

Executive Council.

Monday. 7th January. 1807.

Present:

H. S. Gov^r Robinson
R R Griffith Esq^r
A Bailey Esq^r
H Syring Esq^r

The Council met pursuant to Summons.
The Minutes of the Council held on the 27th
August 1806 and the preceding Meeting were
read amended and confirmed.

H. S. The Governor then laid before the
Council an application from Captain Sibbald
n.r. Clerk of the Courts, for leave of absence for
one year to proceed to England on urgent
private affairs.

The letter was then read, and His Excellency
in proposing that Captain Sibbald's application
should be granted requested the advice of the
Council thereon.

The Members were unanimous in
expressing their opinion that after eleven years
continuous service in these Islands, Captain
Sibbald was entitled to the 12 months leave
he had applied for, and that such leave
should commence from the date of his
departure from the Colony.

The Council then adjourned sine die.

(The letter from Capt.
Sibbald above referred to
will be found in Book No. 2. 16.
"Jan 3 1807")

Executive Council.

Tuesday. 14th May. 1867.

Present: - H.L. the Governor
and all the Members.

The Council met pursuant to Summons.
The Minutes of the last preceding meeting
were read and confirmed.

The Governor said that he wished to call
the attention of the Council to a letter he
had received from Mr. Turpin with reference
to the prevention of Scab among Sheep. Mr
Turpin complained that the Falkland Islands
Company's Sheep affected with Scab were
continually being depastured on land
contiguous to Captain Packes to the
inherent danger of his flock.

The Governor said that the Sheep-farmers
were undeniably entitled to all such
protection as it might be in the power of
Government to extend to them, and
asked the opinion of the Council as to the
propriety of introducing the Canterbury
(New Zealand) Ordinance in a simplified
form.

A long conversation ensued the result
of which was that the Members unanimously
advised His Excellency to propose to the Legisla-
tive Council an Ordinance & to meet the
case.

The Council adjourned sine die

Wynn.

Executive Council21st June 1867.

Present: His Excellency the Governor.
The Hon^{ble} D Griffiths
" " A Bailey.
" " M Byng.

The Council met pursuant to summons.
The Minutes of the last preceding meeting
were read and confirmed.

The Governor laid before the Council
the Secretary of State's despatch No 25
of the 5th January and a set of
Regulations for the disposal of the
Crown Lands on the West Falkland
Island, which were unanimously
adopted.

The Council was then adjourned
sine die.

M Byng.
Clerk to the Council.

Minute addressed to Governor by Members of the Executive Council on the subject of Wild Cattle on the West Falklands.

We have considered the question as to the expediency of preventing the destruction of wild cattle on the occupied lands on the West Falkland Island without the Crown in some way benefiting or receiving some compensation for their value and beg to submit to your Excellency the following remarks on the subject.

We think that it is unnecessary for us to refer at length to the working of the existing law since the recent decisions of the Privy Council in the East Falkland Island indicate as much as it is now impossible or at least impracticable to alter it, and we therefore shall simply express our opinion that it has not been so successful as was hoped for or could be wished, but on the contrary has been in many respects injurious both to the occupiers and the general interests of the Settlement. The occupiers generally have not been actuated for the most part by a desire to encourage the rearing of tame cattle and providing produce for market, but rather by a reckless destruction of wild cattle wherever they dared to get a livelihood themselves by the sale of the hides, in fact we have reason to believe some took out the licence for that purpose alone, and without a thought of doing anything to benefit the land. This has fostered habits of lawlessness and contempt for honest industry - for the hunting and killing wild cattle is to them an amusement, and they care very little where they kill knowing that the power of the Government to stop them is extremely limited. They thus destroy valuable meat, as they leave the carcase on the ground to rot and this at a time when meat is likely to become scarce or at all events of inferior quality.

The

The settlement is now with difficulty supplied by only one firm, and it is probable that before long the price of meat in Stanley will be almost ruinous. The experience therefore of the working of the licensees being allowed to kill indiscriminately on the East Falkland does not encourage us to look with a favourable eye at such a practice being allowed on the West Falkland. We think that the right of killing all wild cattle there should be reserved to the Government, & to be parted with on such terms as may be prescribed. The property in them is a valuable property and one certainly that no private individual would part with without some adequate return. Such a return could be secured either by sale of the whole ^{of the cattle} upon certain conditions or else by the retention of the cattle on the land for the encouragement and benefit of settlers. As to the fish there are many arguments in its favour, for we have no doubt that solvent purchasers could have been found, and it is possible that arrangements could have been made for the settlers obtaining cattle from the purchasers. On the other hand we think the presence of the cattle are a great inducement to colonists to take up land and that the Government should as much as possible encourage all endeavours to colonize the Island, and promote real agricultural industry, and therefore we should be loath to put difficulties in the way of the settlers having on the spot upon reasonable terms the means of living and procuring stock. We therefore think that the second of the two means is the best, but to do this without some recompence to the Government would

would in our opinion be most unwise.
The practical result of allowing the licensees
to kill without restraint would be that it
would be in the power of the holders of
occupation licenses in many cases to pay
for the importation of sheep by killing the
Government Cattle, and should they think
it not worth while, or be in other respects
disinclined to import sheep or to take
leases, to kill as many cattle as possible
in the year, give up their holdings, and
carry away the proceeds without the govern-
ment receiving one farthing or any benefit
except the nominal amount of payment for
the occupation license.

As this is possible, and we think not
improbable, the necessity of an Ordinance
to try and put a stop to it is in our opinion
very evident.

Upon the whole we beg therefore to submit
to your Excellency, that the Ordinance to pre-
vent killing wild cattle on any lands on
the West Falkland without permission should
be passed and in conclusion to express our
opinion that no objection will be made to it
by any respectable colonists for their interest
obviously is to enhance the value of their
own property, and prevent possible invasion
of their rights by men whose sole object would
be to get as much out of the government as
they could by paying as little as they were
obliged.

/s/ W Griffiths

/s/ Arthur Bailey.

/s/ H Byng.

Executive Council

Tuesday 14th January 1868.

Present

His Excellency the Governor
 The Honble E. R. Griffiths
 " " Arthur Bailey
 " " Henry Byng.

The Council met pursuant summons. The Minutes of the last preceding Meeting were read and confirmed.

The Governor stated that he had summoned the Council for the purpose of Considering a Petition from Captain David Miller R.N. against an order of the Magistrates Court withdrawing the Injunction which restrained the Purchaser of the Wreck and cargo of the Coquimbo from moving the property out of the Jurisdiction of the Court pending the issue of the trial, the Captain Miller having given notice of an Appeal to the Governor in Council against the judgment of the Court consequent on the verdict of the Jury in the said Cause.

Captain Millers Petition was then read by the Clerk.

To His Excellency the Governor in Council.

The Petition of Captain David Miller R.N. sheweth that the petitioner Appeals to His Excellency the Governor in Council against the Order of the Magistrates Court of January 6th 1868. removing the Injunction restraining Louis Piedra Buena and any persons claiming an interest in the wrecked Vessel Coquimbo or cargo from taking the said wreck or any portion of her cargo out of the Jurisdiction of the said Court.

The petitioner grounds his Appeal on the consideration that a trial cannot be said to be over until if an Appeal is made - such Appeal is decided - and on the evident practical utility of any Appeal to a superior court in the case of the Coquimbo recently tried in the Magistrates Court and concerning which the petitioner herewith forwards an Appeal by petition to His Excellency the Governor in Council against the judgment of

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of the Magistrates Court given on the 6th instant with reference to the Verdict of the Jury of the 27th December 1867. If such injunction is removed. Because in the event of the superior Court giving judgment favourable to the petitioner the property in question would be most probably out of reach - And the petitioner prays that the Injunction may be continued in force until final judgment be given.

The Petitioner begs to forward herewith a copy of all evidence, proceedings, judgments, decrees and Orders, had or made in the case concerning which this Appeal has been made which Copy has been furnished him from the Court on his Application. Although they are not attested as he requested by letter. There are only a few points in the evidence so furnished which he wishes to correct viz. Instead of saying "I don't know whether the Vessel was insured elsewhere it might have been in Coquimbo" I said "The Vessel was believed to be insured also at Coquimbo to an amount unknown" Also when asked by M^r. Dean if the underwriters had received the 690 £ paid at the sale for ship and cargo I replied that I did not know but supposed that they would repudiate the whole business. Also when asked by M^r. Dean what my instructions were. I said - That I was to bring Ship and cargo home if I found them here, and the ship was repairable at a reasonable cost and if I did not find them here I was to follow them up. Also when asked by me if he had enquired of Captain Boden about his insurance M^r. Dean said No. My question of course referred to where and to what amount he was insured.

Furthermore the petitioner begs to state that on 19 December 1867 M^r. Dean stated in the Magistrates Court that if a certain Letter of Introduction brought out from England by me had been presented when I arrived that no Opposition would have been made to me - thereby practically acknowledging my right to the property in question - I called the attention of the Court to his Observation, and asked upon what principle he still continued to contest the question

(Signed) David Miller.

Stanley

Falkland Islands

January 13th 1868.

The Governor

The Governor stated that he had been in communication with the Magistrates for the purpose of ascertaining their grounds for withdrawing the Injunction, as it was obviously desirable that he should be in possession of the reasons upon which they acted before proceeding to the consideration of the Appeal.

The following correspondence was laid upon the table. The Governor was happy to express his belief that the Magistrates had acted in good faith and with an earnest desire to do right but he considered that the removal of the Injunction under the circumstances was an error in judgment which might have led to unpleasant complications had the parties in possession availed themselves of the opportunity to move the property out of the jurisdiction of the Court. The Governor could not see that the Injunction did injury to any one. It cost nothing to enforce it. It did not prevent the purchaser from wrecking and saving cargo. It simply went to say that the property must remain within the jurisdiction of the Court until the law had decided to whom that property lawfully belonged.

Captain Miller 6 Jan
Govt.

The law of the Colony provides for an appeal to the Governor in Council from the Magistrates Court and he concurred with Captain Miller that when a person gives notice in Court of his intention to appeal therefrom to the Governor in Council, the case cannot be considered as finally completed until such appeal has been heard and decided. He therefore thought that an appeal - having been formally commenced against the verdict of the Jury, and the subsequent judgment of the Court in the case of Miller v. Piedra Buena it would be right to renew the injunction on the property in dispute pending the issue of such appeal. Unless the Injunction be renewed there is nothing to prevent Don Luis Piedra Buena from taking the property away from the Colony, and should the appeal be given in favour of Captain Miller, neither Don Luis Piedra Buena nor the property would be forthcoming, which he considers would be a blot on the good name of the Colony. Mr. Griffiths concurred that it would have been well to have allowed the Injunction to remain in force pending the appeal as aforesaid, but he thought that perhaps instead of renewing it, it would be better to ask Mr. Dean as Agent for Don Luis Piedra Buena to give a guarantee that the property should not be removed from the jurisdiction.

Jurisdiction until after the Appeal, and that Captain Miller should be asked to accept such guarantee instead of pressing for the injunction. The Governor concurred. Mr. Bailey (who repeated the arguments contained in the 2nd and 3rd paragraphs of the Chairman's letter of the 13th January) and Mr. Byng concurred.

Captain Miller and Mr. Dean were summoned.
Captain Miller agreed to accept the guarantee.

Mr. Dean at first refused to give any guarantee whatever. He said he was about to send the Barley (the portion of the cargo which had been already saved) to Montevideo and he gave the Council to understand that since the removal of the injunction he had sold portions of the wreck to Settlers on the West Falkland, and that therefore he would not undertake not to remove either the Barley or the wreck out of the jurisdiction. The copper he was eventually prepared to say would not be taken away.

Captain Miller agreed to waive the question of the injunction being placed on the Barley, and the Governor after mature consultation with the Council and with unanimous consent made the following order on the back of the petition

To the Hon^{ble}

The Chairman of the Courts.

The within Petition of Captain David Miller R.N. having been this day taken into consideration by the Governor in Council it is hereby ordered that the said injunction shall be from and after this date renewed in the following words. Viz -

That the said Luis Piedra Buena and any persons claiming under him, or any other persons claiming an interest in the said Wreck and cargo be enjoined from taking the said Wreck or any portion of her cargo, the Barley only excepted out of the jurisdiction of the said Court, pending the result of an Appeal now commenced before the Governor in Council against the judgment of the Magistrates Court in the said cause.

th
14th January 1868.

(S^d) William Robinson (Governor.)

The Governor adjourned the Council

Note. The correspondence referred to will be found in the ^{civil & naval} Guard and letter books of the period.

Executive Council

22nd January. 1868

Present

His Excellency the Governor
 The Hon^{ble} E. R. Griffiths
 " " Arthur Bailey
 " " Henry Byng

The Council met pursuant to adjournment

The Minutes of the last meeting were read and confirmed.
 The Governor stated that he had called the Council for the purpose of considering an Appeal to the Governor in Council from the Magistrates Court in the case of Miller v. Piedra Buena and considered that it would be right to conduct the business with open doors in order that all sides might hear and cross question the witnesses. His Excellency said that he had fortunately been able to obtain a survey on the wreck by competent and impartial Naval Officers whose report would presently be read to the Council.

Public Admitted Accordingly.

The Governor read the following Address.

Gentlemen of the Executive Council.

I have called you together to day in order that I may avail myself of your experience and assistance in considering an Appeal to the Governor in Council from the judgment of the Magistrates Court in the Case of Miller v. Piedra Buena.

Although the broad facts of this important case are pretty generally known, it will be convenient to glance at them briefly before entering upon the consideration of the appeal.

On the 31st of May last the "Coquimbo" a British Barque of 484 tons laden with Bar Copper and Barley and bound from Valparaiso to Bristol was wrecked on Ypsen

Patch, a shoal of considerable extent lying outside Yessen Islands in the Falkland Sound. The Master (Thomas Boden) Arrived in Stanley On the 15th of June, having left the Mate and crew and compass on one of the islands in charge of the wreck. The Master says in effect, in his Protest that having advertised for tenders to wreck the ship and receiving none that were favourable, and having consulted with those persons in Stanley best Capable of giving him advice upon the subject he thought it better to sell the wreck and cargo for whatever they might bring, than run the risk of losing everything by the breaking up of the Vessel. The wreck and cargo were accordingly sold by public Auction on the 19th of June for £690. The ship when she left Valparaiso was probably worth £3,000. the Copper and Barley were I understand valued at about £13,800. When the intelligence of this transaction reached the Underwriters the Salvage Association Appear to have lost no time in despatching a special Agent to the Falkland Islands to look after their interests in the Matter. Captain Miller, the Special Agent referred to arrived in the Colony on the 28th November and having previously obtained an Injunction restraining all persons from moving the property out of the jurisdiction of the Court pending the issue of the trial brought an action as Agent for the Underwriters at Lloyds Against Don Luis Piedra Buena, the registered purchaser of the wreck and cargo claiming possession of the property on the ground that the master sold without necessity, and without lawful cause. The case was tried on the 27th Ultimo and received a patient hearing. The Jury (composed I am told of some of the most intelligent and probably impartial jurors on the list) found for the Defendant and on the 6th instant judgment was entered accordingly.

Against this judgment Captain Miller now appeals to the Governor in Council, stating inter alia in his Petition that the Verdict of the jury was not according "to law" and that part of the evidence was of little or no value.

The leading points to be considered by us are
 (1) What does the law of England expect and require of a merchant in the event of his Vessel being shipwrecked? and (2.) Did the Master of the Coquimbo act or did he fail to act, in accordance with the requirements of that law? The evidence given in the Magistrates Court, on which the Jury came to a verdict, and which must not on any account be lost sight of goes to show that in the opinion of the witnesses Captain Boden's conduct was prudent

and right. Whether it was so or not in the opinion of this Court of Appeal is just the Point which we are now called upon to decide.

You will readily believe that I have spared no pains with a view of arriving so far as I am personally concerned at a clear apprehension of the laws which affect this question. Aided by my legal adviser, I have gone carefully through the best authorities within my reach, and I have come to the conclusion (a conclusion in which my legal adviser concurs) that the following is a correct summary of the law as it stands.

The paramount duty of the Master is to carry the cargo entrusted to his care to the place of destination. The disposal of the cargo in case of shipwreck is a matter that requires the utmost caution, and the conduct proper to be adopted with respect to perishable goods will be improper with respect to a cargo not perishable. Lord Chief Justice Tenterden says. "The wreck of the ship is not necessarily followed by an impossibility of sending the goods forward it does not of itself make their sale a measure of necessity or expedience much less can the loss of the season or the proper course of the voyage have this effect. An unexpected interdiction of commerce, or a sudden war may defeat the adventure and oblige the ship to stop in her course, but neither of these events doth of itself alone make it necessary to sell the cargo at the place to which it may be proper for the ship to resort. In these and many other cases the master may be discharged of his obligation to deliver the cargo at the place of destination, but it does not follow that he is authorised to sell it, or ought to do so. What then is he to do? in general it may be said he is to do that which a wise and prudent man will think most conducive for the benefit of all concerned. In so doing he may expect to be saved, because the Merchant will not have reason to be dissatisfied but what this thing will be no general rules can teach. Some regard may be allowed to the interest of the ship and of its owners, but the interest of the cargo must not be sacrificed to it. Transhipment for the place of destination, if it be practicable, is the first object, because that is in furtherance of the original purpose; if that be impracticable return or a safe deposit may be expedient. A disadvantageous sale (and almost every sale by the master will be disadvantageous) is the last thing he should think of, because he can only be justified by that necessity which supersedes all human law". It

It is not sufficient that in the selling the Master acts in good faith, and according to the best of his judgment, unless there be an absolute necessity for the sale, and unless the Master actually does what is best to be done for the benefit of all parties concerned, the purchaser acquires no title. (Vide cases quoted in Lee's Laws of Shipping pag 74.) In brief, the law expects the Master will act as a prudent man, uninsured being the owner of the property, would act if on the spot. This being the law (and I must say it appears to me to be founded on the highest principles of justice and common sense) the case lies in a narrow compass. The question which having carefully considered, ^{the evidence given in the Magistrate's Court, having carefully enquired} the Appellants Allegation that that evidence is of little or no value, and having enquired into the matter in such further manner as shall appear to the Council to be necessary for arriving at a sound and just conclusion - the question I say, which it will then be my duty to ask myself is whether I being the uninsured owner of that ship and cargo, would have acted, if on the spot, as Captain Boden acted, or whether on the contrary I would have acted as the Appellant maintains it was his duty to act? According to the answer which I shall make to this question, so will I give my voice for the confirmation or reversal of the judgment of the Magistrates Court. It will be your duty Gentlemen to ask yourselves individually the same question and to answer as your consciences shall dictate.

Captain Miller here asked for somebody to appear for him, and suggested Mr. Bull which was allowed.

Mr. Dean appears for Don Luis Piedra Buena.

Captain Miller's Appeal read (Vide Appeal.)

Report of Captains Mayne and Wilson read (Vide Report.)

Mr. Dean asked that Don Luis Piedra Buena might be admitted. The Governor remarked that the doors were open to the public and that if Mr. Dean wished to summon any witnesses other than those present he was at liberty to do so.

Captain Mayne

Captain Mayne R.N. Sworn.

I am Captain of H.M.Ship
"Nassau" This is my signature. (signature of Report shown.)
I do not wish to alter one word of that Report.

Examined by Mr. Bull on behalf of Captain Miller.

The Captain might have stored the barley
on the Island between the time of the wreck and now.

Mrs. Bailey to Captain Mayne.

You say in your Report that
it would take 50 working hours to get the Copper now but would
it have taken longer when the barley was on the top. (Answer.)
The Barley must have been removed before the Copper could be
touched, but as I understand that the barley was not under
water or very little so the difference of time would have been
very slight.

By Mr. Bull.

Instead of selling the cargo the Captain might
of course have gone on working at the barley and cargo. No
extraordinary precaution involving much time and expense
have been apparently taken to retain her (the wreck) in
her present position. I can't say what would be the mo-
ney value of laying out anchors. There would have been
no difficulty in the Captain laying out a second anchor
that is to say if he had a suitable boat.

By Mrs. Bailey.

On my last voyage from the Straits I found
there was a slight current of which there is no notice in the
sailing directions. I never heard that the Chart of the
West Falkland was incorrect. I consider it good and
quite suitable for all purposes of navigation. If there
was anything very wrong it would be noted by the Ad-
miralty on the chart. This is always done in such cases

By Mr. Bull.

I don't consider that Captain Boden acted wisely
in selling the cargo - or as a seaman. I know the character
of the weather in these latitudes owing to my being employed
in the Straits of Magellan. On the average there are 2 $\frac{1}{2}$
working

working days in the week, and Luis Piedra Buena says a week in a month is the average here. A Schooner might anchor close to the Patch but would have most likely to weigh when a gale comes on. I have never been in the Sound before.

By Mr. Dean.

I have never seen a cargo of wet barley or wheat. I don't think there would be any great difficulty in removing wet Barley. If under water divers would have to be employed. I can't give an opinion as to whether it would be more difficult to get wet barley or anything else.

Mr. Dean objects to the receipt of fresh evidence. He considers that the Council is limited to the re-examination of former witnesses. He also considers that it is impossible for the present witnesses to judge of the circumstances under which Captain Boden considered it necessary to sell his vessel and cargo months ago, in support of which he quotes Arnold on Marine Insurance Vol 2. page 948. 3rd ed. He also produces Arnold on Marine Insurance, as to sale of ship and cargo by the Master; and refers to case of Farnworth v. Hyde. The Governor remarked to the Council that they were constituted a Court of Appeal from the Magistrates Court by local law, and their powers as such were fully indicated in Sections 9 and 10 of Ordinance No. 10 of 1853.

Captain Wilson Sworn.

I abide by that Report.

That is my signature (to Report.)

By Mr. Bull.

Considering that the Master was able during one week to go on board 5 times in a small boat, I see no reason why with proper appliances he should not have continued to save the whole of the cargo and store it on the nearest island, especially, when you consider that the water at the time was only up to the lower deck beams. I have been through the sound in fine weather. In January 1867. We passed the Tyssen Patch $\frac{1}{2}$ a mile off and saw it. The sea was perfectly smooth as it generally is on a Kelp patch.

By Mr. Dean.

I don't know how long it would take to get out 480 tons of Barley in an ordinary pinnace with 17 men, some of them employed at other work. If I had been in the Captain's place I should not have attempted to save the Barley. I should have pitched it Overboard for the sake of getting the Copper.

By Mr. Bailey.

Throwing the barley Overboard would have endangered the vessel by lightening her, but she had two anchors to secure her. There is no deep water for a vessel to go down in. There is an advantage in her going into deeper water, because there is less freeboard, besides which if the preservation of the cargo was the primary object the mast should have been cut away and the hull secured.

By the Governor.

I think decidedly that two anchors ought to hold the vessel in her position in any weather that she is likely to experience in these seas.

By Mr. Bull.

It was unnecessary to put ballast in if the barley was taken out.

William Uriah Davis (Sworn.)

I am diver on board the "Narcissus" I abide by what is said in the Captain's Report in connection with my name. There would be no difficulty in getting up the Copper. There should be two men. I mean one man under water at the time and one above. In 50 working hours I could get it up the barley having first been cleared away from the top.

By Mr. Bull.

I have been a diver between 4 and 5 years. I have never dived in such thick Kelp. I think that there would be 2 hours each tide slack water.

By Mr. Bailey.

I could not work in a 4 knot tide. There would be no difficulty with the kelp here, as the ship has crushed it.

it down. I have been with a diving party for treasure in Ceylon. In cold weather I could not stay down so long as in warm.

By Mr. Dean.

I could dive effectively in a 2 knot tide. I could ~~not~~ dive effectively in a $2\frac{1}{2}$ knot tide, but not in a 3 knot tide.

Captain Mayne recalled.

I think that at the Gysen Patch at least half the day would be good for diving. The probable effect of a Southerly gale would be to drive her further North and tend to secure her. The character of the bottom is sandy with stones.

Captain Wilson recalled.

I think that except in spring tides and extraordinary occasions the tide at the Gysen Patch does not exceed 2 knots. I consider it would take more than one southerly gale to knock the ship to pieces.

Captain Miller sworn.

By Mr. Dean.

I am not personally interested in the cargo. I have no stake in it. I never underwrote at Lloyds or any other Office. I never saw the Policy. I don't know the underwriters of the ship and cargo personally.

Mr. Dean wishes it noted that Captain Miller does not hold the Policy of Assurance and that that the Bills of lading are not endorsed.

The Governor asked Captain Miller and Mr. Dean whether they wished to ask any more questions or call any further witnesses, to which they replied in the negative.

The Public then withdrew in order that the Council might proceed to deliberate on the evidence.

X The Governor proceeded to ask the members their opinion as to the question before the Council. He said, for his own part, he did not hesitate to say at once that the Report sent in by the Naval Officers - Officers of high character and position in Her Majesty's Service whose word was beyond suspicion and who were preeminently qualified to give an authoritative opinion in matters relating to shipping was

quite conclusive. The Report it must be borne in mind was that of Gentlemen who had actually visited the wreck, who had carefully studied her position and condition and what did they say? Why that she had been and was not then in any danger of moving or going to pieces. And what did the diver who accompanied the Officers say? That 50 working hours would suffice to get up the Copper - either from its present position in the wreck, or from the bottom, it was immaterial which, as neither the Kelp nor the tides of the Sound would prove any impediment to diving operations. In the face of this evidence it was quite impossible for him to come to any other conclusion than that there was no necessity whatever for the sale of the Copper and that under the circumstances in selling as he did, the Master evinced a reckless disregard for the interests of all concerned. Against the testimony of the Naval Officers and the Diver must of course be placed the evidence given in the Magistrates Court and on which the Jury came to a decision approving of the Master's conduct, but it must be remembered that if those who gave evidence in the Court not one except the purchaser had ever been on board the wreck or even within two miles of her. How was it possible for men under such circumstances to express any opinion worth having in the matter. Far be it from him to say that the witnesses swore falsely, but he must confess after what they had heard that day that he concurred with the Appellant that the evidence given in Court was of "little or no value" as compared with that of competent persons who had actually visited and examined the ship. In conclusion the Governor said that while he felt called upon to express openly and freely to the Council the opinion to which he had come, he earnestly hoped the members would not be influenced in the slightest degree by anything he had said. His Excellency wished each member to be guided solely by what he felt in his own conscience to be just and right.

M^r Griffiths said that in view of the clear and decided evidence of Captain Mayne and Wilson and the Diver it was impossible to come to any conclusion other than that at which His Excellency had arrived. He regretted that the

Jury had not had the benefit of that evidence, for he thought the Jury was a good one and that they decided honestly in accordance with the evidence such as it was, which they had before them at the time.

Mr. Bryng entirely concurred with the Governor and Mr. Griffiths and expressed a strong condemnation of the master's conduct in selling a valuable imperishable cargo which as a Seaman he ought to have known was not in any danger.

Mr. Bailey said it was now clear that the Master did sell without necessity, but he thought that the Master had acted in good faith and to the best of his judgment, and that on this account the sale should hold good. Mr. Griffiths pointed out that the Law required something more than this of a Master, and the Governor read again that portion of his written opening address which referred to the legal point at issue.

The Governor then said that it was the duty of the Council when appealed to from the Magistrates Court not simply to reverse or confirm the judgment of the Court, but having fully investigated the case, and having left no stone unturned for the purpose of arriving at the truth, to make (in the language of the Ordinance providing for the Appeal) such order as justice shall seem to require. The words of the Ordinance were to his (the Governor's) mind clear and conclusive. The Council was called up on to act as a Court of Appeal, and a Court of Equity and the duty thrown upon them by the law of the Colony was one from which they must not shrink.

Mr. Griffiths concurred that this was clearly the intention of the law and said that for his own part his mind was made up. The wreck and Barley may or may not have been properly sold, but the sale of the Copper was clearly unnecessary in a Mercantile sense and therefore illegal. He thought substantial justice would be done. . the question of the Barley having been already waived by mutual consent if the appellant were allowed to take

and Copper (the possession of the wreck)

Possession of the Wreck, being necessary to him in order to the proper working of the Copper) on repaying to Don Luis Piedra Buena who was no doubt a bona fide purchaser the sum originally paid by him for the purchase of the said wreck.

The Governor thought this very fair. He concurred with Mr. Griffiths that Don Luis was a bona fide purchaser. Indeed so far as he saw it, the whole blame rested with the Master, and he thought it would be hard for the purchaser under such circumstances to lose the £ 250 paid for the wreck. He apprehended that strictly speaking if a man bought what was improperly sold, he took the chance of the consequences with his eyes open. But in the present case he did not think that the purchaser being a foreigner knew the risk he ran, and he (the Governor) felt quite sure that Slade if on the spot would be the first to acquiesce in the proposal.

M^r. Bailey and M^r Byng concurred and after mature deliberation and a consultation on the whole of several hours the following Order was agreed to and unanimously adopted.

To the Hon^{ble} The Chairman of the Magistrates Court The Council having this day taken into mature consideration the within Petition and all documents which accompanied the same - The Report of Captains Mayne and Wilson R.N. (dated 21st January 1868.) and the evidence of these Officers, and of William Davis the diver, have come to the conclusion that the sale of the cargo of Copper was illegal, not being justified by necessity. And as during the consideration of the appeal for the removal of the injunction on the 14th instant it was decided by mutual consent that the question of the Barley should be waived.

It is hereby Ordered

That the Wreck of the Barque "Corquinbeena" and the cargo of Copper laden therein be forthwith relinquished by the purchaser

purchaser in order that the Appellant in this cause may take possession of the same on the payment to respondent of the sum of £250. paid by him for the purchase of the said wreck.

(Signed) William Robinson
Governor.

22nd January 1868.

The Council wish to add that as in their Opinion the sale was so far as the purchasers are concerned bona fide and having regard to the circumstance that Don Luis Piedra Buena has been to Considerable trouble and expense in clearing away the Basley preparatory to getting at the Copper, he is entitled although he has not succeeded in raising the Copper to some consideration at the hands of the Appellant, for there can be no reasonable doubt that the labour performed by the respondents men has greatly facilitated the work which still remains to be done.

(Signed) William Robinson
Governor.

The Governor in Conclusion said he considered that the visit of the Flag Ship was most fortunate and opportune. It was highly probable that if the Council had only had before it the evidence given in the Magistrates Court the Judgment of that Court would have been Conformed by the Council. But now thanks to the evidence of the Naval officers kindly sent down by Admiral Ramsay the truth had happily been arrived at, and he for one felt satisfied that substantial justice had been done to all parties. The Governor then thanked the Members for their Assistance and adjourned the Council.

(Signed) H. Byng

Clerk to the Council

Note The Report of the Surveying Officers, together with Captain Miller's Appeal and other documents relative to this case may be found in the Guard and Letter Books of the period.

Executive Council.

6th July. 1868.

Present: A. D. Governor Robinson.

Honorable E. K. Griffiths and
Henry Lyng Esq;

The Council met pursuant to summons
~~the minutes of the last meeting were read & confirmed~~
The Governor laid before the Council
an application for leave of absence
from Mr. Charles Melville the Harbour
Master, remarking that Mr. Melville
was an old and faithful servant of
the Crown, who had always done
his duty zealously and efficiently,
and who moreover was fully entitled
to the privilege which he now sought.

The Council entirely concurred
in the Governor's remarks, and
Leave was granted accordingly

The Council then adjourned

H. Lyng.
Clerk to the Council.

Litter dated 30 June. 1868.

Executive Council.

Present: H. J. Governor Robinson
 Honorable E. Griffiths,
 Honorable A. Bailey.
 and J. Hyatt Dyer

10th August 1868.

The Council meets pursuant to Summons.
 The Minutes of the last meeting were
 read and confirmed.

The Governor laid before the Members a
 correspondence with Mr. Packe respecting
 Station No 1 at Manybrough.
 Letters read by Clerk.

Mr. Packe it appears applied for a lease
 of Manybrough on the 27 July, stating
 that the Station was stocked and occupied
 as required by the Regulations. The lease
 was at once granted the Governor not
 hesitating to accept the accuracy of Mr.
 Packe's statement. On further inquiry,
 brought about by the representations of Mr.
 Switzer, it was ascertained that Mr. Packe
 had not placed any stock on the Station,
 but he considered himself justified in saying
 it was stocked because there were wild
 cattle on the land.

In the question whether Mr. Packe's
 lease should not be at once cancelled
 the Governor asked the advice of the Council.

The Council considered that as Mr.
 Packe has not complied with the conditions
 of his license he was not entitled to receive
 his lease; and that the lease having been
 granted on a misapprehension of the real
 facts of the case ought now to be cancelled.

After

After considerable consideration the Governor decided to send some competent person to inspect the Station, and if matters there are found to be as Mr. Packe represents them, he shall, though he is not entitled to any such consideration have the benefit of that circumstance.

The Council then adjourned sine die

A. Keyng.
Clark to the Councils

Executive Council.

4th September 1858.

Present. All the Members.

Council met pursuant to summons.
The Minutes of the last meeting read
and confirmed.

Governor informed the council that, in
conformity with arrangements made at
last meeting he had caused a survey to
be held on the Station at Manly branch
occupied by Mr Packe, and laid on table
a Report from Surveyor General upon
the subject.

Report, dated 1st September, read by
clerk.

The Governor said that under the
circumstances he feared there was only
one course open to the Executive. "If
we respect our Regulations to be respected
by the Settlers" remarked H.E., "we must
show that we respect them ourselves."
There was a gross breach of the Regulations,
an attempt to deceive the government,
and a incorrect statement as to the condition
of the land. leniency in such a case would
in the Governor's opinion, mean weakness.

The members entirely concurred,
Mr Griffiths remarking that although His
Excellency was properly prepared to allow
every indulgence to Mr Packe and had
decided that the condition of the Station
would be taken into consideration,
Mr Griffiths, as a lawyer very much
doubted whether Mr Packe having failed
to comply with the requirements of the
Proclamation, the Governor had any
alternative.

alternative but to resume possession
of the Station.

The council advised the governor
to cancel Mr. Packe's lease, and this
course H.E. said he would feel
compelled though reluctantly to adopt.

Council adjourned sine die

N. Kyng
Clerk to the Councils

Executive Council

17th October. 1858.

Present: H. S. Baily Governor
and all the Members.

The Council met pursuant to summons.
The minutes of the last meeting were read
concurred and confirmed.

Memo: 27th M 1858
The Governor laid before the council letters
which he had received from the Settler on
the West Falkland praying for an ex-
tension of time for complying with
the conditions of the Proclamation, and
pointing out that it is next to impossible
to comply with those conditions within
the time allowed however anxious the
settler may be to do so.

The Governor was of opinion that the
prayer of the Petitioners might properly
be granted, so long as no Revenue was
lost by the concession. His Excellency's
policy was to afford every reasonable
facility and indulgence to Settlers com-
patible with the profitable and bona fide
occupation of the land, and that what
the Governor had to guard against was
land speculation and the mere holding
of land to prevent others holding it.

The Council quite concurred but after
consideration it was decided to postpone
the final settlement of the question to a
subsequent meeting.

The Council then adjourned sine die

N. Byers
Clerk to the Council

Executive Council

7th November. 1868.

Present: H.E. the Governor.

J.R. Griffiths

J. Byng.

A. Bailey.

The Council met pursuant to summons.
The minutes of the last preceding
meeting were read and confirmed.

The consideration of the question
raised at the last meeting was resumed.

The members informed His Excellency
that they had given their best consideration
to the application from the West Falkland
Settlers for an extension of time to comply
with the terms of the Proclamation, and
repeated their advice to His Excellency
to grant the applications.

The Governor said he concurred in
the advice of the members and would
frame a Regulation upon the subject
(see Proclamation No. 39 of 7 Nov. 1868)

The Governor adjourned the Council
sine die.

J. Byng.
Clerk to the Council