agreement provided that Bligh would proceed to England forthwith, would not return to Sydney or touch at any part of the colony, and would not interfere with the *de facto* government before specific instructions from England had been received. On signing the agreement, Bligh was allowed to return to Government House. It was also part of the arrangement that Bligh was to be at liberty to take with him to England such witnesses as he decided were necessary.³ The agreement was broken by Paterson who refused Bligh permission to select his witnesses, and Bligh, instead of sailing to England, did not leave the waters of Van Diemen's Land before the arrival of Macquarie. Then he returned to Sydney. Bligh hoped that, at the Derwent, he would intercept English warships and return to Sydney in triumph. Such was the hope of all the loyalists, expressed even in their verse:

The noise of the rebellion resounds o'er the Plain
 The anarchist Junto have pulled down the banner
 Which monarchical Government sought but in vain
 To hold as the rallying standard of honor.
 The Diadem's here fled
 From off the King's head
 His royal appointment by force they depose
 But the time it draws nigh
 When magnanimous Bligh
 Will triumph with honor and prostrate his foes.⁴

² *H.R. of N.S.W.*, vol. vii, pp. 86-7.

³ *ibid.*, pp. 16-17.

⁴ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.)

Before Bligh left Sydney in March 1809 he received an address from the Hawkesbury settlers acknowledging: "the blessings we experienced under your firm, upright, and impartial administration."⁵ The settlers reminded him of the abuses which existed when he arrived in the colony: "Everything was gone too far for any one man to correct. Either integrity or ability could not prevail to correct the abuses, which were reduced to a system. Every department was equally corrupt, from the highest in office, or very nearly so, to the lowest constable."⁶ Bligh's measures, according to this remarkable address, were achieving all their beneficial objects when he was placed under arrest. Certainly, the rum traffic was disappearing: "these evils were now done away, to the great satisfaction of the people of the colony, except the individuals alluded to, at the head of whom is McArthur and the officers."⁷

Bladen condemns Bligh for his breach of agreement, stating that: "The pledge of honour of a British officer, and a gentleman, is one which Bligh's friends would rather have seen him hold sacred, at whatever cost."⁸ This comment is rather beside the point if Bligh's point of view is appreciated, viz., that he alone was loyal to his King, his opponents being traitors and rebels who had seized the government by force and secured the particular agreement also by force and the threat of force.

Before the dispute between Bligh and Paterson came to a head, the rebels had corrupted the naval officers Porteous, Oxley, Kent and Ellison, conferring upon them valuable grants of land, each of the first three obtaining 1000 acres, the dates being 21 February, 26 February and 21 February, respectively.⁹ This was the crucial period of the dispute over the *Porpoise*.

As to Porteous, Montgomerie says that: "Bligh seems to have been rather doubtful of Porteous's loyalty to him,"¹⁰ and also "Porteous was suspected of trafficking with the enemy."¹¹ Bligh's suspicions of Porteous had possibly been aroused by the publication in the *Sydney Gazette* of the account of a strange incident at South Head, Sydney, on a pleasant Sun-

⁵ *H.R. of N.S.W.*, vol. vii, p. 78.

⁷ *ibid.*, vol. vi, p. 622.

⁹ *H.R. of A.*, series i, vol. vii, p. 307.

¹⁰ Montgomerie, H. S., *Life of William Bligh*, p. 198.

¹¹ *ibid.*, p. 208.

⁶ *ibid.*

⁸ *ibid.*, vol. vii, intro. p. xxxi.

day afternoon in January 1809. According to the local narrator, it was a "genteel pleasure party . . . consisting of fourteen officers and ladies."¹² There occurred between three and four in the afternoon a very violent thunderstorm, and a ball of fire struck a rock near the tree under which the company was preparing to have lunch. Ten of the party suffered with shock:

Captain Porteous sensibly felt the shock, but happily was not otherwise affected; Mr Harris was knocked down and supposed to have been killed, but soon recovered. . . . Lieutenant Laycock received the shock on the right side and was much lamed; Mr G. Blaxland had a bottle knocked out of his hand but escaped unhurt. The principal sufferer, however was a young lady, whose head was in a total blaze, and who must have perished in a state of insensibility had not assistance been at hand.¹³

The corruption of the naval officers was quite characteristic of the new rebel technique under Foveaux. Ellison had been long friendly with the rebel administrators¹⁴ and had frequently acted on their pretended Criminal Court. His grant of land was much smaller than that of the other naval officers who were not irrevocably committed to the rebels.

According to Fulton, Paterson at Sydney

is in a very bad state of health—almost a paralytic—from former intemperance; and now I am informed from good authority that he is drunk the greatest part of his time; so that, from imbecillity when sober and stupidity when drunk, he is a very convenient tool in the hands of McArthur, or of Foveaux and Abbott, who see that his plans are executed while he keeps himself in the background to remove the offence which his actual interference would give many in the colony, who are seduced to co-operate with the rebels while they are persuaded that McArthur has nothing to do with public business.¹⁵

Hence the rhyme in vogue:

The last but not least of this rebellious squad
Is phlegmatic Paterson arrived from the southward
His head as well filled as an empty pease cod
The Amor Patriae in him being quite smothered.¹⁶

Paterson's name appears as the signatory to a dispatch to the Governor-General of India, Lord Minto, which even

¹² O'Hara, J., *History of New South Wales*, p. 235.

¹³ *ibid.*, p. 325.

¹⁴ *H.R. of N.S.W.*, vol. vii, pp. 31, 162.

¹⁵ *ibid.*, p. 88.

¹⁶ "Song on New South Wales Rebellion." (Bligh Papers: Mitchell Library.)

Bladen, no unfriendly critic, termed "a masterpiece of misrepresentation."¹⁷

It has been proved that Commodore Bligh, almost from the first moment of his arrival in New South Wales, had acted upon a settled plan to subvert the laws of his country by terrifying and influencing the Courts of Justice, and that in order to improve his own fortune he had sacrificed the interests of Government by a wasteful expenditure of the public stores and the most glaring appropriation of the property of the Crown to his own private purposes. . . .¹⁸

Only one portion of a very long and breathless paragraph has been quoted, but its deliberate falsity is characteristic of the whole document.

Johnston and Macarthur had left the colony for England on 31 March. For a time, Paterson, then acting almost entirely on the advice of Foveaux, was at odds with them, refusing to allow Abbott to accompany them as a necessary witness. The responsibility for the false dispatch to India is attributable to Paterson and Foveaux jointly. The dispatch also alleged that Johnston's decision to arrest Bligh was reached "at the earnest entreaties of the civil and military officers and the most respectable inhabitants," and that, thereafter, "more perfect peace, tranquility, and confidence was restored, which happily have since in no instance whatever been materially interrupted."¹⁹

With this letter should be contrasted Paterson's earlier letter to Banks from Launceston. There Paterson carefully refrained from any personal allegation, saying:

As I am, thank God, at such a distance from Port Jackson, I cannot enter into the merit or demerit of such an extraordinary event; but both from my public and private accounts it appears that the Government was in a wretched state from tyranny and oppression (at least, so they say) when the circumstance took place. How far the crimes he is accused with, when investigated by unprejudiced people, will appear, time can only determine; until then I shall be anxious to know the result, which I hope you will be so kind as to communicate when it is decided upon.²⁰

Paterson not only allowed the speculation of government property to continue, but, at Foveaux's instigation, he enormously increased the number of free grants of land. Almost

¹⁷ *H.R. of N.S.W.*, vol. vii, intro. p. 1.

¹⁸ *ibid.*, pp. 152-3.

¹⁹ *ibid.*, p. 153.

²⁰ *ibid.*, vol. vi, p. 767.

invariably the grantees were rebel adherents. Up to the end of 1808, Johnston and Foveaux had made grants to Lawson, Minchin, Moore, Bell, Fitz, Wentworth and a son of Johnston.²¹ But in 1809, when Foveaux had someone else to assume the primary responsibility, the distribution of lands was made without stint, and the list of grantees included Abbott, the Blaxlands, Moore, Minchin, Bayly, Kable, Fitz, Laycock, Whittle, Reily, Harris, Townson, Thompson, Wentworth, Hobby, Lord, Kemp, Bell, Underwood, Lawson and Atkins.²²

All these grants were valuable and they were used mainly to reward friends, but occasionally to conciliate opponents. For instance, even Townson, a frequent writer of complaints to Whitehall, was silenced by a grant. In March 1809 he complained bitterly that Johnston had granted to his own son the land which he (Townson) had desired and located. The complaint stated: "I beg leave to remind your Lordship that Lt.-Col. Johnston, Capt'n McArthur, Surgeon Jamison, &c., who are now on the point of sailing for England, are not the representatives of the settlers, only of the military and civil officers."²³

However, towards the end of 1809 Townson received grants from Paterson, and he at once ceased to criticize the rebel administration.

Under Paterson, respect for the Government almost disappeared. A fairly reliable, if very breezy, and voluble account of the administration was contained in a letter attributed to Sir Henry Brown Hayes and sent to Castlereagh on 13 October 1809.²⁴ Hayes was an extraordinary character. He had been transported to the colony for the abduction at Cork of a young lady who had a considerable fortune. Curran, the Irish advocate, was brought down specially from Dublin to prosecute Hayes, entered the court, and was saluted by an old fishwoman with what Charles Phillips calls "the common Irish cheer of encouragement"²⁵—"Huzza, Counsellor! I hope you'll gain *the day*," to which Curran's quick reply was: "Take care, my good woman, if I should, that you don't lose *the Knight*."

²¹ *H.R. of A.*, series i, vol. vi, pp. 702-3.

²² *ibid.*, vol. vii, pp. 304-13.

²³ *H.R. of N.S.W.*, vol. vii, p. 61.

²⁴ *ibid.*, p. 216; *Jnl and Proc.*, R.A.H.S., vol. xv, p. 354.

²⁵ Phillips, C., *Memoir of J. P. Curran and His Contemporaries* (1851), p. 379.

The young woman whom Hayes had abducted was a Quaker, whereupon the Irish verse-maker:

Sir Henry kissed behind the bush,
Sir Henry kissed the Quaker,
And if he did, and if he did,
I'm sure he didn't ate her.²⁶

Like most of the transported convicts who were possessed of wealth, Hayes, for a long portion of his sojourn in New South Wales, was able to live in comparative ease. For a time, he was in possession of the famous Vaucluse Estate, which was said to be infested with snakes. Hayes imported from Ireland no less than 500 barrels of Irish bog, and a trench was dug round the estate and filled with this sacred soil. Since when, according to the authority of Piper: "no venomous reptile has ever been killed or observed within Hayes' enclosures, notwithstanding they were plentiful enough beyond it."²⁷

In his letter to Castlereagh, Hayes described the system of government prevailing under Paterson's regime:

Forty thousand gallons of spirits . . . were given away to the civil and military officers since Bligh had been deposed, and not anything to the peaceable, industrious individual. The officers and favourites have been finally enriched by this republican Government . . . Paterson gets drunk at Government House at Parramatta, and Foveaux is left at Sydney to do as he likes, and he gives pardons, grants, and leases to the whores and greatest thieves, 'till there is nothing left for any other Governor . . . to give. . . . Oh, it has been charming times! . . . Hang half this worthy set and it will be justice, for they have been the greatest robbers.²⁸

²⁶ *Jnl and Proc.*, R.A.H.S., vol. xv, p. 341.

²⁷ *ibid.*, p. 345.

²⁸ *H.R. of N.S.W.*, vol. vii, pp. 216-17.

CHAPTER XLV

THE ATTITUDE OF MACQUARIE

MACQUARIE, accompanied by two warships, arrived at Sydney on 28 December 1809. There was a strong military detachment under Colonel O'Connell, who subsequently married Bligh's daughter Mrs Putland. Macquarie had been instructed to restore Bligh to his administration, but for one day only. Even this meed of retribution was denied Bligh, who missed the "succours" and did not return to Sydney from Tasmania until 7 January 1810. Meanwhile, Foveaux had welcomed Macquarie upon his arrival at the Heads, and he spent the intervening days in poisoning his successor's mind against Bligh.

The attitude of Macquarie towards Bligh presents some puzzling features. Commander of the 73rd Regiment, Macquarie's appointment was "largely due to accidental circumstances."¹ He took a somewhat remote and Olympian view of the rebellion, uttering the platitude that there had been party feeling in the colony. He also made the ponderous observation that the rebellion was a "mysterious subject." This restraint in forming a judgment did not always characterize Macquarie in later years. It is certain that he rather objected to Bligh's careful preparation for the investigation in England and his insistence upon the seaworthiness of the vessel on which he was to travel. Inevitably this caused some delay. But Macquarie's attitude reminds one of Pope's description of Addison:

. . . too proud to rule alone
Bear, like the Turk, no brother near the throne

.
Willing to wound, but yet afraid to strike
Just hint a fault, or hesitate dislike.

¹ Phillips, M., *Colonial Autocracy*, p. 25.

Thus we find that, in his opening speech, Macquarie hopes: "that all party spirit which has unfortunately resulted from the late unhappy disturbance" will end, and that the highest classes "will set an example of subordination, morality, and decorum."² Another extraordinary feature of the case is Macquarie's continued efforts for the advancement of Foveaux, who had treated Bligh with shocking discourtesy. Macquarie reported:

In justice to Lieut.-Col. Foveaux, I cannot omit mentioning to your Lordship that, in the trying and very Critical Circumstances he found the Colony on his arrival from England, it being then commanded by Lieut.-Col. Johnston, whose assumption of it Colonel Paterson had approved of, I am of opinion he could not with safety have adopted a different line of Conduct from that he pursued.

Since that period he has exerted himself to the utmost of his power, in every way possible, to promote the interests of the Colony, and I am happy to assure your Lordship that I found the Public Works, and every other Department of Government under his Control, in a state of great improvement, and conducted with a degree of regularity, economy, and industry that reflect the greatest credit on him.³

Macquarie recommended Foveaux to the English Government as "an officer of high merit, and as one who has rendered most important services to this colony."⁴ He also said that he had never met any one "more eminently qualified for forming and conducting to maturity and perfection any infant colony committed to his charge."⁵ If Macquarie had taken the slightest trouble to search into the records of Foveaux's administration of the infant colony of Norfolk Island, he would have found some startling evidence as to Foveaux's qualifications and capacity as colonial administrator. Yet he kept pressing Foveaux's claims upon the English authorities,⁶ though, fortunately, without success.

On 10 May 1810, after he had been four months in the colony, Macquarie, in a dispatch to Castlereagh, ventured an opinion upon the overthrow of Bligh. The general tone of the dispatch was obviously affected by the undue influence of Foveaux, and such phrases as "party rancour having run so high," "Bligh's administration was extremely unpopular, particularly among the higher orders of the people," suggest

² *H.R. of N.S.W.*, vol. vii, p. 253.

³ *H.R. of A.*, series i, vol. vii, pp. 221-2.

⁴ *H.R. of N.S.W.*, vol. vii, p. 304.

⁵ *ibid.*, p. 304.

⁶ *ibid.*, p. 347.

that Macquarie's main wish was to avoid trouble with those of the rebel leaders who remained in, or would return to, the colony.

Although Macquarie had been biased against Bligh by Foveaux, he admitted in his dispatch that he had not been able to discover "any act of his [Bligh's] which could in any degree form an excuse for" the mutiny, and that "very few complaints had been made to me against him, and even those few are rather of a trifling nature."⁷ All students of Bligh should acknowledge their indebtedness to Dr Mackaness, but I must dissent from his opinion that, in relation to the rights and wrongs of Bligh's overthrow: "the considered judgment of Macquarie must stand as final."⁸ With all respect, Macquarie's judgment was not "considered." Indeed, the very judgment to which Dr Mackaness refers itself admits that it was not possible to arrive at the truth "without a very minute and legal investigation of the whole business."⁹ Macquarie had no qualifications or means for conducting such an investigation but, fortunately for the reputation of Bligh, such an investigation was conducted in England.

⁷ *ibid.*, p. 378.

⁸ Mackaness, G., *Life of Vice-Admiral Bligh*.

⁹ *H.R. of N.S.W.*, vol. vii, p. 378.

CHAPTER XLVI

COURT MARTIAL MANOEUVRES

JOHNSTON and Macarthur arrived in England in October 1809, and they were soon made aware that, if Castlereagh had remained in office, then, in all probability, very drastic proceedings would have been instituted. In November Macarthur wrote to his wife:

How it might have been had Lord Castlereagh and that northern bear, Mr Cook, remained in office I cannot say; for certain it is they had both declared themselves adverse to us—and had they retained their authority they would have increased our difficulties, and perhaps, in the end, have crushed us altogether. We ought, therefore, to think ourselves very fortunate that these men are removed, for from what I hear and know of their characters, it is not trifles that would deter them from executing any plan which they might conceive their interest required them to pursue.¹

As a matter of fact, Castlereagh's final instructions to Macquarie, as given in the previous May, were: (i) to place Johnston under close arrest and send him to England for trial before a Court Martial, and (ii) providing sworn information was forthcoming, to have Macarthur arrested and brought to trial before the Criminal Court of the colony.² But before Macquarie arrived in Sydney, Johnston and Macarthur had arrived in England.

After Harris furnished his opinion to Castlereagh in September 1809, the question remained: Where were Johnston and Macarthur to be tried? As both were deemed guilty of high treason upon reasoning which I have already analysed, consideration was given to the question whether they could be tried in England. By the Statute 35 Henry VIII, c. 2, it was provided that treasons committed "out of this realm of England," should be tried before the Court of King's Bench.

¹ *H.R. of N.S.W.*, vol. vii, p. 239.

² *ibid.*, pp. 143-4.

Was this Statute available? The answer derives from the very nature of the treason of levying war against the King in his realm. It was, by definition, not a treason which could be committed "out of this realm of England," but a treason which could be committed only within it. True, by 27 Geo. III, c. 2, the misbehaviours of Macarthur and Johnston were punishable in New South Wales as high treason. But that Statute did not convert their misbehaviours into treason "out of this realm of England," but merely, as it were, operated to have New South Wales converted into portion of the realm solely for the purpose of determining the quality and nature of misbehaviour committed within the colony. The Statute 27 Geo. III, c. 2 did not of itself extend the list of treasons contemplated by 35 Henry VIII which aimed solely at the trial within the realm of treasons committed out of the King's realm. Harris said:

I submit, that it is only triable in the colony, and by the judicature there erected; inasmuch as not being a treason by 25 Ed. 3, from being committed abroad, it is not within the purview of c. 35 H. 8 c. 2 which brings treasons "then declared or thereafter declared to be so" within the cognizance of the Court of King's Bench here.³

Again the conclusion of Harris is correct despite his failure to give reasons.

Accordingly, Macarthur, who was not subject to military law, could not be tried in England. But Johnston, who was a military officer, was in a different position. Then a new question arose—could the Criminal Jurisdiction Act of 1802 be invoked in order to bring to trial in England those of the rebels who were occupying positions in the service of the Crown. The Statute of 1802 (42 Geo. III, c. 85) enabled civil or military officers in His Majesty's service outside of Great Britain to be prosecuted before the King's Bench in England if they had committed "any crime, misdemeanour or offence in the execution or under colour or in the exercise of any such" office.⁴ Very probably the military officers, and especially Johnston, as officer commanding the regiment, had overthrown Bligh "under colour" of exercising their office. But the Act in question did not extend to felonies⁵ although it was subsequently "employed for the purpose of trying colonial

³ *ibid.*, p. 213.

⁴ 42 Geo. III, c. 85, sec. 2.

⁵ *R. v. Shawe* (5 M & S 403).

governors for oppression and other illegalities."⁶ The advice given by Gibbs and Plumer was therefore:

That, as there might be a doubt raised whether Major Johnson was a person within the meaning of the statute 42 G. 3rd, cap. 85, if proceeded against by information in the Court of King's Bench; and as he certainly may be tried for mutiny by Court-Martial under the Mutiny Act, we think the proper step, as to him, would be to bring him to a Court-Martial.⁷

One of the most intriguing problems of the Rum Rebellion is the manner by which Macarthur was able to escape actual punishment for his crime. For the reasons already advanced, he was safe only while he remained in England, and it is almost certain that he received legal advice that, if he returned to New South Wales, he would do so with a noose around his neck; whereas, if he was arrested in England merely for the purpose of being sent to New South Wales for trial, he could obtain his release by habeas corpus, there being no Statute in the nature of the modern Fugitive Offenders Acts providing for the rendition to the colony of offenders against its laws.⁸

Macarthur's *coup d'état* had succeeded to this extent that, early in May 1809, Castlereagh decided that after Bligh had been formally reinstated by Macquarie, he should return to England on the ground that "his continuance in the colony might tend to keep alive dissatisfaction." To such extent, Macarthur might be said to have acquitted himself of treason for:

Treason can never prosper—there's a reason—
If treason prospers, none dare call it treason.

⁶ Halsbury, Earl of, *Statutes of England*, vol iv, p. 414.

⁷ *H.R. of N.S.W.*, vol. vii, p. 229.

⁸ A most curious error seems to have crept into the joint opinion of Gibbs and Plumer who argued that Macarthur should be prosecuted in the colony "as was done in the year 1779 in the case of Stratton Brooke and others for the arrest and imprisonment of Lord Pigot and the assumption of the Government at Madras" (*ibid.* p. 229). As a matter of fact, the four fellow counsellors of Pigot were prosecuted in England, defended by Dunning and Erskine, and each fined £1000. In order to get a majority in the Council of Madras, Lord Pigot had adopted extraordinary tactics which were countered by actual violence. The precedent had little resemblance to that of Bligh, but it seems to have been used to affect him adversely because the direction from England was that Pigot should be restored to office for a nominal period and then recalled to England. Pigot died before the direction could be carried out.

The question remains as to how Johnston was able to avoid being brought before a general Court Martial on a charge of high treason. It has to be remembered that the leading rebels were able to exert strong pressure upon certain powerful persons in England. Earl Fitzwilliam was the patron of D'Arcy Wentworth, and even before a Court Martial had dealt with Johnston he exercised his influence with the Earl of Liverpool to obtain for Wentworth the post of Principal Surgeon of the colony.⁹

Similarly, Johnston was always able to procure the intervention of the Duke of Northumberland.¹⁰ When, in September 1808, Edward Macarthur arrived in England as the advance agent of his father in connexion with the rebellion, he immediately waited on the Duke of Northumberland to present personal letters from Johnston.¹¹ Edward Macarthur reported that "he [the Duke] greatly interests himself in Colonel Johnston's welfare."¹² Twelve months later, when John Macarthur and Johnston both arrived, the latter also waited on the Duke and was received on the terms of closest friendship.¹³ The Duke of Northumberland was related to Colonel Sir James Gordon, then military secretary to the Commander-in-Chief, the Duke of York, and this explains the readiness with which Johnston sent to Gordon his complaints that Bligh had personally nominated members of the Criminal Court.

In that complaint (made in October 1807, three months before the rebellion) Johnston asserted that Bligh had insulted certain soldiers of the Corps and had called one of them a "tremendous b—r!"¹⁴ But Johnston's charges were based entirely on *ex parte* statements, and the credibility of the soldiers was very poor. The point of importance about these complaints is that Johnston dared to make them at all. The explanation lies in the facts I have just mentioned.

John Macarthur's influence on Camden via his friends Watson and the Farquhars was also brought into full play. He reported to Sydney that:

Mr Watson received me in the same kind and frank manner I had a right to expect from his past friendship, and I have since received

⁹ *H.R. of N.S.W.*, vol. vii, pp. 493-4.

¹⁰ *ibid.*, vol. vi, pp. 112, 182.

¹¹ *ibid.*, p. 774.

¹³ *ibid.*, vol. vii, p. 239.

¹² *ibid.*, p. 775.

¹⁴ *ibid.*, vol. vi, p. 653.

repeated proofs of his goodwill. Lord Camden continues President of the Council. Of course I cannot expect to be received by him until matters are settled, but I have good reason to think he is well inclined towards me.

Mr Brogden, who you already know is one of the Duke of Northumberland's members, is amongst the forwardest and most active of our advocates.¹⁵

Subsequently, Macarthur said that the Duke of Northumberland was supporting with all his power the cause of the rebels.¹⁶ Still later, in November 1810, he wrote:

I have found a powerful body of friends in this country, who are not only able but willing to give me their support to my endeavours to obtain satisfaction for the past and security for the future. Depend upon it, the colony will soon undergo a radical reform. I think I shall be obliged to procure a seat in Parliament. The expense will be great, but the prospect of benefit from it is still greater.¹⁷

Although Sir Joseph Banks remained the friend of Bligh to the end, it was hardly to be expected that he could cope with the machinations of the high personages with whom Bligh's opponents were so closely associated. Moreover, the great war with France reduced colonial matters to a relatively unimportant category. As Macarthur wrote in 1810:

You will learn from the newspapers that the public mind is very far from being tranquil in this country. Many are of opinion that a revolution is unavoidable, and cannot be long protracted. In such a state of things it would be weak indeed to expect that the affairs of our insignificant colony should create much interest. No man thinks of another's safety when his own house is burning.¹⁸

In such circumstances, the power exerted by personal or political patronage for the purpose of securing some comparatively unimportant favour, was greatly increased. By these means it was possible to create an atmosphere in which the offence of Johnston could easily be made to appear less serious than it undoubtedly was.

¹⁵ *ibid.*, vol. vii, pp. 239-40.

¹⁷ *ibid.*, p. 454.

¹⁶ *ibid.*, p. 241.

¹⁸ *ibid.*, p. 370.

CHAPTER XLVII

THE COURT MARTIAL OF JOHNSTON

It is most fortunate that Johnston and Macarthur had to submit their charges against Bligh to examination at the hands, not of partisans in a struggle for economic mastery, but of a tribunal which, in spite of its limitations as consisting solely of military officers, had expert lawyers and advisers to assist it, and was desirous of ascertaining the truth.

In his dispatch to Castlereagh, dated 11 April 1808, when he first stated the case for the rebels, Johnston charged Bligh with having: "acted upon a predetermined plan to subvert the laws of his country, to terrify and influence the Courts of Justice, and to bereave those persons who had the misfortune to be obnoxious to him of their fortunes, their liberty, and their lives."¹

At the court martial, this dispatch became the basis of charges against Bligh. It is reasonably plain that the dispatch emanated from Macarthur, and the paragraph I have quoted almost transcribes the language of Macarthur upon other occasions with which I have dealt. Those charges were repeated by Foveaux and Paterson, almost in the same words. The charges were extremely vague, but I have established that, in substance, they were false. It was not Bligh, but his opponents, who had subverted the laws and conspired to pervert the course of justice by influencing the members of the Criminal Court of the colony. Certainly, Bligh had been cursed with the services of an inefficient and unreliable judge-advocate whom the rebels did not pity but subsequently endured and embraced. It is absurd to impute to Bligh the slightest intention to act outside the law, let alone intimidate or overawe the Courts or interfere either with liberty or property.

¹ *H.R. of N.S.W.*, vol. vi, p. 576.

Johnston's dispatch also alleged that "several inhabitants were dispossessed of their houses,"² which is a strange euphemism to employ for the Government's endeavouring to insist upon its legal rights after ample notice. The dispatch introduced as chief villain "the notorious George Crossley,"³ as the leading counsellor of Bligh. In point of fact, Crossley's legal advice always turned out to be fairly sound, and the rebel party objected to the fact that Crossley always seemed to know what in point of law or logic was the next move to make. However, Crossley was only a bogey man.

The most wicked, if fantastic, charge of all was that Bligh acted the coward on the evening of his arrest, but the unctuousness of the dispatch in dealing with this matter is only equalled by its falsity.⁴

Throughout the present work I have insisted that the importance of the Johnston court martial has been seriously underrated by the historians, some of whom openly deny its significance. Thus Marion Phillips says: "Never, perhaps, was a Court of military officers so bored by any judicial proceeding,"⁵ adding that: "Johnston's trial showed the immense difficulty of dealing with political crimes at so great a distance and in so small a settlement."⁶

These comments are fairly typical of the attitude of historians to the court martial. The reason is, I suppose, that in ordinary circumstances the verbatim transcript of a long and involved legal proceeding is seldom appreciated by the non-legal student. Although Marion Phillips alleges that the officers of the Court were bored, it is plain from a close perusal of the transcript that they followed the course of proceedings with keen interest and frequently interposed. It has also been asserted that the case was a mere military affair possessing no legal significance. This also is incorrect, such well-known legal figures as Adolphus, Williams, Pollock and Larpent being the counsel engaged. Personally, I find the print of the trial absorbing, and I have continually referred to it for the purpose of verifying or checking the facts of the Rum Rebellion. There were many dramatic scenes during the trial, and the standard of legal skill and eloquence was high.

² *ibid.*, p. 576.

³ *ibid.*

⁴ The question has already been discussed fully. The dispatch used the phrase "in a situation too disgraceful to be mentioned." (*ibid.*, p. 580.)

⁵ Phillips, M., *Colonial Autocracy*, p. 43.

⁶ *ibid.*, p. 44.

While the lay historians have failed to appreciate the significance of the Johnston court martial, the legal profession has remained in almost entire ignorance of the case. Thus, in 1894, a leading law journal said of Lord Chief Baron Pollock: "he distinguished himself first at the Blake [*sic*] Court Martial in 1810,"⁷ and in *The Judges of England*, published in 1864, Foss said of Pollock:

His business there [on circuit] was greatly increased before he had been three years at the Bar, by his very able and judicious management on the part of Captain (afterwards Admiral) Blake in the famous trial of Colonel Arthur before a court martial for his implication in a rebellion against the Captain while Governor of New South Wales.

Most recently, Lord Hanworth, a grandson of the Chief Baron, said: "I cannot find that my grandfather was engaged in the court martial, although there are letters which show that he was on terms of friendship with Admiral Bligh and his wife."⁸ In these circumstances, it is not surprising that there is neither a close knowledge, still less a full appreciation, of the importance of the trial of Johnston by general Court Martial.

From the outset of the case, Johnston was placed in great difficulty in selecting a defence to the charge of rebellion and mutiny. All the high-sounding dispatches which Macarthur had prepared had to be discarded. The Court insisted upon proper legal proof of every contested fact. As to the primary facts of mutiny, arrest and supersession, they were indisputable. Therefore Johnston and Macarthur were forced to advance facts by way of justification.

It was decided to plead a situation of overwhelming emergency, requiring the most extreme measures to save the colony. By this plea, the defendants were able to drag in all the charges which I have already analysed. From none of them was any solid benefit obtained by the defendant. Moreover, witness after witness for the defence either broke down under cross-examination by the Court or by the Judge-Advocate General, or greatly qualified his evidence-in-chief. Minchin, for instance, had the hardihood to suggest during the course of his examination-in-chief that although certain

⁷ Quoted in *Memoir of Lord Chief Baron Pollock*, by Lord Hanworth, p. 31.

⁸ *ibid.*, pp. 32-3.

convicts had been duly acquitted of stealing a boat, Bligh subsequently ordered them to be punished. But, on the production of official records, it was proved that Bligh dealt with the convicts on an entirely different charge, though it arose out of the same transactions. Minchin's allegation was thus disproved, and it must have been wilfully false. As to the allegation that Bligh interfered with the course of justice, Surgeon Harris, though called for the defence, denied that Bligh ever interfered in the slightest way with the magistrates exercising their jurisdiction.

I have already made reference to the collapse in court of Sergeant-Major Whittle. The other witnesses of Johnston made no favourable impression. Blaxland, Grimes, Kemp, Abbott and even Macarthur himself assisted the defence but little. Nor is this surprising. Given a competent and honest tribunal, an unhurried legal investigation, where there are a large number of witnesses to give material testimony, and where documents and records may be referred to in order to test accuracy and credibility, the result will almost inevitably be the detection of falsehood and the triumph of truth.

For example, the sole matter of complaint against Bligh suggested by Harris's evidence was that: "in consequence of an order which had been issued for shooting dogs, the people appeared dissatisfied with the Governor."⁹ Now, Harris was accurate in stating that Bligh, following the example of earlier governors, was anxious to avoid the dangers caused to children and to riders by curs of the town. Accordingly, he ordered that straying dogs should be destroyed. But the bona fides of Harris in advancing so foolish a charge and the genuineness of the complaint were destroyed so soon as Bligh was able to produce a copy of the official *Sydney Gazette* in which Harris himself had notified the public that: "any dogs hereafter found within Mr Harris' enclosure will be shot and the owners prosecuted in case of damage."¹⁰

Throughout the course of the proceedings, Bligh worked at great pressure, and he was very concerned at the probable outcome, having in view his future promotion in the Navy and the possibility of obtaining the pension which he had been promised before setting out for Australia. In the Banks Papers belonging to the Mitchell Library at Sydney, there is

⁹ *Court Martial of Lieut.-Col. George Johnston*, London (1811), p. 330.

¹⁰ O'Hara, J., *History of New South Wales*, vol. ii, p. 300.

a series of valuable letters from Bligh to Banks, reporting the ups and downs of the court martial. Bligh bitterly complained of Macarthur's evidence: "charging me with damning the Secretary of State and various other untruths—particularly to calumniate my character."¹¹ Bligh commented:

We shall have our reply, but we have clever men against us . . . honour and truth support me against a violent phalanx and I trust we shall do well. I am only concerned for calumny all the rest is nothing . . . our labours now continue every night till late.¹²

As to the evidence of Minchin that Bligh had improperly interfered with the proceedings of the Courts, Bligh wrote to Banks: "Two particular instances Minchin described with all the appearance of truth, but my fortunately having the minute of the proceedings of the Court, it turned everything against him and proved he was the most competent false witness that ever existed to the great abhorrence of everyone present."¹³ Of several other witnesses, Bligh said: "Harris gave fairer evidence than any of them, but he united in particular points of falsehood with his party. Kemp . . . stuck at nothing but at last the Court brought him to say that he spoke only from hearsay."¹⁴

The verdict of the general Court Martial was that Johnston was guilty of mutiny as described in the charge. He was sentenced to be cashiered. The Prince Regent, on behalf of the King, acquiesced in the sentence of the Court, but he added that the sentence was so inadequate that the Court had apparently been actuated by a consideration of the novel and extraordinary circumstances which may have appeared to them to have existed during Bligh's administration. He added that no circumstances whatever could extenuate the assumption of power of which Johnston had been convicted, so subversive as it was of every principle of good order and discipline.

No reasons were advanced by the Court Martial for its decision, but there can be no question that its mitigation of punishment was due, not to any opinion that Bligh had been guilty of misconduct, but to the opinion that Johnston had acted as the mere instrument of Macarthur. I have endeavoured to show that Johnston's conduct should not be

¹¹ Bligh to Banks, 23 May 1811. (Banks Papers: Mitchell Library.)

¹² *ibid.*

¹³ *ibid.*, 29 May 1811.

¹⁴ *ibid.*, 30 May 1811.

judged entirely from that angle. I have also shown that Johnston was far more deeply involved in the conspiracy against Bligh than the evidence at the inquiry was able to disclose. In my view, the verdict was quite inevitable, having regard to the facts established by the evidence. I am also of opinion that, if the report of the English lawyer T. G. Harris had been properly used in a prosecution,¹⁵ Johnston, Macarthur and their associates must have been found guilty by the Criminal Court of the colony of the crime of high treason. No further court martial proceedings were taken in England against the military officers.

But this success of the rebels was also qualified. After the decision of the Court Martial, Manners Sutton, the Judge-Advocate General, reported that while it was not necessary for the public service to institute proceedings against the military officers involved, that was mainly because the 102nd Regiment had been removed from the colony, for it would be mischievous: "if any of the officers connected with the regiment during the commotion in the colony were now residing in, or likely in a public capacity again to return to, that settlement, or any of its dependencies."¹⁶

And Macarthur himself was in far worse case. He had all his pecuniary interests embarked in the colony, yet, because Castlereagh's order to Macquarie was not revoked, it was nearly nine years before he dared return.

Macarthur well knew that Macquarie had been instructed to prosecute him and that it would be many years before such an instruction would be withdrawn. Thus, the so-called "exile" of Macarthur was purely self-imposed, but it was no less bitter. In his bitterness he railed, not only against his old enemies, but also against his old allies. Foveaux was denounced,¹⁷ Johnston came under the lash,¹⁸ Paterson also¹⁹ (though he had died on the voyage home) and Thompson, who had won the promissory note case against him, shared with Paterson in a post-mortem dissection of a very unpleasant kind.²⁰ Even his comment on the Rum Regiment—"it is a happy event for the colony [their departure from it] for a more improper set of men could not be collected

¹⁵ *H.R. of N.S.W.*, vol. vii, pp. 209-14.

¹⁶ *ibid.*, p. 553.

¹⁷ *Early Records of the Macarthurs of Camden* (1914 ed.), pp. 203, 206, 216.

¹⁸ *ibid.*, p. 232.

¹⁹ *ibid.*, p. 205.

²⁰ *ibid.*, p. 219.

together than they had lately become"—provokes the thought that Macarthur was entirely devoid of gratitude. For he had largely contrived to make the regiment his own.

During his long absence from the colony, Macarthur's fierce hatred of Bligh never burns out. He is always writing to his friends or relatives that, sooner or later, he will expose Bligh for terrible offences, never specified, never even described generally. The truth was that he had done his worst against Bligh, and all his charges had fallen to the ground.

During his declining years, the victim of the Rum Rebellion and of the *Bounty* mutiny became a great friend of the distinguished lawyer who was later to become Chief Baron Pollock. Pollock wrote that the court martial of Johnston was: "one of my earliest efforts as an advocate and he [Bligh], Mrs Bligh, and indeed all the family, became my intimate friends. Mrs Bligh did not long survive the anxiety she had endured while his promotion was stopped, his pension suspended and his conduct impeached."²¹

Until his death in 1817 Bligh retained many enduring friendships. As Dr Mackaness says:

Sir Joseph Banks, who knew and judged many men, was ever his best friend. Sir Frederick Pollock, the eminent jurist, was proud to be numbered among his circle of intimates. Admiral of the Fleet Sir James Hawkins, the Earl of Selkirk, Dr Alfred Gatty, the Rev. Richard Polwhele, all cultivated his friendship. He was elected a nautical Fellow of the Royal Society. . . . Nelson knew and honoured him. What greater testimony to his worth need be sought.²²

²¹ Mackaness, G., *Life of Vice-Admiral Bligh*, vol. ii, p. 329n.

²² *ibid.*, vol. ii, p. 343.

CHAPTER. XLVIII

JUDGMENT

AMID the great wars of the Napoleonic era, what happened in a small English penal settlement in the antipodes was of minor concern to those controlling the destinies of England. New South Wales was wanted as a safe receptacle for convicts. It was a perfect location for confining political prisoners and other undesirables, and also for retaining convicts after their term of servitude expired.

With this point of view prevailing at Whitehall, the affairs of the colony went from bad to worse during the military dictatorship which prevailed after Phillip, the first governor, had departed. Subsequently, Hunter failed to improve conditions, and King, despite some attempts to eradicate the pernicious traffic in rum and the forestalling of all commodities, was brought to heel by intimidation and defamation. Vested economic interests successfully defied the regulations of the governors, because they had the monopoly, not only of wealth and of violence, but also of justice.

Such was the stable which Bligh was employed to clean. He commenced his work admirably, making good use of the indifferent human instruments which had been provided for the conduct of the civil government. Soon he was well on the road to the entire suppression of the traffic in rum, and to the establishment of a stable currency. By careful handling of the difficulties and distress caused by the great Hawkesbury floods of 1806, he became the idol of the small agriculturalists. Against him the trading monopolists, including the officers of the regiment, were arrayed on the general ground of self-interest; but it is probable that, but for the efforts of Macarthur, they would not have united to overthrow him by force. Before force was employed, methods of persuasion and intimidation were tried in order to break down his policy of supporting the agriculturalist. Blaxland tried to bribe him

by offering him a partnership in a distillery. Macarthur then threatened bloodshed, and commenced systematically defying the law, partly, at least, in order to see whether Bligh's determination was inflexible. At the same time, several false and malicious prosecutions were commenced in order to ruin men who were loyal to the civil administration. But Bligh remained firm against all these attacks, and, point by point, insisted upon the punctual observance of the law by every person in the community.

The changing moves in the great legal struggle between Bligh and Macarthur, I have already described and analysed. In setting at nought the warrant of Atkins, the Judge-Advocate, and by imputing tyranny and despotism to Bligh's lawful actions in the cases of the imported stills and of the schooner *Parramatta*, Macarthur brought himself within the clutches of the criminal law and was committed to be tried for sedition. He sought, not only to avoid the consequences of his action, but to unite the officers to overthrow Bligh by force. He manufactured a cause of grievance or challenge against Atkins, who was indeed an old enemy of Macarthur's upon the theory that a man's enemies always include those whom he has wronged. When, despite his ignorance and drunkenness, Atkins acted with some show of firmness, Macarthur was placed in a quandary, because, quite recently, he had twice accepted Atkins as one of his judges and had won an important case through his deciding vote.

Macarthur next multiplied causes of dispute with Bligh, so as to extend, as it were, the fighting platform of the malcontents and bring to his support the regiment whose help was essential if Bligh was to fall by violence. These tactics proved successful. Macarthur co-operated with Johnston, and, for the time being, he united all the officers for the purpose of overcoming the resistance of Bligh. He was always certain of acquittal on the criminal charges of sedition which were pending. But to be certain of his acquittal was not enough, for, on the next day or the next week, he might again be prosecuted, and at a time when the officers might well be embroiled once again in a faction fight over the spoils of the colony. Time was therefore of the essence of the contract. Bligh must go, and go forthwith. Macarthur must provoke an open quarrel between the six officers and Bligh. This Macarthur did in a way which shows that his campaign

was planned with care and after a good deal of collaboration with others, including the six officers who had sworn to try him well and truly, and according to law.

The course of events was hastened just a little by Bligh's summons to the six officers of the Criminal Court, but I am satisfied that, had the arrest not been effected on the night of the twenty-sixth, it could not have been long delayed. The damning admissions of Abbott and all the surrounding circumstances prove the existence of a prior agreement to place Bligh under arrest, although the exact moment and method of striking were necessarily left to the discretion of Macarthur and Johnston. The carrying out of such agreement through the open force of the regiment under arms made the leaders liable to be punished in the colony for the crime of high treason.

In the then state of the penal settlement, very few men in the Governor's position could have succeeded in resisting the *coup d'état*. Intensely loyal to his King, Bligh could not believe in the possibility of treachery on the part of the King's commissioned officers.

In one sense, the life of Bligh is a tragedy, but a tragedy in the grand manner. He was the victim of two mutinies, one on sea, the other on land. In neither case was he the victim of his own tyranny. The objective of the *Bounty* mutineers was immediate return to the Lotus Land of Tahiti. In the case of Bligh's New South Wales administration, the thought of forcible rebellion was probably suggested by the fact of the prior *Bounty* mutiny. It is only a child who would reason that, because there were two mutinies against Bligh, he must have been guilty of conduct justifying both.

In New South Wales he was guilty of no misconduct, still less misconduct which could mitigate the crimes of conspiracy and high treason. He was the victim of a corrupt system, which, through combination, forestalling, monopoly and licentiousness, aggregated the wealth of the colony in the hands of a few unscrupulous men. Serious charges were made against him, but they were disproved after the fullest investigation at the court martial of Johnston. The charge of cowardice disgraced, not Bligh who had proved his courage to the uttermost, but the men who made it.

I like to imagine what would have happened to the colony had Bligh remained Governor for some ten years as was

originally intended. I suggest that his policy would have triumphed; that, instead of such extravagances as an unnecessary Rum Hospital and imposing but costly public works, he would have greatly advanced the interests of the small settlers and the free emigrants. Had he been present to carry out the policy of the English Government, he might have prevented some of the struggles between agriculturalists and pastoralists which convulsed the politics of many a later generation. On the same hypothesis, the degrading system of convictism would have disappeared much sooner than it did.

In the end, the two mutinies will turn out to have both immortalized Bligh and vindicated his character, despite the fierce and skilful propaganda which has lasted for over a century, and which is illustrated by the recent picture film. Certainly, a close study shows that Bligh was not only a man of courage and honour, but a man of science and character, and, rarest perhaps of all, a man with something of a gift for practical statesmanship. Sooner or later, history will pronounce final judgment upon William Bligh. It will be in his favour.

INDEX

- Abbott, *Capt.* Edward, evidence at court martial of Johnston, 12-13, 184-5, 269; prosecution of Lieutenant Marshall, 42-5; prosecution of D'Arcy Wentworth, 110-13, 116; stills imported by, 121, 124; trial of Macarthur for sedition, 130, 143; Macarthur's criticism of, 142; second-in-command to Johnston, 167, 183; complicity in rebellion, 183-6, 275; refusal to sit on mock trial of Macarthur, 199; declines appointment as acting Judge-Advocate, 226; trial of Gore, 227-9; Gore's writ against, 231; order to Bligh delivered by, 252; Paterson a tool of, 254; refused permission to accompany Johnston and Macarthur to England, 255; land grant to, 256
- Abbott, J. H. M., quoted, 131-2
- Adolphus, John, 267
- Agriculturalists, Bligh's assistance to, 85-7, 90-1, 109, 114, 117, 120, 132, 273, 276
- Anna Josepha*, brig, 54
- Annandale, 151, 164, 169
- Argo*, ship, 205
- Atkins, Richard, supersedes Macarthur at Parramatta, 27; quarrel with Macarthur over turnip stealing, 28-31; action in Marshall assault case, 43, 44-5; King's opinion of, 45; report on Macarthur, 50; opinion on arrest of Harris, 64; Harris replaced by, 65; addresses to Bligh and King, 84; Bligh's criticism of, 90-1, 177, 198; weakness in Gore case, 93; Wentworth court martial, 110, 114-17; evidence at court martial of Johnston, 116-17; vote in stills case, 123-5; attempt to arrest Macarthur, 127-9; arrest of Macarthur, 130; indictment against Macarthur, 133-4, 136-7, 139-40; Macarthur's demand for payment
- Atkins, Richard—*continued*
of bill of exchange, 143-5; trial of Macarthur, 152 *et seq.*; memorial to Governor, 166-7; witness at Macarthur's trial for sedition, 200-1; reference to, in lampoon, 229 (and note); restored to office of Judge-Advocate, 232; trial of George Suttor, 235-6; inducements to desert Bligh, 237; land grants to, 237, 256; trial of Palmer, 249
- Baird, *Sir* David, 178
- Balmain, *Dr* William, 38-41
- Banks, *Sir* Joseph, suggested animus against Macarthur, 8, 9; faith in future of Australia, 15; views on land grants for sheepwalks, 58, 60; recommends Bligh as Governor, 69; letters from Bligh, 75, 79, 81, 86-7, 90, 91-2, 93, 150, 178, 270; letter to Bligh, 95; patron of George Suttor, 232; letter from Paterson, 255; support of Bligh, 265, 272
- Banks Papers, 269
- Barrallier, Francis, 62
- Barrington, George, 17
- Barter system, 23-5, 87-9, 91, 95, 109, 233, 246-7, 250
- Baughan, John, 38, 40
- Bayly, Nicholas, member of court in Nichols case, 34 (and note); court-martialled by King, 62, 63; Macarthur's criticism of, 142; provides bail for Macarthur, 164, 166; proposes Macarthur as delegate to England, 203; action in Russell case, 214-15; charges in Gore case, 226 (and note); land grant to, 256
- Bell, *Ensign* Archibald, 212, 220, 248, 256
- Belloc, Hilaire, quoted, 68
- Bent, Ellis, 160, 193

- Bentham, Jeremy, quoted 23, 98-103
- Bladen, F. M., opinion of Johnston, 7; view on application of common law to the colony, 99-101, 102; opinion on promissory note case, 108; comment on Wentworth case, 115; statement on Macarthur's activities against Bligh, 142; comment on Bligh's power to appoint a substitute judge-advocate, 154-5; justifies Bligh's use of Crossley, 159; acquits Macarthur of complicity in arrest of Bligh, 170; view on charge of cowardice against Bligh, 177; acquits Abbott of complicity in conspiracy against Bligh, 185; disinclination to accept evidence of conspiracy, 186-7; criticism of report of T. G. Harris, 194; error concerning Macarthur's part-ownership of the *Parramatta*, 205-6; view of Gore case, 231; treatment of Palmer's reports, 246; condemnation of Bligh, 253; comment on Pater-son's dispatch to Lord Minto, 255
- Blakemore, William, 147
- Blaxcell, Garnham, replaced as Colonial Secretary, 85; partner of Macarthur in the *Parramatta*, 126-7; provides bail for Macarthur, 164, 166; subscribes to Macarthur's expenses as delegate to England, 203; magistrate in Russell case, 216; complicity in rebellion, 238; Palmer's charges against, 246
- Blaxland, Gregory, letter attacking Bligh, 3; Bligh's criticism of, 91-2; subscribes to Macarthur's expenses as delegate to England, 203; trial for assault on Oliver Russell, 210-13; Macquarie's denunciation of, 221; conflicts among rebels, 238-9; picnic at South Head, 254; land grant to, 265
- Blaxland, John, Bligh's criticism of, 91-2; subscribes to Macarthur's expenses as delegate to England, 203; conflict with Macarthur in Russell case, 206 *et seq.*; Macquarie's denunciation of, 221; Blaxland, John—*continued*
magistrate in Gore case, 225; complicity in rebellion, 238; conflicts among rebels, 238-9; Palmer's charge against, 247; land grant to, 256; evidence at Johnston court martial, 269; attempt to bribe Bligh, 273
- Bligh, Elizabeth, *Mrs.*, 81, 83, 272
- Bligh, Governor, biographers, 1-2, 11; character, 2-11, 69 *et seq.*, 275-6; alleged insulting language to Macarthur, 10-14; attitude to wool industry, 13-14; concern for moral state of colony, 19-20, 81; appointed Governor, 69; mutiny of the *Bounty*, 70-4, 76-7; *Warrior* court martial, 74-5; letters to Banks, 75, 79, 81, 86-7, 90, 91-2, 93, 178, 270; *Providence* voyage, 78-9; mutiny at the Nore, 79; charge by Lieutenant Kent, 80; dispute with Captain Short, 83; opposed by King, 84, 197; arrival in the colony, 84; addresses of welcome, 84-6; assistance to agriculturalists, 85-7, 90-2, 109, 114, 117, 120, 132, 141, 273, 276; proposals for reform of administration of justice, 90-1; criticism of Atkins, 90, 91, 117, 198; conflict with Johnston over Criminal Court, 93; Harris's opinion of, 94; letter from Banks, 95; general order *re* promissory notes, 106; dismissal of Macarthur's appeal, 107-9; suspension of D'Arcy Wentworth, 112 *et seq.*; court martial on Bligh's report, 114-15; evidence at court martial of Johnston, 116-18, 176, 178-9; order for re-importation of stills, 121-5; action against Macarthur in *Parramatta* case, 126-9; Macarthur's efforts to overthrow, 141 *et seq.*; addresses from Hawkesbury settlers, 141, 253; memorial by Macarthur, 144; refusal of town leaseholds, 146-51; legality of action in trial of Macarthur, 153-5, 157-60; defied by officers, 163, *et seq.*; arrest, 171 *et seq.*; charge of cowardice, 175-9, 275; dispatch on punishment of rebels, 193; official papers seized, 198; attacked at mock trial of

- Bligh, *Governor*—*continued*
 Macarthur, 200-2; administration of justice by, 222; reply to officers in Gore case, 224; letter from Hawkesbury settlers, 232-3; loyalty of Suttor, 235-6; rebel inducements to Atkins, 237; Foveaux's charges against, 242-3, 244; proclamation against N.S.W. Corps, 249; dispute with Paterson over the *Porpoise*, 251-2; removed to barracks, 252; agrees to return to England, 252-3; accusation by Paterson, 255; Macquarie's attitude to, 258-60; alleged insult to soldiers, 264; friendship with Baron Pollock, 268, 272; charges at Johnston court martial disproved, 268-9; Macarthur's hatred of, 272; enduring friendships, 272
- Borrow, George, quoted, 175
 Boswell, James, quoted, 189
Bounty, H.M.S., 2-3, 70-2, 76-9, 175, 275
 Brabyn, *Lieut.* John, 150, 212, 220, 224
Britannia, ship, 31
 Brogden, —, 265
Brothers, schooner, 205-18, 220-2, 228
 Buckle, H. T., quoted, 26
 Buller, *Mr Justice*, 190
 Byron, *Lord*, quoted, 76-7
- Caley, George, quoted, 173-4, 182, 239, 242
 Camden, *Lady*, 59
 Camden, *Lord*, 8, 56, 57-61, 82, 264-5
 Campbell, Robert, charge that Bligh was in partnership with, 4; charges by Fitz, 94; Harris's complaint against, 94; action in stills case, 121-2, 123; arrest of schooner *Parramatta*, 126-7; warrant for arrest of Macarthur, 130; Macarthur's objection to, as magistrate, 143; Bligh in consultation with, 163; loyalty to Bligh, 172; Foveaux's charges against, 242-3
 Campbell, Robert, *jun.*, litigation with Macarthur, 33, 121-5, 137-8, 140; witness at Macarthur's trial for sedition, 200
 Camperdown, Battle of, 175, 178
- Casement, Sir Roger, 192-3
 Castlereagh, *Lady*, 59
 Castlereagh, *Lord*, dispatches to Bligh, 88-9, 95, 115, 118-19; dispatch from Johnston, 171, 266; T. G. Harris's report to, 194; letter from Sir H. B. Hayes, 256-7; dispatch from Macquarie, 259; instructions to Macquarie, 261, 271; decision to recall Bligh, 263
 Chapman, James, 61
 Chapman, W. N., 66
 Christian, Edward, 2, 70, 136
 Christian, Fletcher, 2, 70-1, 74
 Collins, *Col.* David, 28-9, 160
 Colnett, *Capt.* James, 66
Commentaries on the Laws of England, 136-7
 Convict labour, use by officers, 110 *et seq.*, 233
 Convicts, 15-19, 205
 Cook, *Capt.* James, 69 (and note), 73, 178
 Cooke, Edward, 95, 261
 Copenhagen, Battle of, 175, 178
 Courts of Justice, 96-7, 99, 102-3
 Criminal Court, composition of, 22, 93, 96-7, 102-5, 154-5, 160
 Crossley, George, defence of Gore, 94, 158; indictment against Macarthur, 135-7, 140, 152-3, 157-62, 163-4, 200-1; Bligh guided by, 242, 267
 Curran, J. P., 256
 Currency, 91
- Daniels, Robert, 213-16
 Darling, *Mr Justice*, 192
Dart, ship, 137, 161 (note), 205, 220
 Davidson, Walter, 56, 57, 82, 204, 251
Dictionary of Dates (Haydn), x
Director, H.M.S., 178
 Dogger Bank, 178
 Dore, Richard, 34-6, 45, 160
 Dowling, J. A., quoted, 80
 Draffin, *Lieut. C.*, 142, 212, 227-8, 230, 235
Duke of Portland, ship, 122
 Duncan, *Admiral*, 175
- Early Records of the Macarthurs of Camden*, 10, 59, 161-2, 176, 198, 205, 219, 245
Edinburgh Review, 5

- Edwards, *Capt.* Edward, 70
 Ellison, *Lieut.* William, 218, 253-4
 Erskine, *Lord*, 189-90, 191
- Farquhar, *Sir* Robert, 56, 57, 264
 Farquhar, *Sir* Walter, 56, 57, 264
 Ferguson, *Sir* David, quoted, 123-4
 Finucane, *Lieut.* James, 242
 Fitz, Robert, 3, 94, 244-6, 247-8, 253
 Fitzwilliam, *Lord*., 119-20, 264
 Flanagan, Roderick, 6-7, 11, 88, 107, 124-5, 157
 Flinders, Matthew, 34-5 (and note)
 Foss, Edward, quoted, 268
 Foveaux, *Major* Joseph, record at Norfolk Island, 80, 241; opposition to Bligh, 83, 233; succeeds Johnston as Lieutenant-Governor, 180-2; continues Bligh's arrest, 204; attack on Gore, 230; dispatches from, 230, 242-3, 248-9; commends N.S.W. Corps, 230; restores Atkins to office, 232; prosecutes Suttor for refusal to attend muster, 234-6; administration of, 241 *et seq.*; charges against Bligh, 242-3, 244; land grants by, 243, 256; denounced by Macarthur, 243, 271; charged with malversation, 249; speculation under, 247-9, 254; dismissals and appointments by, 249; influence on Paterson, 255-6; Macquarie welcomed by, 258; Macquarie's opinion of, 259
 Frazier, *Lieut.* John, 74
 Fulton, *Rev.* Henry, 242; quoted, 254
- Gatty, *Dr* Alfred, 272
 Gauguin, Paul, 71
 Gibbs, V., 194, 236 (and note)
 Gibraltar, 178
 Gipps, *Sir* George, 7 (note)
 Glatton, H.M.S., 66, 175, 178
 Glenn, *Capt.* John, 126-7, 200, 203 (note)
 Gordon, *Lord* George, 189-91
 Gordon, *Sir* James, 264
 Gore, William, prosecution of, 92-4, 96, 147, 158, 198, 224-32; evidence concerning rebellion, 151, 174, 196; action in trial of Macarthur, 163, 165, 166
 Grant, *Lieut.* James, 44, 54
- Griffin, Edmund, appointed Colonial Secretary, 85; forced testimony at bogus court martial of Wentworth, 114; evidence in stills case, 122; reply to Macarthur's memorial to Bligh, 144; examined by rebel committee, 186; evidence at mock trial of Macarthur, 200-1; affidavit and evidence in Gore case, 224, 226, 229
 Grimes, Charles, deputy *Judge-Advocate at Wentworth court martial, 114; Macarthur arrested at house of, 130; sent home with dispatches, 142, 220; co-operation with Macarthur, 148; acting Judge-Advocate at mock trial of Macarthur, 199, in Russell case, 207, 209, 212, 214-15, in Gore case, 226-7; dismissed from magistracy, 216, 219; rhyme on, 223; removed from office of acting Judge-Advocate, 228, 232; complicity in rebellion, 238; evidence at court martial of Johnston, 269
 Grose, *Major* Francis, 22, 27, 100
- Hale, *Sir* M., 190
 Hanworth, *Lord*, quoted, 268
 Hardy, Thomas, 189 (note), 190
 Harrington, brig, 239
 Harris, T. G., 187, 194-5, 261-2, 271
 Harris, *Dr* John, letter to King condemning Bligh, 3, 94; and Kemp, 96; court martial of, 65-6; Macarthur's letter to Piper, 82-3; action as Naval Officer in stills case, 121-2; advised to go home with dispatches, 142; lessee of town lands, 147; complicity in rebellion, 168-9; meeting to send Macarthur as delegate to England, 203; magistrate in Russell case, 208, 216; dismissed from office of magistrate, 216, 219; ordered home with dispatches, 218; opposition to Macarthur, 218-19, 220, 222, 238-9; rhyme on, 222; Palmer's charge against, 247; accident at picnic, 254; land grant to, 256; evidence at court martial of Johnston, 269-7
 Hasselburg, Frederick, 216

- Hawkesbury floods, 82-3, 273
 Hawkesbury settlers, 85-6, 107, 141, 177, 196, 210, 232-4, 235, 253, 273
 Hawkins, Sir James, 272
 Hawkins, W., quoted, 190
 Hayes, Sir H. B., 65, 195 (note), 228, 256-7
 Hickey, William, 251
 High, J. L., quoted, 189
 High treason, 188-94, 261, 263
Historical Records of Australia, 222, 224
Historical Records of New South Wales, 7, 186, 200, 222, 225, 246
 Hobart, Lord, 65
 Hobby, Lieut. Thomas, 64, 65, 256
 Hollywood, 71
 Holt, Joseph, quoted, 23
 Horridge, Mr Justice, 192
 Howe, Lord, 178
 Hulletts Brothers and Co., 205-6
 Hume, Andrew, 244, 247
 Hunter, Governor, disillusioned with colony, 15; evidence at Select Committee on Transportation, 18; description of N.S.W. Corps, 21; abuse of convict labour under, 22; rum traffic by Corps under, 25; attempt to replace Corps, 25; conflict with Corps and Macarthur, 27 *et seq.*, 42, 51-2, 197; dispatches from, 30-1, 35, 37; support of Macarthur, 56-7, 83-4, 197; order for court martial of Johnston, 182
 Ivory, Thomas, 207, 208
 Jamieson, John, 235 (note), 244-5, 247
 Jamison, Dr Thomas, letter attacking Bligh, 3; false certificate in Gore case, 93; dismissed from magistracy, 93; evidence at Wentworth court martial, 111-12; at his bogus court martial, 115; lessee of town lands, 147; meeting to send Macarthur as delegate to England, 203; magistrate in Russell case, 208, in Gore case, 225; opposition to Macarthur, 220; Palmer's charge against, 247; Townson's complaint against, 256
 Jefferies, W., 42
 Johnson, Dr Samuel, 189
 Johnson, William, 34
 Johnston, Lieut. George, 74-5
 Johnston, Lieut.-Col. George, Bladen on character of, 7; court martial of, 12-14, 80; arrest of Surgeon Harris, 63-5; addresses to Bligh and King, 84; influence in Gore case, 93; quarrels in N.S.W. Corps, 96; president at Wentworth court martial, 110, 112; evidence at court martial of, 116-17, 133-4, 147, 149-50, 157, 159, 170, 171-2, 176-82, 184, 237, 266, 268-70; Macarthur's action against Campbell, 121, 123, 125; arrest of Macarthur, 130; lack of support by officers, 141-2; committal of Macarthur, 143; collection of statements against Bligh, 147; accidents to, 151; refusal to attend on Bligh, 164; Bligh's letter to, 167; arrest of Bligh, 169; charges Bligh with cowardice, 176; defence at court martial inspired by Macarthur, 176, 180; responsibility for the rebellion, 180 *et seq.*; feud with Paterson, 182; plans for Bligh's arrest, 183-7; guilty of high treason, 188, 191-5; seizure of Bligh's papers, 198; proclamations by, 202; appoints Macarthur a magistrate and Secretary to the Colony, 204; case of Blaxland and Russell, 206 *et seq.*; orders Harris to England with dispatches, 218; appeals to officers for support, 219-20; dispatches from, 220, 266-7; member of court in Suttor case, 235; troubles of his administration, 238-40; charges by Principal Superintendent of Stock, 245; speculation under, 248; order to Bligh *re Porpoise*, 252; leaves for England, 255; land grants by, 256; arrives in England, 261; triable by court martial, 262; friends in England, 264; verdict of court martial, 270-1; denounced by Macarthur, 271
 Jose, A. W., 2, 10
Judges of England, The, 268
 Justice, administration of, Bligh's proposals for reform, 90-2
 Kable, Henry, 246, 256

- Keltie, James, 74
- Kemp, *Capt.* A. F., Holt's description of, 23 (and note); pipes ascribed to, 63; court martial of, 63; opposition to Johnston and Macarthur, 96; loyalty to Johnston, 142; complicity in rebellion, 150; opposition to Atkins, 163; deposition in Russell case, 210; magistrate in Gore case, 224-7; acting Judge-Advocate in Gore case, 228-30, 232, in Suttor case, 234; lampoon on, 229; relinquishes office as acting Judge-Advocate, 232; land grant to, 256; evidence at court martial of Johnston, 269-70
- Kent, *Lieut.* W. G. C., 80-1, 83, 218, 228, 230-1, 253
- King, *Mrs* P. G., 94
- King, *Governor*, letter to Banks, 9; Macarthur's attack on, 42; action in Marshall case, 44-6; Macarthur put under arrest by, 48-9; dispatch urging court martial of Macarthur, 50-2, 53-4, 161 (and note); quarrels with N.S.W. Corps, 62-7, 197; recall of, 67; savage punishment of convict, 80; relations with Macarthur, 82-5, 197; farewell address to, 84; death, 85; letters from Harris, 94, 96; view of colonial regulations, 101; grant of town leaseholds by, 146-8, 150; mess dinner in time of, 150; letter from Abbott, 183-4
- King, John, 50
- Lady Jane Shore*, transport, 223 (note)
- Lang, *Rev.* J. D., 5 (note), 5-6 (and note), 25-6, 108, 178-9
- Larpent, F. S., 267
- Laughton, Charles, 7
- Law, administration of, 98 *et seq.*
- Lawson, *Lieut.* William, support of Johnston, 142, 230; complicity in rebellion, 150; meeting to send Macarthur as delegate to England, 203; magistrate in Russell case, 216, in Gore case, 224, 226, 228, 230; Paterson welcomed by, 251; land grant to, 256
- Laycock, *Lieut.* Thomas, 142, 150, 212, 224, 227-8, 230, 235, 254, 256
- Liverpool, *Lord*, 194, 231, 264
- Log of the "Bounty"*, 71-4
- Lord, Simeon, Bligh's condemnation of, 92; imprisonment of his partner Underwood, 93; owner of copy of Blackstone's *Commentaries*, 136; opposition to Bligh, 168; subscription to Macarthur's expenses as delegate to England, 203; connexion with Russell case, 208, 209-12, 216, 218, 219-20, 222; complicity in rebellion, 238; appointed vendue-master, 243; land grant to, 256
- Macarthur, *Mrs* John, 48, 107
- Macarthur, Edward, 264
- Macarthur, James, 161-2
- Macarthur, John, letters to his wife, 1, 261; praised by Sydney Smith, 5; Norrie's account of rebellion, 8-9; Bligh's alleged insulting language to, 10-14; intellectual standard, 26; removed from civil command, 27-8; quarrel with Atkins over turnip stealing, 27-31; part in Hunter's recall, 30-1; evidence at trial of Wright, 33-4, 36; Hunter's report on, 37; attack on Dr Balmain, 38-41; Marshall assault case, 42-6; King's report on, 46; duel with Paterson, 47; put under arrest, 49; King's dispatch on, 50-2; relations with Phillip, 52-3; theft of King's dispatch, 53-5; Camden grant, 56-8, 60-1, 82, 87, 95; propaganda in London, 66; tenacity of character, 78; building lease at Sydney, 82; letters to Piper, 92-3 (and note), 96, 141-2; relations with King, 82-5, 197; addresses to Bligh and King, 84; repudiated by free settlers, 85; appointment of jailer favourable to, 94; committed for trial for sedition, 96; opposition to Governor's Orders and Regulations, 100; jurisdiction of Criminal Court in charges against, 103-4; suit over promissory note, 107-9; part in Wentworth case, 113, 120; case of the imported stills, 121-5, 137; enforcement of Parramatta bond, 126-9, 138; arrested on charge of sedition, 130 *et seq.*; efforts to overthrow Bligh, 141 *et seq.*;

- Macarthur, John—*continued*
 demand on Atkins, 143-5; memorial to Bligh, 144; refusal by Bligh of town leaseholds, 146-50; distribution of liquor by, 151; trial, 152 *et seq.*; possession of copy of indictment, 160-2; rearrest, 166; part in arrest of Bligh, 167 *et seq.*, 183-7; released by Johnston, 169-70; conduct during rebellion, 174; Johnston's defence at court martial inspired by, 176, 180-1, 184-5; Colonial Secretary under Johnston, 180; guilty of high treason, 188, 191-4; character of, 197-8; seizure of Bligh's papers, 198; petition for removal from Colonial Secretaryship, 199; mock trial for sedition, 199-202; appointed delegate to England, 203; magistrate and Secretary to the Colony, 204; action in Blaxland and Russell case, 205 *et seq.*; Johnston's appeal to officers for support, 219-20; Townson's criticism of, 221-2; affidavit in Gore case, 224 *et seq.*; Hayes's testimony against, 228; inducements to Atkins, 236-7; real ruler during Johnston's administration, 238-40; land grant by Foveaux, 243; charges by Principal Superintendent of Stock, 244-5; charges by Palmer, 245-50; leaves for England, 255; arrives in England, 261; not triable in England, 262; friends in England, 264-5; evidence at court martial of Johnston, 270; verdict affected by his influence over Johnston, 270-1; enforced exile, 271; hatred of Bligh, 272
- Mackness, George, 1, 21, 70, 74, 81, 260, 272
- McKay, Daniel, 92, 94, 198
- Macquarie, *Governor*—reaps benefit of Bligh's agitation for legal reform, 160; condones acts of rebels, 193 (and note); proclamation on rebellion, 197; denounces the Blaxlands, 221; restores Gore to office, 230; Foveaux's boast to, 244; dismisses Jamieson, 249; arrives at Sydney, 258; attitude to Bligh, 258-61; opinion of
- Macquarie, *Governor*—*continued*
 Foveaux, 259-60; dispatches from, 259; instructions to, 261
- Mann, D. D., 147
- Mansfield, *Lord*, 190
- Margarot, Maurice, quoted, 24
- Marlborough, *Lance-Corporal* M., 177
- Marsden, *Rev.* Samuel, 18-19, 47, 82-3
- Marshall, *Lieut.* John, 42-6, 48, 211
- Mason, Martin, 248
- Mileham, James, 220
- Minchin, *Lieut.* William, letter attacking Bligh, 3; sent home with dispatches, 142, 220; complicity in rebellion, 150, 169; meeting to send Macarthur as delegate to England, 205; magistrate in Russell case, 208, 216, in Gore case, 224; rhyme on, 223 (and note); writ by Gore against, 231; petition to Lord Liverpool, 231; land grant to, 256; evidence at court martial of Johnston, 268, 270
- Minto, *Lord*, 254
- Minto, 237
- Monopoly, 23-5, 85, 131, 247, 275
- Montgomerie, H. S., 2, 14, 25, 70, 119 (note), 253
- Moore, *Lieut.* Thomas, 150, 203, 212, 224, 227-8, 230, 256
- Nelson, *Lord*, 175, 178, 272
- New South Wales Corps, constitution, 21-2; monopoly exercised by, 22-6; charge against Isaac Nichols, 32-6; attack on Dr Balmain, 38-41; court martial of officers, 56-66; welcome to Bligh, 84; removal urged by Bligh, 90; conflict with Bligh, 96, 117-18, 274; internal quarrels, 96, 141-2; mess dinner, 150-1; arrest of Bligh, 172-4, 191; evil influence on the colony, 196-7; Macarthur's testimony against, 197, 271-2; Johnston's thanks to, 202; imputation of partiality in Russell case, 218; Foveaux's praise of, 230; Suttor's criticism of, 236; Bligh's proclamation, 249-50; proceedings not taken against for part in rebellion, 270
- Nichols, Isaac, 32-6, 92
- Nore, mutiny at the, 79

- Norfolk Island, 80, 241, 251, 259
 Norrie, *Dr Harold*, 8-9
 Northumberland, *Duke of*, 264-5
- Oakes, Francis, 111, 114, 130, 138, 162, 200
 O'Connell, *Sir Maurice*, 258
 Oxley, John, 253
- Palmer, John, evidence before
 Select Committee on Transportation, 23; bearer of Balmain's letter to Macarthur, 38-40; evidence at trial of Macarthur, 52-3, 200; loyalty to Bligh, 94; magistrate in stills case, 121, 123; warrant for arrest of Macarthur, 130; in consultation with Bligh, 163; Foveaux's charges against, 242-3; reports on rebel speculations, 246-50
- Pandora*, H.M.S., 70
 Parker, *Admiral*, 178
Parramatta, schooner, 126-9, 132, 138, 205, 221
Parramatta Hospital, 110 *et seq.*
 Paterson, *Mrs W.*, 48
 Paterson, *Lieut.-Col. W.*, abuse of convict labour under, 22-3; military dictatorship under, 27, 100; magistrate in Marshall case, 43-7; quarrel with Macarthur, 47-9, 50-2, 53, 55; ill-health of, 65, 254; lessee of town lands, 147; Johnston's unwillingness to hand over government to, 181, 184; Foveaux succeeded by, 182, 251; induced to continue Bligh's arrest, 204; tool of Foveaux, 230, 255-6; land grants by, 237, 248, 255-6; letter from Foveaux, 242-3; Fitz suspended by, 247-9; dispatches from, 250, 254-5; agreement for Bligh to return to England, 252-3; letter to Banks, 255; Hayes's account of his administration, 257; denounced by Macarthur, 271
- Pegasus*, ship, 247
 Phillip, *Governor*, 51-3, 104, 146-7, 196 (and note)
 Phillips, Charles, 256
 Phillips, Marion, quoted, 110, 267
 Piper, *Capt. John*, magistrate in Marshall case, 43; Macarthur's second in duel with Paterson, Piper, *Capt. John—continued* 48; letters from Macarthur, 62, 82-3, 96, 141-2; Bligh's alleged instructions to, at Norfolk Island, 80; letter from D'Arcy Wentworth, 119 (note); statement on absence of snakes at Vacluse, 257
 "Plea for a Constitution" (Bentham), 99
Pleas of the Crown, 139
 Plumer, *Sir Thomas*, 194, 263 (and note)
 Pollock, *Baron*, 268, 272
 Polwhele, *Rev. Richard*, 272
 Pope, Alexander, quoted, 258
Porpoise, H.M.S., 243, 249, 251-2, 253
 Porteous, *Capt. John*, 251, 253-4
 Portland, *Duke of*, 40, 50
 Promissory notes, 106-9, 200
Providence, H.M.S., 79
 Putland, *Lieut. John*, 81
 Putland, *Mary, Mrs.*, 81, 172, 252, 258
- Rawson, Geoffrey, 2, 11, 70, 77
 Regulations, 98 *et seq.*
 Reily, —, 94, 166, 168-9, 170-1, 198, 256
Resolution, H.M.S., 178
 Russell, Oliver, 205-18, 220-2, 228, 232
 Rutter, Owen, 2, 11, 70, 77
- Scott, *Capt.*, 209
 Scott, *Prof. Ernest*, 11
 Sedition, 134 *et seq.*
 Select Committee on Transportation (1812), 17, 22-5, 79, 119
 Selkirk, *Earl of*, 272
 Shann, *Prof. E. O. G.*, 11, 131
 Shelley, P. B., quoted, 118
 Sheep, Bligh's alleged insult to Macarthur, 10-14
 Short, *Capt. Joseph*, 83
 Smith, —, 32-3
 Smith, Sydney, quoted, 5, 16, 59
Speeches (Erskine), 189
 Spirits, traffic in, 21-5, 68-9, 83-4, 87-9, 91, 92, 94-5, 197, 239, 246, 253
 Stephen, J. F., quoted, 135, 188 (note), 188-9
 Stills, importation of, 121-5
 Sullivan, *Serjeant*, 192

- Sutherland, *Sergeant*, 177
 Sutton, *Rt Hon.* C. Manners, 14, 157, 159, 271
 Suttor, George, 232-6
Sydney Gazette, 106, 253, 269
 Sydney Hospital, 119 (and note)
 Sydney Loyal Association, 84
 Symons, *Lieut.* James, 208, 212, 216, 219
- Tahiti, 70-1, 73-4, 78, 126
 Tench, *General*, 176
 Thompson, Andrew, 107-8, 200, 243, 256, 271
 Townson, *Dr Robert*, 3, 203, 221, 238, 256
- Ultimo, 169
 Underwood, James, 93, 256
- Vaocluse Estate, 257
- Walker, Frank, 11
 Wallis, *Capt.* Samuel, 73
Warrior, H.M.S., 74-5
 Watson, —, 56, 57, 59, 264
- Watson, *Dr Frederick*, quoted, 16, 42, 53-4, 182, 186, 208, 225
 Webb, T. P., 101
 Wentworth, D'Arcy, letter attacking Bligh, 34; court martial and suspension of, 110 *et seq.*; meeting to send Macarthur as delegate to England, 203; declaration on petition for Bligh's arrest, 238; land grant to, 256; Lord Fitzwilliam patron of, 264
 Wentworth, W. C., 3-6, 175, 178
 Whittle, *Sergeant-Major* T., 147 (and note), 150, 151, 202, 256, 269
 Williams, C. F., 267
 Williamson, James, 245, 248
 Windham, *Rt Hon.* W., 13, 88, 91, 113
 Winter, *Admiral* de, 178
 Wool industry, Bligh's attitude to, 13-14; Macarthur's advocacy of, 56-8
 Wright, Samuel, 33, 34
 York, *Duke of*, 147, 264

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