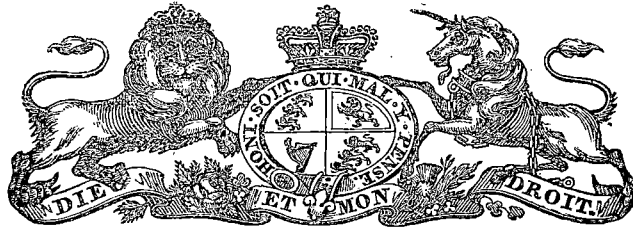


(No. 118.)



1878.

T A S M A N I A.

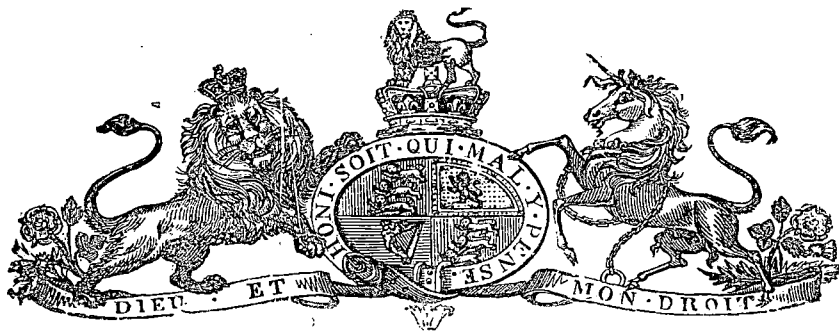
LEGISLATIVE COUNCIL.

H U N T C A S E :

CORRESPONDENCE AND DESPATCHES.

Return to Address dated May 6, 1879. (Mr. Chapman.)

Laid upon the Table by Mr. Crowther, and ordered by the Council to be printed,
May 13, 1879.



TASMANIA.
No. 49.

Downing-street, 29th November, 1878.

SIR,

I HAVE the honor to acknowledge the receipt of your Despatch No. 38, of the 2nd August, enclosing a Memorial signed by several members of your late Ministry, in reference to the pardon of Louisa Hunt, in which they pray that such directions may be given as will assure them that the office of Administrator of the Government of the Colony, upon the occurrence of any interregnum, or the absence of the Governor, whenever either contingency may arise, will be filled, not by the Chief Justice, but by some other person in whom both the Cabinet and the public of Tasmania will have full and entire confidence.

2. I have also received, and have had under my consideration with this Memorial, the letters from the Chief Justice and the Puisne Judge of the Supreme Court which were forwarded in your Despatch No. 44 of the 30th of August.

3. You will be so good as to inform the Memorialists that the Memorial has duly reached my hands, but that the circumstances of this unfortunate controversy, and the manner in which it has been conducted, have not been such as to convince me that I could properly accept the representations of the Memorial as a ground for advising the Queen to make any change in the arrangements now in force for the Administration of the Government of Tasmania in the absence of the Governor.

4. You will also inform Sir Francis Smith and Mr. Justice Dobson that I have received their letters to which I have above referred.

I have, &c.

Governor WELD, C.M.G.

M. E. HICKS-BEACH.

For Ministers and also their Honors the Judges and the Memorialists.

FRED. A. WELD.
1st Feb., 1879.

Received 12-30.

DESPATCH noted and returned. A copy has been sent to each of their Honors the Judges and also to the Memorialists.

THOS. REIBEY.
6th Feb., 1879.

MEMO.

At the time I sent this Despatch to Ministers, and also at the Executive Council on Monday, 3rd February, I requested Ministers to present this Despatch to Parliament on the next sitting day. Their Memorandum of the 10th February, 1879, is their reply to this request.

FRED. A. WELD.
15th Feb., 1879.

Enclosures to Secretary of State's Despatch No. 49.

Despatch No. 38.

Tasmania, Government House, 2nd August, 1878.

SIR,

I HAVE this evening received a letter signed by all those members of my late Ministry now in the Colony addressed to you. I am sending a copy at their desire to the Judges of the Supreme Court, and will transmit any reply their Honors may see fit to make by the first opportunity; but as this may lead to a long correspondence, I do not await its termination.

The only remark I feel called upon to make is in reference to the question of animosity. The Chief Justice has stated (*vide* Chief Justice's letter 13th June) that I have "accepted his assurance" that he "never had any quarrel with Mr. Reibey nor any animosity (meaning personal enmity) against him." This statement can only refer to my letter of 31st May, 1877, in which you will observe that my words bear no such construction: I used the present tense. I could not, without exposing myself to the imputation of dishonesty and wilful blindness, have accepted it in the past, and I fear I stood alone in my hopes for the future. I trust, however, that it will be understood that whatever influence the Chief Justice's feelings may appear to me to have had upon his judgment, his memory, or his conduct, I am perfectly satisfied that it would ever be his desire to do his duty.

I have, &c.

FRED. A. WELD.

The Right Honorable Sir M. HICKS-BEACH, Bart.

P.S.—As the mail is closing I have received a letter from the Chief Justice requesting me to "notify to the Secretary of State that it has reached us too late to notice by this mail. If upon perusal it should appear to call for any remarks" he "proposes to make them in time for transmission by next mail."

I have, &c.

FRED. A. WELD.

Enclosures to Governor Weld's Despatch No. 38.

2nd August, 1878.

SIR,

I HAVE the honor to enclose a Memorial to the Secretary of State, and to request that Your Excellency will forward it to the Secretary of State.

It is the desire of the Memorialists that a copy of the said Memorial may be sent to their Honors the Judges, if Your Excellency deems it right to do so.

I have, &c.

THOS. REIBEY.

His Excellency the Governor.

Hobart Town, Tasmania, 22nd July, 1878.

SIR,

WE, the undersigned, late Ministers of the Crown, beg most respectfully to call your attention to certain facts and circumstances that transpired during and subsequently to the period of our Administration; such facts and circumstances having reference to His Excellency the Governor, the Judges of the Supreme Court of Tasmania, and His Excellency's late Advisers, in the matter of the remission of a sentence passed upon one Louisa Hunt.

The prisoner and her son were in July, 1875, tried before Mr. Justice Dobson, convicted of Arson, and sentenced,—the one seven, the other to two years penal servitude.

That the boy Edwin Hunt, who had been pardoned by a previous Administration, that Administration having referred his case to Mr. Justice Dobson, who in his Memorandum of the 3rd December, 1875, stated "that to a great extent he had controlled the mother, and believed that the sentence was not more than adequate to the offence," in November, 1876; petitioned His Excellency the Governor in Council on his mother's behalf, such petition having been signed by a number of respectable and influential citizens, seven being at the time Members of the Legislature, and three holding the Commission of the Peace.

That in consequence of the recorded opinion of Mr. Justice Dobson, "that the youth was the greater criminal, he from his superior intelligence having *controlled the mother*," and he having upon the recommendation of His Excellency's previous Advisers received a full pardon, and doubts having arisen in the minds of Ministers as to the woman's guilt, your Memorialist decided to recommend her case to the favorable consideration of His Excellency the Governor in Council, in whom alone rested the prerogative of mercy.

It must be borne in mind that, beyond the Minute of Mr. Justice Dobson with regard to Edwin Hunt, no data or memoranda were in existence bearing upon her case; but so important did your Memorialists consider the opinion of the Judge as *tending to extenuate* the guilt of the mother, he having distinctly

recorded his opinion that the son had *controlled the mother*, that they felt no hesitation in receiving favorably the petition for a remission of her sentence, believing that after so deliberate an expression of the judicial mind as to her having been the "lesser criminal," it could only be considered as an act of inconsistency, if not injustice, her son the greater criminal having been liberated, to allow the lesser one to undergo the full period of her sentence.

That His Honor Sir Francis Smith and Mr. Justice Dobson took no exception to the act of the previous Administration upon the pardon of Edwin Hunt, although in distinct opposition to the deliberately recorded opinion of the latter, nor considered the dignity of the Supreme Court in any way encroached upon, or its decisions imperilled; but no sooner had the prerogative of mercy been extended to Louisa Hunt than the Judges on the 27th January, 1877, addressed a remonstrance to His Excellency the Governor, such remonstrance having not only been based upon most erroneous premises, but was a direct attack upon our Administration.

Mr. C. H. Bromby, then Attorney-General, in his Memorandum of the 10th January, 1877, gave it as his opinion "that the Governor in Council acted in some measure as a Court of Appeal, the only Court of Appeal provided by the English law in criminal cases," to which in their letter of 27th January the Judges replied: "It is our duty to inform Your Excellency that the views thus expressed by your present Advisers are, in our opinion, erroneous, and have no warrant in law. Neither the Governor nor the Governor in Council is in any sense a Court of Appeal from the Supreme Court in criminal more than civil cases. The Supreme Court, in all matters of which it has cognizance, is supreme within this Colony;" and drew His Excellency's attention to the "novel and dangerous doctrines promulgated by your present Advisers who wished to constitute themselves into a Court of Appeal."

On the 30th January, 1877, His Excellency the Governor, in the 5th paragraph of his letter to their Honors, replied: "Ministers have not advised the Governor that the Executive Council is a Judicial Court of Appeal from the Supreme Court;" and further, in paragraph 7, he says, "the Governor does not consider that he sits in Executive Council as a Judicial Court of Appeal from the decisions of the Supreme Court."

Their Honors also state, "the course followed by Your Excellency's Advisers is without precedent in any part of the British Dominions," an assertion, as they were informed when Ministers replied, "that was unsupported by facts."

Ministers, in replying to their Honors' first letter to His Excellency, in the third paragraph of that letter stated, "that they had not at any time advised His Excellency that the Executive Council occupied the position of a Judicial Court of Appeal from the Supreme Court," as the Judges constructively infer."

Their Honors appear to have been in total ignorance of the fact that a Royal Commission sat in England upon this subject in 1865, and reported in 1866. The witnesses examined before that Commission consisted of Lords Cranworth, Wensleydale, and Hobart, Sir Fitzroy Kelly, Sir George Bramwell, Right Honorable Spencer Walpole, Sir George Grey, and other great legal authorities, who one and all gave it as their opinion that Her Majesty in Council *did sit as a Court of Appeal*; from which it will be seen, had Ministers claimed for the Governor in Council the position objected to by their Honors the Judges, they would not only have done that which was constitutionally right, but that the words used by Mr. C. H. Bromby, Attorney-General, that "the Governor in Council acted in some measure as a Court of Appeal," were strictly in accordance with the evidence referred to.

An assurance at the outset of the correspondence having been given by His Excellency the Governor on the one hand, and his Advisers on the other, to their Honors the Judges that no attempt had been made to interfere with the dignity nor usurp the privileges of the Supreme Court, it was only natural to suppose that upon the receipt of that assurance all correspondence would have ceased, more particularly as Ministers, in their reply, pointed out the false position assumed by their Honors. Such, however, has not been the case; and a correspondence of interminable length and duration, and of most questionable tone, has been obtruded upon His Excellency the Governor, the character and effects of which we feel assured have been duly estimated by you, and carefully examined in every essential.

Your Memorialists are of opinion that their Honors the Judges, and subsequently the Chief Justice in particular, did not initiate and pursue that correspondence, the grounds being untenable, from the desire, as alleged, to "protect the dignity of the Supreme Court, or resist an invasion of its rights and privileges," (for if this had been the case a protest would at once have been entered against the act of a former Administration in the matter of the pardon of Edwin Hunt, such pardon having been granted after a second reference to the Puisne Judge, who, on the 14th July, 1876, minuted to the following effect:—"I expressed my views on a former petition, but I have no desire to interpose in any way with regard to the exercise of any clemency which the Executive may desire to extend to the boy"), but from motives partisan in character, coupled with a desire to embarrass the then existing Administration, to the *personnel* of which the Chief Justice was known to be hostile.

Your Memorialists, having in view the contingency of the absence of His Excellency the Governor, temporarily or otherwise, from the seat of Government of the Colony, and that it may not be improbable that a return to office of some members of the Reibey Administration may take place, consider it incompatible with the dignity of the office of the Administrator of the Government, after a careful consideration of the correspondence in question, that such office should be filled by the present Chief Justice or Puisne Judge, or that it could be expected that the relations of a Cabinet so composed, after what has transpired, could be

upon such terms and hold such relations to such Administrator of the Government as the situation would, for the conduct of public business, demand, beg most respectfully to request you will be pleased to take such steps as may be necessary, and give such directions as will assure your Memorialists that the office of Administrator of the Government of this Colony, upon the occurrence of any interregnum, or the absence of His Excellency the Governor from the Colony, whenever either contingency may arise, will be filled by some other person,—one in whom both the Cabinet and the public of Tasmania will have full and entire confidence.

We have, &c.

THOS. REIBEY.
CHARLES MEREDITH.
C. O'REILLY.
WILLIAM LODGE^K. CROWTHER.

The Right Honorable Sir MICHAEL E. HICKS-BEACH, Secretary of State.

Government House, 3rd August, 1878.

SIRS,

I AM directed by the Governor to forward to Your Honors herewith copy of a letter with enclosures which reached His Excellency last evening.

I have, &c.

W. H. ST. HILL, *Lt.-Col., Private Secretary.*

Their Honors Sir F. SMITH, C.J., and Mr. Justice DOBSON.

Chief Justice's Chambers, 3rd August, 1878.

SIR,

I BEG to acknowledge the receipt of your letter of this day's date addressed to my colleague and myself, enclosing copy of a Memorial to the Secretary of State purporting to be signed by Messrs. Reibey, Meredith, O'Reilly, and Crowther. This reaches me after 11 o'clock A.M., and in the midst of my English correspondence. I shall consequently not have time even to peruse the Memorial. I shall be obliged if His Excellency will notify to the Secretary of State that it has reached us too late to notice by this Mail. If upon perusal it should appear to call for any remarks I propose to make them in time for transmission by next Mail.

I have, &c.

FRANCIS SMITH.

Lt.-Col. ST. HILL, Private Secretary, Government House.

Government House, 3rd August, 1878.

SIR,

I AM directed by the Governor to acknowledge Your Honor's letter of this day's date, and to inform Your Honor that His Excellency has notified to the Secretary of State as therein requested.

I have, &c.

W. H. ST. HILL, *Lt.-Col., Private Secretary.*

His Honor Sir F. SMITH, C.J.

Chief Justice's Chambers, 17th August, 1878.

SIR,

I BEG to enclose a letter addressed to Her Majesty's Secretary of State for the Colonies dated this day, (17th August, 1878,) with 3 (three) enclosures, marked A, B,* and C respectively; and to request that His Excellency the Governor will be so good as to transmit the same to the Secretary of State by the first opportunity. I proceed to Launceston on Monday to hold a sitting of the Supreme Court, and will furnish you with duplicate and triplicate on my return.

I have, &c.

FRANCIS SMITH.

Lt.-Col. ST. HILL, Private Secretary, Government House.

* These have been already printed, Enclosure A being Paper No. 9, Leg. Council, 1877, Session I., and B being Paper No. 34, Leg. Council, 1877, Session II.

Chief Justice's Chambers, Tasmania, 17th August, 1878.

SIR,

(1.) ON the day the last Suez Mail left, a copy of a Memorial to yourself from Messrs. Reibey, Meredith, O'Reilly, and Crowther was forwarded by direction of His Excellency Governor Weld to my Colleague and me, which I had not time even to read through before the mail closed. I would not trouble you with any remarks upon that Memorial were it not that it contains serious mis-statements which, being brought to my notice, I am forced to contradict if I am not content to be taken to assent to them—an alternative which has so often before been presented to me during this controversy. I hope you will consider that the necessity thus imposed is a sufficient apology for this letter, and accept my assurance that I write it with much reluctance and regret.

(2.) The object of the Memorialists is to procure the revocation of the Commission by which Her Majesty the Queen was graciously pleased to appoint the Chief Justice or Senior Judge for the time being of Tasmania to be Administrator of the Government in certain contingencies, and the substitution of some other person—described by the Memorialists as “one in whom both the Cabinet and the public of Tasmania will have full and entire confidence.”

(3.) By what title these four Memorialists assume to speak in the name of the people of Tasmania they do not inform you. But there can be no doubt that they do not rightly interpret the opinion of the public, which, were expression given to it, would be found to be the opposite of that which the Memorialists wish you to believe. I will not, however, take upon myself to contradict their implied assertion that the Judges do not enjoy the confidence of the “Cabinet”—by which term it appears that the Memorialists mean to denote themselves, inasmuch as, although not now constituting the Cabinet, they announce their approaching return to power, and desire that my Colleague and I shall be removed from the Office confided to us by the Queen in anticipation of and preparation for that event.

(4.) I need hardly say that it is not my intention to offer any remonstrance against the demand which the Memorialists have taken upon themselves to make. I should deem it presumptuous on my part to offer any opinion to Her Majesty's Secretary of State as to the manner in which a prerogative depending so peculiarly upon the pleasure of the Sovereign, guided by his advice, should be exercised,—even to deprecate a revocation which would be interpreted as inflicting an indignity, and as giving countenance to calumnious imputations.

(5.) The mis-statement to which I shall first draw attention is this:—The Memorialists say that they decided to recommend the case of Louisa Hunt to the favourable consideration of the Governor-in-Council “*in consequence of the recorded opinion of Mr. Justice Dobson ‘that the youth [Edwin Hunt] was the greater criminal, he from his superior intelligence having controlled the mother, and he having upon the recommendation of His Excellency's previous advisers received a full pardon, and doubts having arisen in the minds of Ministers as to the woman's guilt.’*” They state further that “*beyond the Minute of Mr. Justice Dobson with regard to Edwin Hunt, no data or memoranda were in existence bearing upon her case, but so important did they consider the opinion of the Judge as tending to extenuate the guilt of the mother that they felt no hesitation in receiving favourably a petition for a remission of her sentence, believing that after so deliberate an expression of the judicial mind as to her having been the ‘lesser criminal,’ it could only be considered as an act of inconsistency, if not injustice, her son the greater criminal having been liberated, to allow the lesser one to undergo the full period of her sentence.*”

(6.) You will observe the great importance which the Memorialists attribute to the opinion of Mr. Justice Dobson, contained in his Minute in Edwin Hunt's case, in influencing them to advise the remission of the mother's sentence. According to the statements in this Memorial it was the chief if not the only ground of their advice. The “deliberate expression of the judicial mind” in that Minute was the cause of their being led to consider that it would be an “act of inconsistency, if not injustice,” to allow the mother to “undergo the full period of her sentence” when her son had been liberated.

(7.) Now, incredible as it may seem, the fact is that the Memorialists, according to former statements of theirs, never saw Mr. Justice Dobson's minute, and were not aware even of its existence, until more than a month after the woman was pardoned. This I proceed to prove.

(8.) In the Memorandum, dated January 5th, 1877, addressed by the Governor to the Memorialists in consequence of the “public comment” to which the pardon had given rise, occurs this sentence:—“The Governor has no wish to discuss the soundness of the advice tendered to him by Ministers in Mrs. Hunt's case, but he has lately been informed that reports or memoranda exist bearing on that case, which have not been brought to his knowledge by Ministers, and he learns that their existence is also unknown to the Premier: should those papers contain the expression of the opinion of a Judge, the Governor's decision might have been materially influenced by that opinion.”

Leg. Council
Paper (No. 9)
1877, Sess. 1.,
marked A,
page 5.

Leg. C. Paper
(No. 34) 1877,
Sess. II.
marked B,
page 3.

(9.) To this the Memorialists reply by a Memorandum, dated 24th Jan. 1877, in which they make it a matter of complaint that the Governor should thus allege that they had withheld information that was in existence, and which if known to him might have materially influenced his decision—"that at the time they tendered advice to His Excellency they were not aware of any reports or memoranda, nor are they at the present time, other than those placed before His Excellency." Mr. Justice Dobson's report was not among those here mentioned as having been "placed before His Excellency." But the form in which the Memorandum is printed does not disclose that fact. It has been discovered, however, that the printed document is not an authentic exemplification of the manuscript, which is found to contain a minute by Mr. Bromby, then Attorney-General, in these words—"I fully concur with the above Memorandum. I wish to add that I was aware of a report of the *Puisne Judge* in the case of Edwin Hunt, but not of any on Mrs. Hunt's case."

(10.) That this minute was purposely, and not accidentally, omitted in the printing is evident from the fact that the paper makes it appear as if Mr. Bromby signed the Memorandum of his colleagues (the Memorialists), which in fact he never did, and not a separate minute which in fact he did.

Leg. C. Paper
(No. 34) 1877,
Sess. II.
marked B,
page 4.

(11.) The Governor in his reply, referring to this minute, says:—"It appears from the Attorney-General that a report by the *Puisne Judge* does exist in Edwin Hunt's case. Such a report may throw light, it is not improbable, on the opinion of the Judge in Mrs. Hunt's case. It has also been rumoured that the Sheriff made inquiries regarding Mrs. Hunt's case. These documents have never been read to the Governor, or sent to him for perusal."

Leg. C. Paper
(No. 9) 1877,
Sess. I.
marked A,
page 6.

(12.) Although Mr. Bromby, as he states in his minute above quoted, was aware of the report of Mr. Justice Dobson in Edwin Hunt's case, yet he had not seen it at the time Mrs. Hunt's petition was before the Executive; as appears from his Memorandum dated 10th January, 1877, where he says—"I have no knowledge of any report or memorandum in Mrs. Hunt's case. The only papers connected in any way with it are a petition of Mrs. Hunt's some time ago; a request by the late Attorney-General to the *Puisne Judge* to report on her son's case; the report of the *Judge* dealing entirely with the son's case . . . ; and a report of Mr. Quodling as to certain statements made by Mrs. Hunt after her conviction. These statements and the report on them do not in any way touch the grounds upon which Ministers doubted the justice of the verdict. I had not seen them at the time Mrs. Hunt's petition was before the Executive."

(13.) It thus appears that, according to previous deliberate assertions of these Memorialists, not only were they not aware of Mr. Justice Dobson's report in Edwin Hunt's case "at the time they tendered advice to His Excellency," (which was on the 18th December, 1876) but were not so even at the time of writing their Memorandum of the 24th January, 1877. So that the Memorialists knew nothing of that opinion of Mr. Justice Dobson which they considered so important, and which so powerfully influenced them in advising the pardon, until more than a month after that pardon was granted.

Leg. C. Paper
(No. 9) 1877,
Sess. I.
marked A,
page 5.

(14.) There are other statements of the grounds upon which the pardon was granted, besides those above specified, of which the statements made in this Memorial are contradictory. The Governor, in his Memorandum of 5th January, 1877, says that those grounds were "a very strongly urged and unanimous request for mercy—made formally in Executive Council by his Ministers, backed by the assurance of the Premier that he did not doubt the innocence of the prisoner, and by the point urged by the Attorney-General, that the witness Amelia Dear having been since convicted her evidence was worthless, and that consequently new light had been thrown on the case since the trial." Mr. Bromby (the Attorney-General), in his memorandum of 10th January, 1877, says: "In regard to the case of the woman Hunt I offered no advice to His Excellency because I had acted as her counsel at her trial; but I pointed out to my Colleagues that if Ministers advised the remission of the whole of her sentence it would be virtually reversing the verdict of the jury; and I think both the Premier [Mr. Reibey] and the Colonial Treasurer [Mr. Meredith] expressly stated that, after considering the case, they were of opinion that the verdict of the jury was wrong." The grounds of the pardon assigned by Ministers in Parliament, were, in effect, that the woman was the innocent victim of a vile plot concocted by the police to obtain a reward offered for conviction; Mr. Reibey declaring that, "having always entertained from the very first a conviction that the woman was not guilty, he was bound to advise the remission of her sentence, and would have deserved execration if he had not done so; that the whole of the evidence was circumstantial, and the witnesses not of the best character, and he was convinced that justice had miscarried."

(15.) You will observe that in all these statements of the grounds of the pardon there is no hint that Mr. Justice Dobson's opinion had anything to do with it, nor any allusion to the "inconsistency, if not injustice," of allowing the "lesser criminal," the mother, to remain under punishment when "the greater criminal," the son, had been liberated. Obviously there could be no question of comparative guilt when the ground on which they advised the woman's pardon was that she was innocent.

(16.) Self-contradiction so flagrant makes it needless to trouble you with particulars of proof of other misrepresentations in this Memorial. It will be enough barely to indicate the following as misrepresentations:—

The attributing of words to Mr. Justice Dobson which he never used;

The assertion that an assurance was given by the Memorialists to the Judges “at the outset of the correspondence” that no attempt had been made to usurp the privileges of the Supreme Court, and that the Judges continued the correspondence after the receipt of that assurance—an assertion in which they reproduce the old fallacy first suggested by publishing the correspondence in an interpolated and misarranged form;

The imputing to us of inconsistency in not protesting against the pardon of Edwin Hunt—as if the cases were parallel, and as if we ever made any objection to the act of pardon by the Governor in his unfettered discretion.

(17.) I shall not stoop to reply to the imputation that we were actuated by sinister motives in initiating and pursuing the correspondence—an imputation which has been persistently made from the commencement of the controversy—further than to recall the assurance which I gave you in my letter of the 3rd July (paragraph 3) “that I acted from a sense of duty which could not, in my view, be evaded.” I am persuaded that you will not listen for a moment to the imputation of improper motives.

(18.) The allegation that I was “known to be hostile to the *personnel*” of the late Administration is of so vague a character that, if I proposed to answer it, I should be entitled to require it to be stated in a more specific form. I have no desire, however, to enter upon the subject without absolute necessity. I will only say that there is not even a plausible pretext for the imputation with relation to any member of the late administration excepting Mr. Reibey. With regard to him I have before informed you that I am perfectly ready to explain my attitude, should he request it. (Letter of 3rd July, paragraph 10.) I now add that I am also ready to give such explanation should you desire it. At present it is sufficient to assure you that the attitude which the Memorialists call hostile is not the result of personal enmity or political bias; and, although no social intercourse subsists, it is quite true, as I assured His Excellency the Governor in my letter of the 29th May last, “that, should circumstances ever bring us [Mr. Reibey and myself] into official relations, there would be no difficulty, on my side, in the courteous maintenance of those relations, and in the harmonious transaction of public business.”

(19.) That the non-existence of social intercourse is no obstacle to the maintenance of official relations was proved in the case of Governor Weld and Mr. Reibey. Notwithstanding he was the Governor’s chief adviser, Mr. Reibey did not enter the social circle of Government House. Indeed it was repeatedly made a charge against me in Mr. Reibey’s organ, the *Tribune* newspaper, that he was excluded through my influence—a charge which was as groundless as another charge made in the same newspaper to the effect that I advised the Governor not to accept Mr. Reibey as his minister. His Excellency has declared the latter charge to be unfounded, and I have no doubt he will corroborate my declaration that the former is equally so.

(20.) The Memorialists represent that the opinions expressed by the distinguished witnesses who were examined before the Capital Punishment Commission are opposed to our opinion stated in our letter to the Governor of the 27th January, 1877, (paragraphs 5 and 6). I venture still to affirm that our opinion as there expressed is in strict accordance with law. I think it unnecessary to trouble you with any argument to prove that the Memorialists draw erroneous inferences from the language used by those witnesses. I have made some observations upon the fallacy of such inferences in my letter to His Excellency the Governor of the 13th June, 1878, (paragraphs 15 to 19). But the question has, I consider, been settled by the authority of the Secretary of State, in Lord Carnarvon’s Despatch, No. 29 of 29th October, 1877, which seems to me unambiguous; although Governor Weld and the Memorialists attribute to it an opposite meaning to that which it appears to my colleague and myself, as well as to most people, to bear. I venture to repeat the suggestion made in my letter to you of the 3rd July last (paragraph 14), that a useful precedent for future guidance would be furnished if the true interpretation of Lord Carnarvon’s despatch were settled by your authority.

Leg. C. Paper
(No. 34) 1877,
Sess. II.
marked B,
pages 5 & 6.

(21.) I beg in conclusion again to express the sincere regret with which I have found it necessary to trouble you with so long a letter. It must, however, be apparent that the mis-statements in this Memorial could not be so clearly exposed as they have been, at much less length. To a certain extent the exposure of these mis-statements will no doubt have been anticipated by His Excellency the Governor in his covering despatch transmitting the Memorial; inasmuch as His Excellency would of course consider it his duty to warn you against relying upon statements which he knew to be incorrect. Indeed I should imagine that His Excellency must at length begin himself to see how seriously he was misled by his late Advisers. The statements in this Memorial must

Leg. C. Paper No. (34) 1877, 1877, was utterly misplaced—when he said :—“The Governor fully accepts the assurance of Ministers that at the time they tendered advice to him they *were not aware* of any reports or memoranda, nor are they at the present time, other than those placed before the Governor; and that they have not, to their knowledge, in any particular withheld from the Governor any information that it was in their power to supply.” It now appears that at the time they tendered advice to the Governor they *were aware* of a report which was not placed before him; and not only were they at that time aware of this report but they deemed it so important that it mainly, if not solely, influenced the advice they then tendered. As however it is not likely that His Excellency has taken the trouble to enter upon a comparison of documents with the particularity which I think desirable to make the mis-statements quite clear to one who is a stranger to the circumstances, I have thought that His Excellency’s explanations will not have rendered mine superfluous.

I have, &c.

FRANCIS SMITH,
Chief Justice of the Supreme Court of Tasmania.

The Right Honorable Sir MICHAEL HICKS-BEACH, Bart.,
H.M. Secretary of State for the Colonies.

Synopsis of
Extracts from
Memorial &
Memoranda,
marked C.

P.S.—In order to facilitate comparison of the various documents, I have made a synopsis of the extracts referred to, in parallel columns—the contrasted extracts being in opposite columns. It is the enclosure marked C.

C.

SYNOPSIS of Extracts from Memorial and Memoranda.

STATEMENTS IN THE MEMORIAL.

In consequence of the recorded opinion of Mr. Justice Dobson “that the youth was the greater criminal, he from his superior intelligence having controlled the mother,” and he having upon the recommendation of His Excellency’s previous Advisers received a full pardon, and doubts having arisen in the minds of Ministers as to the woman’s guilt, your Memorialists decided to recommend her case to the favourable consideration of His Excellency the Governor in Council. . . . It must be borne in mind that beyond the Minute of Mr. J. Dobson with regard to Edwin Hunt, no data or memoranda were in existence bearing upon her case, but so important did your Memorialists consider the opinion of the Judge as tending to extenuate the guilt of the mother . . . that they felt no hesitation in receiving favourably the petition for a remission of her sentence, believing that after so deliberate an expression of the judicial mind, as to her having been the “lesser criminal,” it could only be considered as an act of inconsistency, if not injustice, her son the greater criminal having been liberated, to allow the lesser one to undergo the full period of her sentence.

(Memorial to the Secretary of State, 22nd July, 1878.)

STATEMENTS ON OTHER OCCASIONS.

The Governor has no wish to discuss the soundness of the advice tendered to him by Ministers in Mrs. Hunt’s case, but he has lately been informed that reports or memoranda exist bearing on that case which have not been brought to his knowledge by Ministers, and he learns that their existence is also unknown to the Premier [Mr. Reibey]: should these papers contain the expression of the opinion of a Judge, the Governor’s decision might have been materially influenced by that opinion. (Governor’s Memo. for Ministers, 5th Jan. 1877.)

To which they [Memorialists] reply, that at the time they tendered advice to His Excellency they were not aware of any reports or memoranda, nor are they at the present time, other than those placed before His Excellency.—(Memorandum of Ministers, 24th Jan. 1877.)

I wish to add that I was aware of a report of the Puisne Judge in the case of Edwin Hunt, but not of any on Mrs. Hunt’s case.—(Minute of Mr. C. H. Bromby written at the foot of the last quoted Memo. but not printed, dated 25th Jan. 1877.)

It appears from the Attorney-General that a report by the Puisne Judge does exist in Edwin Hunt’s case. . . . These documents have never been read to the Governor, or sent to him for perusal.—(Governor’s Memo. in reply, 24th Jan. 1877.)

The Governor fully accepts the assurance of Ministers that at the time they tendered advice to him they were not aware of any reports or memoranda, nor are they at the present time, other than those placed before the Governor.—(Ibid.)

I have no knowledge of any report or memorandum on Mrs. Hunt’s case. The only papers connected in any way with it are . . . the report of the Judge dealing entirely with the son’s case . . . and a report of Mr. Quodling as to certain statements made by Mrs. Hunt after her conviction. These statements, and the report on them, do not in any way touch the grounds upon which Ministers doubted the justice of the Verdict. I had not seen them at the time Mrs. Hunt’s petition was before the Executive.—(Mr. Attorney-General Bromby’s Memo., dated 10th Jan. 1877, but not delivered to the Governor until 25th Jan. 1877.)

Government House, 19th August, 1878.

SIR,

I AM directed by the Governor to acknowledge Your Honor's letter of 17th instant, with its enclosures, and to acquaint Your Honor that His Excellency will forward the same to the Secretary of State by the outgoing Brindisi mail.

I have, &c.

W. H. ST. HILL, *Lieut.-Col., Priv. Sec.*

His Honor Sir F. SMITH, C.J.

Judge's Chambers, Hobart Town, 20th August, 1878.

SIR,

HIS Excellency has forwarded to me a copy of a Memorial addressed to you by four of his late Ministers. Had that Memorial contained an accurate statement of facts I should have refrained from any comment upon it.

The documents already in your possession would expose most of its fallacies; but, as eighteen months have been allowed to elapse since the last communication from the Memorialists, till they now revive the subject in a new form, I deem it desirable, as briefly as circumstances will permit, to point out some extraordinary misapprehensions under which they appear to labour, and upon which they base the prayer of their Memorial.

The Memorialists, in the first place, purport to set out what, they now state, was their course of procedure in pardoning Louisa Hunt; but former recorded documents, under the hands of His Excellency and the Memorialists themselves, give a flat contradiction to the narration contained in the Memorial. This narration, so far as it is material, is as follows:—*“That, in consequence of the recorded opinion of Mr. Justice Dobson ‘that the youth was the greater criminal, he from his superior intelligence having controlled his mother,’ and he having, on the recommendation of His Excellency’s previous Advisers, received a full pardon, and doubts having arisen in the minds of Ministers as to the woman’s guilt, your Memorialists decided to recommend her case to the favorable consideration of His Excellency the Governor in Council in whom alone rested the prerogative of mercy. It must be borne in mind that beyond the Minute of Mr. Justice Dobson with regard to Edwin Hunt, no data or memoranda were in existence bearing on her case, but so important did your Memorialists consider the opinion of the Judge as tending to extenuate the guilt of the mother, he having distinctly recorded his opinion that the son had controlled the mother, that they felt no hesitation in receiving favourably the petition for a remission of her sentence, believing that after so deliberate an expression of the judicial mind as to her having been the lesser criminal, it could only be considered as an act of inconsistency, if not injustice, her son the greater criminal having been liberated, to allow the lesser one to undergo the full period of her sentence.”* 3 Dec. 1875, p. 4. Paper No. 7, H.A., 1877, Sess. III.

I will demonstrate, by reference to documents laid before Parliament by the Memorialists, that so far from acting upon my minute of 3rd December, 1876, upon which they now state that their whole procedure was based, they were in fact unaware of its existence till more than a month after the 18th December, 1876, on which day Louisa Hunt was pardoned. *Ib.*, p. 4. Paper No. 9, H. A., 1877, Sess. I., p. 4.

I enclose official copies of the documents to which I propose to refer, and to facilitate reference, I have underlined with red ink those portions of them which I cite.

His Excellency, in his Memorandum to Ministers, dated 5th January, 1877, states the grounds of remission that were urged before him, and which are at variance with those now stated by the Memorialists; he also adds, that “he has lately been informed that reports or memoranda exist bearing on that case which have not been brought to his knowledge by Ministers, and he learns that *their existence is also unknown to the Premier.* Should those papers contain the expression of opinion of a Judge, the Governor’s decision might have been materially influenced by that opinion.” *Ib.*, pp. 4 & 5.

In reply to this Memorandum, on the 10th January, the Attorney-General, Mr. Bromby, wrote, *Ib.*, p. 6. “I have no knowledge of any report or memorandum on Mrs. Hunt’s case. The only papers connected in any way with it are a petition of Mrs. Hunt’s some time ago; a request by the late Attorney-General to the Puisne Judge to report on her son’s case; *the report of the Judge dealing entirely with the son’s case*, and declining to express any opinion whether he should be allowed his discharge; and a report of Mr. Quodling as to certain statements made by Mrs. Hunt after her conviction. These statements, and *the report on them*, do not in any way touch the grounds upon which Ministers doubted the justice of the verdict. *I had not seen them at the time Mrs. Hunt’s Petition was before the Executive.*”

I would here remark that Edwin Hunt was convicted of setting fire to a dwelling-house, and Louisa Hunt of counselling him to do so. Whatever, therefore, tended to disprove the guilt of Edwin Hunt, must affect the case of the mother; but reference to the papers annexed show that they directly affect Louisa Hunt’s case as well as that of her son.

Paper No. 34,
H.A., Sess. II.,
1877, p. 3.

In a Memorandum of 24th January, 1877, Ministers assert "that at the time they tendered advice to His Excellency *they were not aware of any reports or memoranda*, nor are they at the present time, *other than those placed before His Excellency*;" and they ask His Excellency from what source he had derived his information, that there were any reports or memoranda bearing on the case, and which if they contained the opinion of a Judge might have influenced his opinion.

Ib., p. 3.

This Memorandum, as printed and laid before Parliament, bears the signatures of all the Ministers, but it was not in fact signed by the Attorney-General, Mr. Bromby, who wrote at its foot, "I fully concur with the above Memorandum. I wish to add that *I was aware of a report of the Puisne Judge in the case of Edwin Hunt, but not of any in Mrs. Hunt's case*. In Mr. Bromby's memorandum of 10th January, already quoted, it will be observed that he says that he had not seen this report when Louisa Hunt was pardoned. The cause of Mr. Bromby not signing the Memorandum jointly with the Memorialists is manifestly, that, whilst they deny all knowledge of any reports or memoranda, he cannot sign so unqualified a statement because he says he was *aware* of my report in Edwin Hunt's case, although he had not *seen* it.

Ib., p. 3.

Ib., p. 4.

His Excellency, on the same day, in reply to the request to give his authority for the belief that reports and memoranda exist, &c., wrote, "the most distinct and official information that he (the Governor) has received on this point is the confirmation given to them by the Attorney-General in his Minute attached to Ministers' Memorandum of this day and words previously used by him: it appears from the Attorney-General that *a report by the Puisne Judge does exist in Edwin Hunt's case*. Such a report may throw light, it is not improbable, on the opinion of the Judge in Mrs. Hunt's case. It is also rumoured that the Sheriff made enquiries regarding Mrs. Hunt's case. *These documents have never been read to the Governor or sent to him for perusal.*"

Ib., p. 3.

The Memorialists assure you that, beyond this report of mine in Edwin Hunt's case, there were no data or memoranda bearing upon the case, and state how they based their action upon this report, the very existence of which, it is now clear, was unknown to His Excellency, or themselves, till more than a month after Louisa Hunt was pardoned.

Mr. Bromby, the remaining Minister, who is absent from the Colony, and who wrote on the 10th January that he *had not seen this report* when Mrs. Hunt was pardoned, and on the 24th January that *he was aware* of it, is not a Memorialist.

Even if the Memorialists had been aware of my Minute, it would not have upheld the course which they adopted; and I regret that, in attempting to invoke its aid, they should not only misquote it, but misinterpret it.

Paper No. 7,
H.A., Sess. III.,
1877, p. 2,
13 Nov., 1875.
Ib., p. 4,
3 Dec., 1875.

Mr. Giblin, the Attorney-General, in asking my advice upon a petition for Edwin Hunt's release, referred to the crime as being probably committed "at the solicitation or command of the lad's mother." My Minute in reply stated, *not what is set out by the Memorialists between inverted commas as being my ipsissima verba*, and which I have already quoted at length, but as follows:—"If the boy were a *child* under the influence and control of his mother, I should look upon the case as a comparatively venial one, but his demeanour in Court, and his bearing towards his mother, led me to infer that he not only had perfect self-control, but, to a great extent, controlled his mother." I observed that the lad, during the trial, showed no signs of emotion in the dock, and when his mother did so, he, more than once, checked her and restrained her. I desired to show that, from my observation, I did not consider Edwin Hunt a mere child doing the behest of his mother, without a will of his own or a corresponding responsibility. I had, in sentencing him to two years, whilst I sentenced his mother to seven years' imprisonment, already made allowance for his youth and indiscretion.

Paper No. 9,
H. A., Sess. I.,
1877, p. 6.

The Memorialists say that "the pardon of Edwin Hunt was in distinct opposition to the deliberately recorded opinion of" myself. Here again they are in error. Even Mr. Bromby, in his Memorandum of 10th January, says my report declines to express any opinion as to whether Edwin Hunt should be allowed his discharge. The facts, however, are, that when the petition for his release came before me within five months after his trial, accompanied by a statement from Louisa Hunt, on her own and on her son's behalf, impugning the verdict of the jury, I, after causing enquiry to be made, opposed any remission.

Paper No. 7,
H. A., Sess.
III., 1877, pp.
2, 3, & 4.

Subsequently, when the lad had served, by time and task-work, more than fourteen months out of his sentence of two years, with good conduct, in gaol, and, if his conduct continued good, would have only had eight months more to serve, I no longer interposed as I had done, but, on 14th July, 1876, I wrote: "I expressed my views on a former petition, but I have no desire to interpose in any way with regard to the exercise of any clemency which the Executive may desire to extend to the boy."

Paper No. 9,
H. A., Sess. I.,
1877, p. 6.

The Memorialists see no distinction between the extension of clemency to Edwin Hunt by a former Ministry, and their own act of (to quote Mr. Bromby's Memorandum of 10th January)

“virtually reversing the verdict of the jury in Louisa Hunt’s case; and they complain that the Judges, whilst they took no notice of Edwin Hunt’s release, at once addressed a remonstrance to the Governor against Louisa Hunt’s pardon, which was an attack on their Administration.

The proceedings in both cases are enclosed, and the most cursory reference to them will suffice to mark the distinction. In one case there will be found three references to the Judge who tried the case, careful enquiries and reports; in the other, as the Memorial now virtually proves, there will be found no recorded facts, no reference to a Judge, no enquiry, although the Governor, by his Minute of 2nd December, 1876, seems to have suggested one. Moreover, the Judges did not at once address the Governor, as alleged; they took no notice of Louisa Hunt’s pardon; but when, six weeks after it, the Attorney-General set up, in his Memorandum of 10th January, 1877, (received by the Judges on the 27th) a claim for the Executive to act in some measure as a Court of Appeal, and that claim was enlarged and explained by his declarations, which are referred to in the Judges’ letter to His Excellency of 2nd February, 1877, then the Judges protested against such a claim of authority over the Supreme Court, exemplified (as was pointed out by them) by so dangerous a course of procedure in exercising that authority as that which was adopted by the Memorialists in Louisa Hunt’s case.

Edwin Hunt’s Case, pp. 2, 3, & 5.
Paper No. 7, H. A., Sess. III., 1877.
Louisa Hunt’s Case, at p. 4. Paper No. 9, H. A., Sess. I., 1877.
Ib., p. 6
Paper No. 34, L. C., Sess. II., 1877, p. 10.

With reference to so much of the Memorial as now attempts to show that the Governor in Council is constitutionally a Court of Appeal, and that the claim of the late Attorney-General was justified, it has already been emphatically decided by your predecessor, Lord Carnarvon, that we were justified and right in our protest against the claim set up, and nothing in the Commission or Report of 1866, to which the Memorialists refer, affects the soundness of that decision. The Memorialists also seem to have forgotten that they themselves, in a Memorandum written in February, 1877, when disavowing their claim to be a Court of Appeal, state that “the Executive is not, nor cannot now, *by the most special and disingenuous process of reasoning*, be considered in the light of a Court of Appeal.”

I would add, that all correspondence with reference to the claim to be a Court of Appeal ceased, on the Judges’ part, so soon as the disavowal contained in the three Memoranda of the Ministry was forwarded to them by the Governor on the 16th February, 1877; and the further correspondence, after acknowledging the receipt of these Memorials, was on subordinate issues raised by His Excellency, or on collateral matters.

The Memorialists, upon the allegations contained in the Memorial, base their opinion that, in protesting against the course pursued by them, we were actuated by “motives partisan in character, coupled with a desire to embarrass the then existing Administration;” and that, if any of the Memorialists should again take office, it could not be expected that a Cabinet so composed could be on such terms with either the Chief Justice or myself as Administrator of the Government, in case of the Governor’s absence, as the conduct of business would demand.

The chief ground upon which such opinion is based having been proved to be so extraordinary a misapprehension, and the other grounds almost equally unreal, I might treat the value of the opinion as destroyed, but I desire to state emphatically that I was not, and am not, actuated by partisan motives. I care not from which side of the House the Ministry of the day may come, they will always cordially receive from me, whether in my judicial or any other public capacity, that aid and support which, as the Public Officers of Her Majesty for the time being, they may be entitled to.

I have, &c.

W. L. DOBSON,

Puisne Judge of the Supreme Court of Tasmania.

The Right Honorable Sir MICHAEL HICKS-BEACH, Bart.

Despatch referred to in Secretary of State’s Despatch, No. 49.

Despatch No. 44.

*Tasmania,
Government House, Hobart Town, 30th August, 1878.*

SIR,

By last mail I had the honor to forward to you a letter signed by those members of a former Ministry now actually in the Colony, in reference to their Honors the Judges, and at the same time I informed you that I had referred it to their Honors, as suggested indeed by the writers, and that the Chief Justice requested me to “notify to” you “that it has reached us” (the Judges) “too late to notice by this” (that) “mail,” and that “if upon perusal it should appear to call for any remarks” he “proposes to make them in time for transmission by next mail.”

I now transmit a reply from His Honor the Chief Justice, dated 17th August, 1878, and one from His Honor the Puisne Judge, dated 20th August, 1878.

Mr. Justice Dobson treats the question in a tone befitting his character and his office. I have ever given him credit for perfect honesty and freedom from personal hostility to either my Ministers or myself. I would stop here, but his present reference to "subordinate issues raised by the Governor" calls on me to guard myself from being taken to admit that my statement that Ministers had not so "advised" me was a legitimate issue for debate, a due regard for the constitutional position of the Executive should have led to its immediate acceptance.

I will not notice the allusions to me which the Chief Justice has seen fit to introduce into his reply in the Memorandum beyond one observation which I feel bound to make in order to prevent a blow being struck through me, and officially recorded, at the character and social status of a third person.

Sir Francis Smith states that "notwithstanding he" (Mr. Reibey) "was the Governor's chief adviser, Mr. Reibey did not enter the social circle of Government House." The inference is seemingly that he was "excluded:" this premise, like others of His Honor's, wants precision, and any such inference would be incorrect.

I have, &c.

FRED. A. WELD.

The Rt. Honorable Sir M. HICKS-BEACH, Bart.

TASMANIA.

No. 51.

Downing-street, 2nd December, 1878.

SIR,

I HAVE the honor to acknowledge the receipt of your Despatches noted in the margin, enclosing copies of a correspondence which has passed between yourself and the Chief Justice of Tasmania on points arising out of the case of the pardon of Louisa Hunt.

2. I much regret that a controversy of this nature should have been protracted to the length to which this correspondence has been conducted on both sides.

3. Sir Francis Smith's communications to yourself are written in a tone and in language which it is highly unbecoming in any circumstances for one occupying so high a position as that of Chief Justice to use, and especially when he is addressing Her Majesty's Representative; and, on the other hand, I cannot but observe that you would have acted with greater discretion if you had not had recourse to arguments and allusions which, without materially enforcing your position, were calculated to offend and annoy the Chief Justice.

4. The reference, for instance, made in your Memorandum for your Ministers of the 3rd of June to the personal causes and political results of Sir Francis Smith's action was injudicious and unnecessary.

5. Upon the merits of the controversy itself I must decline to enter further than to observe that I am unable to concur with you in the views stated in your Memorandum to Sir F. Smith of the 31st of May as to the meaning of the passages in my predecessor's Despatch, No. 29, of the 29th of October, 1877, where he says, "strictly therefore the Judges were right in their protest," and "they were also technically right in refusing to accept the assurance that the view put forward by the Attorney-General was not the view of the Ministers."

6. The words of my predecessor were sufficiently clear in themselves, and appear to require no other interpretation than that which they obviously bear; and although I have no doubt that you acted with the best intentions in stating what you conceived to be their purport, you would have kept yourself more clear of personal connection with the dispute if you had abstained from any attempt to point those words more directly against the Judge than had been intended.

7. I trust that this controversy, which has been productive of credit to neither party, will be entirely and finally dropped, and that I shall hear no more of it. Nothing can be more deplorable than that those gentlemen who, as Governor and Chief Justice, occupy the highest positions in a colony, should be constantly appearing before the public as parties to a dispute conducted with heat and acrimony. I cannot but hope that the Chief Justice will not renew the provocation which you have received from him; but in the event of your receiving hereafter any communications requiring an argumentative reply, you should take especial care that such reply should be characterised by the utmost brevity and calmness; and you should, whenever practicable, cause it to be made by one of your Ministers.

I have, &c.

M. E. HICKS-BEACH.

Governor WELD, C.M.G.

No. 30, 2nd
July, 1878.
No. 31, 3rd
ditto.
No. 39, 2nd
August, 1878.
No. 40, 2nd
ditto.
No. 48, 31st
ditto.

For Ministers and their Honors the Judges.

FRED. A. WELD.
Feb. 1st, 1879.

Recd. 12-30.

DESPATCH noted and returned. A copy has been sent to each of their Honors the Judges.

THOS. REIBEY.
6th Feb., 1879.

MEMO.

AT the time that I sent this Despatch to Ministers, and also at the Executive Council on Monday, February, 3rd, I requested Ministers to present this Despatch to Parliament on the next sitting day. Their Memorandum of the 10th February, 1879, is their reply to this request.

FRED. A. WELD.
10th Feb., 1879.

Enclosures referred to in Secretary of State's Despatch, No. 51.

(1.)

Despatch No. 30.

Tasmania, Government House, 2nd July, 1878.

SIR,

I HAVE again, with regret, to forward documents on the "Hunt Case," including a newspaper cutting, containing letters addressed to me by the Chief Justice, and published by him prematurely in the public papers.

Your predecessor's Despatches and your own might well have closed the controversy: indeed it need never have arisen. At the very first I gave the explanation sought: on my next reply I deprecated further controversy; and have lately again in vain appealed to the Chief Justice's sense of propriety.

One thing I have been unable to do. It was impossible to admit that the modified use of a term (used, be it remembered, by Lords Cranworth, Wensleydale, and Hobart, Sir G. Bramwell, Sir Fitzroy Kelly, Sir G. Grey, Mr. Spencer Walpole, and others before the Royal Commission of 1865,) constituted proof of advice having been tendered, or an aggression intended by the Executive on the Supreme Court; nor could I allow any third party to be the arbiter and exponent of the minds of the Governor and his Executive despite of their disclaimer. To have yielded that point would have been to betray not only my then Ministers but responsible Government. I also thought it necessary to make some reply to portions of between twenty and thirty letters which have been addressed to me by the Chief Justice; and if I have felt bound to speak some plain truths, I regret if in doing so I have unavoidably given pain to His Honor, and perhaps caused irritation which may have led him to make assertions or imputations injurious to my personal character as a man and an Administrator.

Those assertions and frequent unanswered incorrect premises and consequent conclusions I will not now follow or refute, but I pledge myself to do so to your satisfaction on any point which to you may seem in the least to require explanation.

One thing I perhaps ought to say. I did not desire or "expect" my Ministers, should they see fit to advise the production of the Despatches, to defend their contents. I, on the contrary, repeatedly and emphatically begged them to consider themselves perfectly free in that respect even to criticise.

You will, I doubt not, see with pleasure that, in contrast to the action of the Chief Justice, the Puisne Judge, who tried the Hunt case, has closed his part of the controversy in fitting terms, without detriment to his position or to our friendly personal relations.

I have, &c.

The Right Honorable Sir M. HICKS-BEACH, Bart.

F. A. WELD.

(2.)

Despatch No. 31.

Tasmania, Government House, 5th July, 1878.

SIR,

IN reference to my Despatch by this mail No. 30, of 2nd July, and its enclosures;—

I have the honor to transmit a letter of Sir F. Smith, Chief Justice, received yesterday; and addressed to you, and its enclosures, namely, a cutting from a newspaper, being copy of a letter

addressed to me but published by His Honor in several newspapers, and of further documents, including Memorandum of my own, and one by Ministers, so far as I am aware yet unpublished but printed, presumably, by order of His Honor. Copies of the Chief Justice's enclosures have already been forwarded with my Despatch. I also enclose a letter addressed to me by the Hon. T. Reibey, which I received some days ago.

I have, &c.

FRED. A. WELD.

The Right Hon. Sir M. HICKS-BEACH, Bart.

REFERRED to Ministers, July 4th, 1878.

Enclosure referred to in Governor Weld's Despatch, No. 31.

Entally, 25th June, 1878.

SIR,

I HAVE read the late letter of the Chief Justice, in which he has so intemperately assailed Your Excellency and late Advisers, with sorrow. Few, I hope, do not regret their publication; for all men, good and true, must condemn His Honor's language, teeming with rage and "calculating malice," as also the peculiarly offensive attitude of the Chief Justice of the Supreme Court towards the Representative of the Queen. The conduct of Sir Francis Smith throughout this "protracted and unhappy controversy" proves how easily a man may imagine himself to be gifted with power to see accurately into the motives of others, and yet be ignorant of his own. "There are few men who do not" lament the want of "self-restraint and delicacy of the Chief Justice—for *justice* consists in doing no injury to others, *decency* in giving no offence.—'Virtue itself offends when coupled with unbecoming manners.'"

The Chief Justice, in his letter, 29th May, makes a strange and incomprehensible declaration, which demands notice from me, "the late Premier," to whom His Honor refers; viz., "I declare I never had any quarrel with the late Premier, nor any animosity against him." It is true that Sir Francis Smith "never had any *quarrel* with me," it takes two to make a quarrel—but, is he *truthful* when he "declares" he "*never* had any *animosity* against me?" If he is truthful, His Honor has been misrepresented, and maligned, by mutual friends. More than this—his conduct towards me, for eight long years, has been a complete contradiction of his words.

The cause of truth may, perhaps, be served if I call to your recollection *facts* connected with my acceptance of the office of Premier in July, 1876.

Your Excellency must remember that when I first submitted the names of an Administration to succeed the Kennerley Ministry for your approval, the Hon. W. L. Crowther, M.L.C., was intended by me to occupy the position of Premier, and that I gave you my reasons for not wishing to fill that office myself.

1. "That I did not desire to take a prominent place in the Administration, *because* I anticipated political embarrassment, and personal opposition from the personal enmity of the Chief Justice."

2. "That I feared you would be made to suffer annoyance, officially and socially, if you accepted me as Premier." I foresaw *all* that has followed: and I hold Sir Francis Smith responsible, in the sight of God and man, for much of the embarrassment which met the Reibey Ministry both in and out of Parliament—and also for the cruel, unmanly, and vindictive assaults made upon me personally, as the head of that Ministry.

I believe, and I have reliable data for my belief,—not "rumour,"—not "public talk,"—or "vague and intangible grounds," as the Chief Justice implies—that Sir Francis Smith did excite public opinion against me as Premier, and strove to crush me, and my wife, socially.

In Sir Francis Smith's letter of the 1st of June there will be found a charge against your late Advisers, as unjust as it is false. Referring to the original correspondence between Your Excellency, their Honors, and your late Advisers, the Chief Justice asserts that "the documents as published were arranged and dressed so as to present a fictitious appearance, and to create a false impression." A more indecent and untruthful charge was never made against public men—men, I am prepared to prove, equal to Sir Francis Smith in integrity, courage, and *morality*. I resent the charge; I deny its truthfulness; and it would indeed "be an evil day for Tasmania" if men, who lately occupied the responsible position of Advisers of the Crown, were so wanting in "courage and resolution"—were, to quote the words of His Honor, of such a "*flabby moral fibre*" as not to be able to prove, if need be, the injustice of this untruthful charge against their integrity.

In the discharge of my duty to my late colleagues I must refer back to their Honors' letter, 27th January, 1877. In that letter is a paragraph beginning—"There is a darker side to the extraordinary proceedings of Your Excellency's Advisers." In this paragraph the Judges charge your late Advisers with "not having scrupled, as a step towards absolving the woman Hunt, to fasten upon Simpson, a meritorious officer of long service, of much integrity, intelligence, and experience, and of reputable character, the atrocious crime of concocting a charge of arson, in order to obtain a large reward alleged to have been offered by the Insurance Company; and of this odious crime they deliberately found Mr. Simpson guilty, behind his back, without giving him the opportunity of exculpation or explanation, which would have enabled him to show that the alleged inducement to the commission of the crime—the promised reward—was a mere fiction." It is impossible to refrain from "characterising" this charge otherwise than it deserves to be, viz.—it is false; and Your Excellency knows it to be so. "A mere fiction!!" Who originated the "fiction?" Your late Advisers or the *Puisne Judge*? On reference to the petition of William Hunt, in favour of the release of his son Edwin Hunt, forwarded to Your Excellency in November, 1875, and submitted by the then Attorney-General, Mr. W. R. Giblin, on the 13th of November, 1875, to the *Puisne Judge*, "who tried the case," for his opinion as to the "expediency of mitigating the sentence passed upon the boy Hunt," you will observe the following Memo. in His Honor's handwriting:—"When, as *I presume there was in this case, a reward is offered, and the case is got up by the Police*, too much caution cannot be used in exhausting every source of information which the prisoner suggests as demonstrative of her innocence. In making the enquiry, it would be desirable, as far as possible, through some other medium than the *police who secured the conviction*." "As suggested by the *Puisne Judge*," Mr. Giblin desires the Inspector of Police to cause fresh enquiries to be made—"through some other agency than that of Detective Simpson." With these Memos. in existence, I am unable to understand how Mr. Justice Dobson could have been induced to attach his signature to a letter containing a *false accusation* against Your Excellency's late Advisers.

There is indeed a "darker side" to the strange attitude which Sir Francis Smith has assumed throughout the attack upon the late Ministry. His Honor now complains that the "Judge who tried the woman Hunt was not consulted—that in consequence Your Excellency was misinformed, and misled as to the merits of the case;" but is he ignorant of the fact that the Judge who tried the case of Edwin Hunt was not only referred to but that he declined to recommend the release of the prisoner, using the words, "if the boy were really a child under the influence and control of his mother, I should look upon his case as a comparatively venial one—but his demeanour in Court and his bearing towards his mother led me to infer that he not only had perfect self-control, but to a great extent controlled his mother. *"I believe that the sentence was not more than is adequate to the offence;"* and that, in the face of the Judge's objections to a release, the boy was pardoned under the advice of the then Administration. Why did not Sir Francis Smith then consider that the Supreme Court had been "assailed" in the person of one of its Judges? By the pardon of Edwin Hunt the advice of the Judge was ignored and his judgment treated with contempt. Then was the time for Sir Francis Smith to have done battle for the *Puisne Judge*, (if he was unable to defend his position,) and to resent what he is pleased to call an "aggression" upon the Court over which he presides as Chief Justice! But THEN there was no political interest to be served, and no private animosity to be gratified!

Notwithstanding Sir Francis Smith's declaration that he "never had any animosity against me," I hold him to be neither guiltless of having excited political opposition to the Administration of which I was the head, nor guiltless of having worked to injure me socially. Truth can only be violated by falsehood, but it may be damaged by silence. *Qui non propulsat injuriam a suis quum potest, injuste facit.*

I remain, &c.

THOS. REIBEY.

His Excellency the Governor.

(3.)

Despatch No. 39.

Tasmania,
Government House, 2nd August, 1878.

SIR,

I do myself the honor to enclose a further letter addressed to you by His Honor the Chief Justice, enclosing a further marked copy of a letter addressed to me, and by him published in the newspapers, which has already been sent to you. It is throughout based on assumptions of fact easily proved to be incorrect, as I am ready to show if you think it necessary. Freeman, in his "Growth of the English Constitution," writes:—"It is often wonderful to see the amazing ingenuity with which lawyers have piled together inference upon inference, starting from some purely arbitrary assumption of their own. Each step of the argument taken by itself is absolutely unanswerable; the objection must be taken earlier before the argument begins; the argument is perfect if we only admit the premises; the only unlucky thing is that the premises will constantly be found historically worthless." I am not aware that any one has here supposed that the Governor in Council sits

strictly and technically as a Court of Appeal, and I said so at the beginning ; but it is gratifying to observe that light recently thrown on the subject has led the Chief Justice to embrace the views originally held by Mr. Bromby, late Attorney-General, as I understood them,—views which are more fully and clearly expressed in Todd's "Parliamentary Government in England," Vol. I., page 344, than either by Mr. Bromby or by the Chief Justice. I presume, therefore, that no difference or question of principle exists.

I have, &c.

FRED. A. WELD.

The Right Honorable Sir M. HICKS-BEACH, Bart.

P.S.—Since writing the above I have received the enclosed letter from the Premier on the subject.

F. A. W.

3rd August, 1878.

Enclosure to Despatch No. 39.

Colonial Treasury, Hobart Town, 3rd August, 1878.

MY DEAR MR. WELD,

I UNDERSTAND that Sir Francis Smith states that his letter dated 13th June, 1878, has, as he anticipated, been printed by order of the local Parliament. Technically speaking this is quite correct ; for on the first day of the Session I laid the whole correspondence, including the letter in question, upon the Table of the House of Assembly, and made the usual formal motion that this document together with some forty-four other documents (Reports of Public Institutions, &c.) should be printed, which was as usual assented to without a word said. No papers in this tedious and painful case have been asked for by any Member during the present Session, nor has any Motion been made or tabled with regard to it. I would fain hope that the whole subject will be allowed to die a natural death and be consigned to oblivion.

I remain, &c.

W. R. GIBLIN.

His Excellency the Governor.

Chief Justice's Chambers, Tasmania, 1st August, 1878.

SIR,

(1.) MY letter to His Excellency Governor Weld, dated the 13th June, 1878, having, as I anticipated, been printed by order of the local Parliament, I am now enabled to transmit to you a copy in a more convenient form (1) than the slips cut from the *Mercury* newspaper enclosed in my letter to yourself of the 3rd July.

(2.) In the copy which I now enclose I have numbered the paragraphs for facility of reference.

(3.) The summary of the causes which led to the Judges' intervention in the first instance, referred to in the 3rd paragraph of my letter to yourself, will be found in paragraphs numbered 20 to 24 of the copy enclosed.

(4.) The observations, referred to in paragraph 14 of my letter to yourself, upon what appears to me the fallacy of the inference drawn by His Excellency from the use, in a popular sense, of the term "Court of Appeal" as applied to the Home Office will be found in paragraphs numbered 15 to 19 of the enclosed.

I have, &c.

FRANCIS SMITH, *Chief Justice of the Supreme Court of Tasmania.*

*The Right Honorable Sir MICHAEL HICKS-BEACH, Bart.,
Her Majesty's Secretary of State for the Colonies.*

(4.)

Despatch No. 40.

Tasmania, Government House, 2nd August, 1878.

SIR,

I DO myself the honor of enclosing two letters addressed to me, with an intimation that I was at liberty to send them to you, or make any other use of them I might see fit. I have now reason to believe that they will be called for in Parliament, and consequently officially transmit them to you. The complete and universally acknowledged impartiality both official and personal, and the high constitutional authority, of the President and Speaker of the two Houses of Parliament gives great weight to their united opinion.

It is unnecessary for me to say anything of the respect and esteem in which the Archdeacon of Hobart Town is held by all classes of Tasmanians.

I have, &c.

The Right Hon. Sir M. HICKS-BEACH, Bart.

FRED. A. WELD.

Enclosure referred to in Despatch 40.

Hobart Town, 1st July, 1878.

SIR,

WE have been pained by the attacks made on Your Excellency in connection with the "Hunt case."

Being in regard both to our sentiments and Parliamentary position removed from the influence of parties, and accustomed by the exigencies of that position to consider constitutional questions, we have, we trust, been able to form a calm and impartial judgment on the matter; and we have thought that it might be a satisfaction to Your Excellency to know that we fully concur in the stand which you have taken in support of the independence of the Executive and the privilege of Parliament, and that we believe that Your Excellency has in your favour the great majority of the thinking portion of the people of Tasmania, and, with few exceptions, the Press generally.

We have, &c.

J. M. WILSON, *President of the Legislative Council.*

HENRY BUTLER, *Speaker of the House of Assembly.*

His Excellency F. A. WELD, Esq., C.M.G.

Enclosure referred to in Despatch 40.

Hobart Town, 17th July, 1878.

SIR,

I have read with great pain the letters lately written to Your Excellency respecting the publication of the Despatches by His Honor the Chief Justice, not only in respect to the language which he uses to yourself personally, and almost the disloyal manner in which he addresses you as the Representative of the Queen, but also on account of his facts not being true.

The whole of his correspondence is special pleading, and it is well known to all who have not forgotten their logic, that if the premises are false, the conclusions cannot be right.

I shall, however, confine myself to one, with which I am unfortunately mixed up. I allude to his last letter, after Your Excellency's Memo. to the Ministers, in which he states, "I never had any personal animosity to Mr. Reibey," or words to that effect. I shall confine my observations to that one point.

I have known Mr. Reibey from childhood, and on intimate terms with his family, and the Cox's of Clarendon, for nearly half a century. I was aware of all the circumstances connected with the unfortunate trial of Reibey v. Bloomfield, and, firmly believing in his innocence, I waited with anxiety the issue of the trial, and was more than ever convinced of his innocence. The charge of the Judge was contrary to evidence, in which opinion I am supported by the late Chief Justice, Sir V. Fleming, and many high legal authorities in England. I have, therefore, always supported Mr. Reibey, when I heard his character assailed, and will continue to do so.

When Your Excellency sent for Mr. Reibey to form a Ministry, what more natural than that he should send for an old friend for advice in forming a new Ministry? which I did, to the best of my judgment.

When Sir Francis Smith heard that I had assisted Mr. Reibey, even before one word was said about a Court of Appeal, or the subject brought before Parliament, he was pleased, to use a common phrase, to cut me, and has since always passed me by unnoticed.

Now, when it is taken into consideration that I am an old man, old enough to be Sir F. Smith's father; that I never offended him in thought, word, or deed; that, at this present time, I am senior clergyman of the Church of England not only in the Australias, but the whole Eastern Hemisphere, the Warrant of my appointment of Colonial Chaplain having been signed nearly half a century since by George IV., you would suppose a gentleman would have at once addressed me on this subject, and told me the cause of offence, so that I might explain, if I really had given any offence, but up to the present date he has continued his insulting demeanour, and I cannot arrive at any other conclusion than my taking the part of Mr. Reibey was the sole cause of offence, and that he "had no personal animosity towards Mr. Reibey" is false.

Other facts may be proved equally opposed to truth, but I have confined my observations to the one with which I am concerned.

I have, &c.

R. R. DAVIES, *Archdeacon of Hobart Town.*

*His Excellency F. A. WELD, C.M.G.,
Governor of Tasmania.*

Despatch No. 48.

(5.)

Tasmania,
Government House, 31st August, 1878.

SIR,

It having been made a subject of reference by me in the first instance, and subsequently by their Honors the Chief Justice and Mr. Justice Dobson in their letters forwarded by this mail;

I have the honor to enclose an exact copy of the Memorandum sent to my office by my late Ministers, as it is not identical with the one laid before Parliament, dated 24th January, 1877.

I have, &c.

FRED. A. WELD.

The Right Honorable Sir M. HICKS-BEACH, Bart.

Enclosure to Despatch 48.

MEMORANDUM.

WE, Your Excellency's Responsible Advisers, having, at the request of Your Excellency, laid upon the table of the House of Assembly a Memorandum forwarded by Your Excellency on the 5th January instant to the Premier, having reference to certain remissions of sentences, and, amongst others, more especially to that of Louisa Hunt; and after such Memorandum had been read by the Clerk in the House of Assembly, a Notice of Motion was tabled by Mr. Adye Douglas to the following effect:—"That the advice tendered by his Ministers to His Excellency, and which led to the release of the prisoner Louisa Hunt, was improper, and such as tended to subvert the administration of justice," are of opinion that the exception taken to the action of Ministers is based upon the ninth paragraph of the Memorandum referred to, and which is to the following effect:—

"The Governor has no wish to discuss the soundness of the advice tendered to him by Ministers in Mrs. Hunt's case; but he *has lately been informed that reports or memoranda exist* bearing on that case, *which have not been brought to his knowledge by Ministers*; and he learns that their existence is also unknown to the Premier: should those papers contain an expression of the opinion of a Judge, the Governor's decision might have been materially influenced by that opinion. It will readily be admitted that it is the duty of a Ministry to lay all possible information before the Representative of the Crown. The Governor doubts not but that Ministers will ever endeavour to fulfil that duty; and it is equally clear that reference to the Judges may much facilitate that endeavour."

Upon a careful consideration of the paragraph in question, we feel compelled to draw Your Excellency's attention to two important allegations contained therein:—

1st. That Ministers have withheld from Your Excellency information that was in existence, and which, if known to you, might have materially influenced your decision.

2nd. That in not doing so they have neglected to do that which it was their bounden duty to have done, viz. "lay all possible information before the Representative of the Crown."

To which they reply that at the time they tendered advice to Your Excellency they were not aware of any reports or memoranda; nor are they at the present time, other than those placed before Your Excellency; nor have they, to their knowledge, in any particular, withheld from Your Excellency any information that it was in their power to supply.

Feeling assured that Your Excellency would not desire that in so important a particular as the exercise of the Prerogative of Mercy any misapprehension as to all facts and circumstances should exist in the minds of Ministers on the one hand, or the public on the other, Ministers deem it a duty incumbent upon themselves to respectfully request that Your Excellency will, with as little delay as possible, furnish the source from which Your Excellency's information has been derived, to enable them to exonerate themselves from a charge which, until disposed of, places them in a position of great personal, as well as public, embarrassment.

THOS. REIBEY.
WILLIAM LODGE CROWTHER.
CHARLES MEREDITH.
C. O'REILLY.

His Excellency F. A. WELD, Esq., Governor.

I FULLY concur with the above Memorandum. I wish to add that I was aware of a report of the Puisne Judge on the case of Edwin Hunt, but not of any on Mrs. Hunt's case.

C. HAMILTON BROMBY.
Jan. 25, 1877.

[Laid upon the Table of the Legislative Council by Mr. Crowther, and ordered to be printed, May 28, 1879.]

Government House, Hobart Town, 28th May, 1879.

SIR,

I HAVE the honor to forward to you the following documents, being copies of a Despatch by His Excellency the Governor with enclosures, and the reply of the Secretary of State for the Colonies; also a letter from the Chief Justice to Secretary of State, dated 3rd July, 1878; forming part of the Hunt correspondence last laid before Parliament, which I regret to say I had overlooked in hurriedly preparing the papers for the printer.

I have, &c.

W. H. ST. HILL, *Lt.-Col., Private Secretary.*

The Hon. the Colonial Secretary.

Enclosure of Despatch No. 31, of 5th July, 1878.

Chief Justice's Chambers, Tasmania, 3rd July, 1878.

SIR,

(1.) THE further correspondence which has taken place between His Excellency Governor Weld and myself, in consequence of the publication of His Excellency's Despatches relating to the case of Louisa Hunt, will doubtless be brought under your notice by the Governor. I venture to ask that, in judging of His Excellency's representations, you will bear in mind that never before, during an official life of nearly thirty years, has my conduct been impugned by any Governor. I trust you will consider that the aspersions which Governor Weld has unjustly cast upon my character, as a man and as a Judge, entitle me without exposing myself to the charge of egotism, and oblige me in self-defence to ask you further to bear in mind that, during that long period I have faithfully served the Queen and the people in the public service of this Colony, in the several capacities of Crown Solicitor, Solicitor-General, Attorney-General, Legislative Councillor, Member of Parliament, Executive Councillor, Prime Minister, Puisne Judge, Chief Justice, and Administrator of the Government—that the conduct of the Government under my administration as Premier was marked by a gracious token of Royal approbation less usual at that time than it has since become—that my relations, both official and social, with all preceding Governors,—with Sir Wm. Denison, Sir Henry Young, Sir Thos. Gore Browne, and Sir Charles Du Cane, successively,—were close and cordial, undisturbed by misunderstanding, and continuing, after the termination of the official connexion, in the form of private friendship. I recall these things because, in order to do me justice, you will need to correct Governor Weld's presentment of me by trustworthy evidence showing what kind of man I really am. With the same object I am desirous that reference should be made to the two of our former Governors who survive, Sir Thos. Gore Browne and Sir Charles Du Cane, for their opinion of my character, personal and official—and this with the knowledge that Sir Thos. Gore Browne is a personal friend of Governor Weld's. I also refer to Sir Valentine Fleming, late Chief Justice of this Court, now residing at Red Hill, my colleague for twenty years and one who knows me thoroughly; and to the Right Honble. Sir Montague Smith, whose pupil I was for two years in early manhood.

(2.) I respectfully request that you will do me the justice to note that, excepting the Judges' first letter of the 27th *Jany.* 1877, I have not addressed a single spontaneous communication in this correspondence to Governor Weld—not one that has not been called forth by some allegation on His Excellency's part, unwarranted in my view, which imposed the alternative of denial or admission, and of which admission was impossible.

In the former Correspondence.

(3.) In making the protest contained in the Judges' first letter I give you my assurance that I acted under a sense of duty which could not, in my view, be evaded. If you will read the summary of the causes which led to the Judges' intervention contained in my letter of the 13th *June*, 1878, I think you will consider that our protest was fully justified.

Slip cut from the *Mercury* of 19th *June*, 1878, and marked "*Mercury B.*" at page 2. Officially printed Correspondence A., at page 14.

(4.) I would respectfully address to you the question asked in my letter of the 1st *June*, 1878—what possible motive could I have had but the discharge of duty? I was not personally concerned. I was not the Judge who tried the case. It was not my charge that was contemptuously criticised in Parliament, nor my judgment that was declared to be wrong and summarily reversed.

(5.) Yet from that day to this I have been subjected to ceaseless attacks, and the continual imputation of the basest motives. I complain that Governor Weld's Despatches, of which the disparaging tenor was either known or guessed almost immediately after they were written, have assisted these attacks and given countenance to these imputations.

(6.) The Despatches upon their publication proved to be saturated with aspersions. It is not denied that they contain, either directly or by innuendo, the imputations which are specified in my letter of the 21st May, 1878, of imprudence, mistake, sophistry, partisanship, disregard of judicial dignity, conduct lowering the Supreme Court in public esteem, the loss of public confidence in my impartiality, the assumption of the attitude of pleader and manager of an impeachment, and, lastly, dissimulation, which, although disclaimed, and as I am bound to believe, not intended, was in terms charged. There were other allusions in the later Despatches not only unfounded, but quite irrelevant, and of a defamatory character. I beg that it may be observed that it was in consequence of the performance of duty, according to my lights, that these injuries were done me.

(7.) These aspersions were propagated throughout the Australian colonies by their publication in the newspapers. I put this question to your candour and sense of justice: could I, with any regard for my personal and judicial reputation, remain silent? I was forced to defend myself. I endeavoured to avoid language inconsistent with the respect due to the Governor's office. But I could not resign the freedom indispensable to effective defence. No defence at all would have been better than a feeble defence. The language used for the purpose of self-defence must, I submit, be judged by canons of criticism widely different from those applicable to other occasions. And if, in the strife, the one who has provoked it should suffer any loss of dignity, surely that ought not to be laid to the charge of the one who has been drawn into it.

(8.) With the answer to the Despatches contained in my letters of the 21st and 29th May, 1878, I would gladly have let the matter rest. But the Governor's Memorandum of the 31st May, 1878, was of a character to necessitate a further reply which I made by letter of the 1st June, 1878. This was acknowledged by the Governor's Private Secretary, and I thought the correspondence at last really ended. But, ten days afterwards, and without notice to me, was published in the newspapers a Memorandum (a) by the Governor addressed to Ministers but aimed at me, to which I request special attention, and ask whether it is possible to justify it?

(9.) An allusion had been made in the despatches, of which there cannot be two opinions that the taste and prudence were very questionable, to unfriendly relations supposed to subsist between Mr. Reibey and myself. This had drawn from me a denial of personal enmity on my part which had been accepted by the Governor. Yet in this Memorandum His Excellency renews the assertion of bitter personal feelings, as if there had been no denial by me and no acceptance of that denial by His Excellency. But—worst of all—the assertion is coupled with an allusion to my intervention in consequence of the pardon granted on the advice of the Ministry of which this gentleman was the head in a manner which can only be interpreted as suggesting a base motive for that intervention.

(10.) I beg that you will accept my emphatic assurance that there is no foundation for Governor Weld's assertion, so far as I am concerned, that bitter personal feelings ever existed between Mr. Reibey and myself. That Mr. Reibey entertains such feelings towards me may be the fact. My attitude with relation to him I am perfectly ready to explain should he request it; but I should not think it considerate towards him to give such explanation otherwise than upon his own request. It is enough to say in this place that, whatever Mr. Reibey's feelings may be, they have arisen out of a trial before me as Judge, in which he was an unsuccessful suitor.

(11.) The Memorandum moreover makes entirely new and extraordinary charges which, while they imply powerful personal ascendancy, flattering in one sense, are fatal to the neutrality which it is the duty of Judges to maintain in relation to local politics, and are absolutely without foundation.

(12.) The attack made in the Memorandum was so outrageous that it wrung from me the vindication contained in my letter of the 13th June, 1878; of which I submit that the vigour is only commensurate with the virulence of the attack—a virulence which the daily testimonies that I receive from all parts of the island prove to be universally recognised among intelligent and thoughtful men, and to be as universally condemned.

(13.) I am unable to transmit a copy officially printed at the Government Printing Office of my letter of the 13th June in answer to this Memorandum, for the reason disclosed in the communications (a) marked C. I therefore enclose a copy of that letter, marked "Mercury B," cut out of the *Hobart Town Mercury* of the 19th June, 1878.

(14.) The opposite constructions put upon Lord Carnarvon's Despatch No. 29 of 29th Oct. 1877 will doubtless attract your notice. According to the interpretation of Governor Weld and the few who support His Excellency's views, when His Lordship says that the Judges were justified, and strictly right, in their protest, he means that we were not really justified, and that we were substantially wrong. To us it appears that His Lordship's Despatch has thus been paraphrased into a quibble. Indeed Governor Weld's principal and most uncompromising supporter in the press undisguisedly and bluntly charges both Lord Carnarvon and yourself with "falling back upon a convenient quibble" in order to escape the necessity of interfering in a frivolous quarrel. A useful precedent would be furnished for future guidance if the true interpretation of Lord Carnarvon's Despatch were settled by the authority of the Secretary of State. My views upon this and the

Officially
printed Cor-
respondence
A., at page 1.

Officially
printed Cor-
respondence
A., at pages 1
and 6.
Ibid., at p. 10.
Ibid., at p. 14.
(a) Memo. of
3rd June—
officially
printed Cor-
respondence
A., at page 19.

Mercury B.,
at page 1.

(a) *Mercury*
B., at page 3.
Mercury B.,
at pages 1,2,3.

cognate subject of the evidence before the Royal Commission on capital punishment of 1865, are stated at page 15 of "officially printed correspondence A" and at page 2 of "*Mercury B.*"

Letter of 13th
June, 1878.

(15.) It is almost unreasonable to expect that a statesman having so onerous a charge as the administration of the Colonial Empire of England can peruse the voluminous correspondence which has grown out of this controversy. Yet I have full confidence that you will give no judgment in respect of my conduct connected with it without being satisfied that you are completely master of the true merits of the controversy.

(16.) It has been called—not inappropriately—"a storm in a tea-cup." Doubtless from the eminence where you sit it will so appear to you. But I submit that, although quite true, it is nothing to the purpose. Tasmania is a small island, no doubt; yet it is inhabited by loyal subjects of the Queen. The Court in which I preside is a petty Court in comparison of the High Court of Justice in England; yet it administers the same system of law, exercises like jurisdiction, and is entrusted with the issues of life and death. I am an insignificant person, yet reputation is as dear to me as to the proudest noble; and I complain that in my person fair dealing and justice have been violated.

I have, &c.

FRANCIS SMITH,

Chief Justice of the Supreme Court of Tasmania.

*The Right Honorable Sir MICHAEL HICKS-BEACH, Bart.,
Her Majesty's Secretary of State for the Colonies.*

Despatch No. 70.

Tasmania,

Government House, Hobart Town, 1st November, 1878.

SIR,

I AM requested by His Honor Sir Francis Smith, Chief Justice, to forward to you the enclosed 29 Oct. 1878. letter addressed to you by him, with enclosures.

His Honor, however, has not favoured me with a copy of the correspondence to which he refers.

Mr. P. O. Fysh, late Premier, has forwarded to me a copy of a letter addressed by him to you, dated 29th August.

I have treated my knowledge of it as unofficial, not having received it from you, or having been informed of your acknowledgment of it.

I have, &c.

The Right Hon. Sir M. HICKS-BEACH, Bart.

FRED. A. WELD.

64, Basinghall-street, London, 29th August, 1878.

SIR,

I HAVE the honor to address you in reference to the latest correspondence on "the Hunt Case" between His Excellency Governor Weld and His Honor the Chief Justice of Tasmania, wherein a paragraph occurs (Chief Justice's letter, 13th June), from which it might be inferred that His Excellency was at issue with his Ministers, and also subject me to the imputation of disingenuous conduct towards His Excellency, between whom and myself and Colleagues there has ever existed the most intimate and complete confidence.

My Colleagues and myself also having been on intimate friendly terms with the Chief Justice will account for our having heard on occasional meetings his views, and discussed the question of production of the Despatches and our duty in regard to them; but such interviews were friendly, unofficial, private, and confidential, except that referred to by the Chief Justice in the following paragraph,—the "fair notice" alluded to having been given in the presence of a Member of the House of Assembly, upon the steps of the Public Offices.

The Chief Justice states—"Before I took any step I gave Mr. Fysh fair notice, and he assured me that he thought it natural and justifiable, from my point of view, that I should try and get them made public."

The Chief Justice, in thus writing what he remembers of the substance of one of these interviews, goes on in the following paragraph, apparently continuing to record what further was said by me; viz.—"Mr. Fysh wished to retrace his steps, and advise Your Excellency to comply with the demand of Parliament, and thus end all embarrassment."

The Chief Justice cannot intend this to mean that I told him so, and I am sure does not, and cannot state that I made known to him such a wish, although the context may cause casual readers to think so.

I do not take exception to the paragraph, as to me it is only the expression of the Chief Justice's opinion, which indeed was the popular opinion of the day, that Ministers would gladly have satisfied the demands of Parliament, had a course opened which would have preserved Ministerial loyalty to the Governor and been consistent with their having concurred in a reference to the Secretary of State.

Had the paragraph been printed separately and commenced in another line, a record of a conversation and the statement of the Chief Justice's opinion would not have been so open to confusion.

I am aware that Members of Parliament and others who followed the correspondence closely held at the time the opinion now published by the Chief Justice, an opinion which became more general when the Governor's Memo. to Ministers dated November, 1877, was published, as follows:—"The Premier has asked the Governor whether he considers himself still at liberty to lay his Despatches before Parliament should Ministers now so advise."

I believe the correspondence throughout shows Ministers to have acted consistently with their original intention, not to advise on a matter which was a legacy from a former Administration, and which was considered as personal to the Governor and likely to be detrimental to the public good if recognised as official, and that throughout there has been harmony between the Governor and his Ministers, and no issue raised or advice tendered which has not been constitutionally dealt with by the Governor.

*The Right Hon. Sir M. E. HICKS-BEACH, Bart.,
H. M. Secretary of State for the Colonies.*

I have, &c.

P. O. FYSH.

Chief Justice's Chambers, Tasmania, 29th October, 1878.

SIR,

I HAVE the honor to transmit for your information the copy of a letter from me to Mr. W. R. Giblin, the present Premier of this Colony, together with his reply.

I have, &c.

FRANCIS SMITH,
Chief Justice of the Supreme Court of Tasmania.

*The Right Honorable Sir MICHAEL HICKS-BEACH, Bart.,
Her Majesty's Secretary of State for the Colonies.*

Chief Justice's Chambers, Tasmania, 26th October, 1878.

SIR,

THE unexpected reference in his letter to the Secretary of State, dated the 29th August, which Mr. Fysh has thought fit to make to the communication to Ministers of my views with relation to the production of certain Despatches, and their duty in that respect, makes it desirable, in order to obviate possible misconception as to the circumstances under which such communication was made, to place the following statement of facts upon record; viz.—

That the communication of my views, referred to by Mr. Fysh, was made to certain individual Members of the Ministry (Mr. Fysh being one), in compliance with their spontaneous solicitation, in conversations—sought by themselves and not by me—with such Members separately.

That the substance of those conversations was subsequently embodied in a written correspondence with yourself, which was communicated at the time to your Colleagues.

If the Secretary of State should wish to be informed of the nature of the views so communicated to Ministers, and signify that wish, then, notwithstanding that the correspondence above mentioned was confidential, I have to request that you will further lay that correspondence before him, being, on my part, very willing that he should see it.

I propose to transmit a copy of this letter for the information of Her Majesty's Secretary of State for the Colonies; and have the honor, &c.

FRANCIS SMITH, C.J.

The Hon. W. R. GIBLIN, Premier.

Colonial Treasury, Hobart Town, 28th October, 1878.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 26th instant, having reference to a communication addressed by the Honorable P. O. Fysh to the Right Honorable the Secretary of State for the Colonies on the 29th August last.

In reply I have the honor to state that the communications to which Mr. Fysh alludes were made precisely as stated in your letter, and I feel quite sure that my friend Mr. Fysh did not intend to convey any other impression. I regret that the language used by Mr. Fysh should be open to "possible misconception," and trust that this letter may prevent any such possibility.

With regard to the confidential letters which passed between us at the close of last year, I can have no possible objection to lay the correspondence before the Secretary of State should he so desire.

I have, &c.

His Honor Sir FRANCIS SMITH, Chief Justice.

W. R. GIBLIN.

TASMANIA.

No. 6.

Downing-street, 29th January, 1879.

SIR,

I HAVE the honor to acknowledge the receipt of your Despatch No. 70, of the 1st of November last, enclosing a letter from the Chief Justice of the Supreme Court of Tasmania, with copy of one which he had addressed to the Premier, together with Mr. Giblin's reply.

I request that you will be so good as to refer Sir F. Smith to my Despatch No. 51, of the 2nd of December, upon the subject of the previous correspondence which has taken place on points arising out of the Hunt Case, and that you will inform him that I must request that the correspondence on this subject, into which I decline to enter further, may be closed.

I have, &c.

Governor WELD, C.M.G.

M. E. HICKS-BEACH.

For Ministers and His Honor the Chief Justice.

FRED. A. WELD.

27th March, 1879.

RETURNED. Copy forwarded to His Honor the Chief Justice.

WILLIAM LODGE CROWTHER, *for Colonial Secretary (absent).*
4th April, 1879.

Colonial Secretary's Office, Hobart Town, 3rd February, 1879.

SIR,

I HAVE the honor, by direction of His Excellency the Governor, to forward to you copies of Despatches received on the 1st instant from the Right Honorable the Secretary of State, No. 49 of the 29th November, 1879, and No. 51 of the 2nd December, 1878.

I have, &c.

His Honor the Chief Justice.

THOS. REIBEY.

Chief Justice's Chambers, 3rd February, 1879.

SIR,

It has been my belief that the tone and language of my communications to Your Excellency in the course of the late controversy between us were warranted by the occasion. But the Secretary of State, whose authority as arbiter between Your Excellency and myself I feel bound to recognise and submit to, has decided otherwise.

It follows that I have done you a wrong. I hope I shall never hesitate, as far as lies in my power, to repair any wrong of which I may be made cognisant: I hasten to do so now. The only reparation which I can make—unless Your Excellency can point out some other more appropriate—is to express to you my regret that my communications were written in the tone and language condemned by the Secretary of State, and to tender an apology. This I do without surrendering, in the smallest particular, the principles for which I have thought it my duty to contend throughout the controversy.

I have, &c.

His Excellency the Governor.

FRANCIS SMITH.

Government House, 4th February, 1879.

SIR,

HAVING been on the Regatta Ground all the morning, I did not receive your note until this afternoon.

I at once say frankly that its generous tone cannot but claim a response couched in a kindred spirit, and it will obliterate in my mind all recollection of our late controversy.

I am sure that you will permit me to say, as you have done, that I cannot in any way surrender the principles for which I have felt it my most painful duty to contend; and I beg to assure you that if I have said anything unnecessarily to annoy you or cause you pain, I very sincerely regret it; and I trust that you will not look back upon it save in the same spirit of forgiveness which, on my part, I am ready to extend to anything that you may have done, said, or written.

I ask no more; and it is my hope that the time may come when, like many other men who have had personal differences, we may wonder how they have ever occurred.

You are quite at liberty, so far as I am concerned, to show this letter, together with your own, to any of our mutual friends.

I remain, &c.

FRED. A. WELD.

His Honor Sir FRANCIS SMITH, C.J.

Chief Justice's Chambers, 5th February, 1879.

SIR,

I BEG to assure Your Excellency that I fully recognise and appreciate the frank spirit in which you have received and so promptly responded to my note; and join with you in free forgiveness of everything in the past calculated to offend or annoy. I regard the controversy as obliterated, and hope no one will ever attempt to revive it.

I have, &c.

FRANCIS SMITH.

His Excellency the Governor.

Chief Justice's Chambers, 24th May, 1879.

SIR,

(1.) AFTER the letter which, upon receiving a copy of the Secretary of State's Despatch No. 51, of 2nd December, 1878, I wrote to Your Excellency on the 3rd February last, and your reply, Your Excellency will not need to be assured by me that I have no desire to revive the late controversy or to refer to any matter connected with it. But, against my will, I am compelled to take notice of two letters among the papers recently printed by order of Parliament, which I now see for the first time: I mean Mr. Reibey's and Archdeacon Davies' letters, dated respectively the 25th June and 17th July, 1878.

(2.) Intrinsically, the contents of these letters do not perhaps merit notice. But they derive importance from having been transmitted by the Queen's Representative here to Her Majesty's Secretary of State for the Colonies, and from being now laid before Parliament. They contain assertions with regard to me which I do not see how I can avoid being deemed to admit if I remain silent.

(3.) In denial of assertions in Mr. Reibey's letter, I deliberately and emphatically again affirm that I never had any personal enmity against him. No private difference or cause of offence ever existed which could possibly give rise to private animosity. The relations between us have not been affected by any circumstances whatever of a private nature, or which concern me personally in the remotest degree.

(4.) In like manner I affirm that I never said or did anything with the object of exciting public opinion against Mr. Reibey as Premier. It is true that I have, in conversation with friends, exercising that freedom of speech which is my right in common with all the Queen's subjects, given expression to opinions regarding his fitness for that office. If such opinions have been repeated so as to influence public opinion (of which I am not aware) it has not been with my wish.

(5.) Lastly, I affirm that I did not, as Mr. Reibey asserts, strive to crush him and his wife socially. I never sought to interfere with social relations which might subsist between him and any other person; and have strictly confined myself to the regulation of my own course and that of my wife and children. Mr. Reibey has thought fit to introduce a reference to his wife, to whom otherwise I would not presume to make any allusion. But, as the reference has been made, I hope I may, without offence, be permitted to say that I have too profound a sympathy and too sincere a respect for that lady to wish her anything but good.

(6.) With regard to the assertions in Archdeacon Davies' letter, I declare that I never heard that he assisted Mr. Reibey with his advice in the formation of a new Ministry, and was not aware of the fact until I read the statement in his letter. It is impossible, therefore, that I could, as he asserts, have "cut" him for that reason.

(7.) But in point of fact I never did "cut" Archdeacon Davies. He will not say that I ever failed to return his salutation. There was no intimacy between us for years before Mr. Reibey became Premier. That Archdeacon Davies' feelings towards me could not have been cordial after the trial in 1870, to which he refers, is obvious from his assertion that my charge in his friend's case was contrary to evidence. The fact is that our acquaintance gradually fell off until it ceased altogether by what seemed a tacit mutual understanding.

(8.) It would not become me to make any remark upon the assertion that my charge in the trial in question was contrary to evidence, save that, if the injustice imputed had been done, a remedy was open to the aggrieved party by application to the Court above. With regard to the statement that Sir Valentine Fleming expressed the opinion attributed to him, I have reason to believe that it is incorrect; but I will take steps to ascertain how the fact is.

(9.) Archdeacon Davies has thought it consistent with the character of the sacred profession to which he makes such pointed reference in his letter to charge me, behind my back, with falsehood. I pass by the insult. But when it is found that, eight years after a case has been tried, an accusation may be secretly made against the Judge of failure in his judicial duty in the case by a friend of the unsuccessful party, and the accusation carried to the foot of the Throne, without the opportunity being given to the Judge of saying one word in his own justification, it suggests matter for serious reflection.

(10.) I beg leave to request that Your Excellency will be pleased to cause this letter to be laid before Parliament in order that it may be appended to the other papers. I also submit that my letter to Your Excellency of the 3rd February, 1879, with Your Excellency's answer, and my reply, are so closely connected with the correspondence that it is desirable they should likewise be laid before Parliament.

I have, &c.

His Excellency the Governor.

FRANCIS SMITH, C.J.

For Ministers. No objection to this letter being laid before Parliament if Ministers so advise.

FRED. A. WELD,
26th May, 1879.

Government House, 26th May, 1879.

SIR,

I AM directed by the Governor to acknowledge your Honor's letter of Saturday, 24th instant, which has been referred to Ministers, from whom your Honor will receive a reply to your request concerning the presentation to Parliament of certain letters.

I have, &c.

His Honor Sir FRANCIS SMITH.

W. H. ST. HILL, Lt.-Col., *Private Secretary.*

Colonial Secretary's Office, Hobart Town, 27th May, 1879.

SIR,

I AM directed by His Excellency the Governor to acknowledge your Honor's letter of Saturday, the 24th instant, and to inform you that, with every desire to treat your Honor with courtesy and respect, His Excellency deems it his duty, in reply, to refer you to the last paragraph of the Secretary of State's Despatch, No. 6, of the 29th January, 1879.

I am further to say that the Governor was not aware that your Honor's letter of the 3rd February, his reply, and your answer of the 5th February, were intended for publication, but His Excellency does not object to the presentation to Parliament of those letters, and the one now under reply, if Ministers so advise.

I have, &c.

THOS. REIBEY, *Colonial Secretary.*

His Honor the Chief Justice.

Chief Justice's Chambers, 27th May, 1879.

SIR,

IN the paragraph of the Despatch referred to in your letter of this day's date, the Secretary of State requested that the correspondence on this subject (points arising out of the Hunt Case), into which he declined to enter further, might be closed. The Secretary of State could not thereby have intended to impose silence where silence would necessarily imply the admission of imputations which are denied.

My letters to His Excellency the Governor of the 3rd and 5th February were not written for publication. But inasmuch as, contrary to expectation, the other papers have been since published, I think it will be admitted to be desirable that those letters, together with His Excellency's letter of the 4th February, should also be published.

I have, &c.

FRANCIS SMITH.

The Hon. the Colonial Secretary.

Judges' Chambers, 24th May, 1879.

SIR,

AMONGST the documents recently laid before Parliament, there is a letter addressed to Your Excellency dated 25th June last, and which was enclosed by Your Excellency, without comment, to the Secretary of State in your Despatch No. 31 of 5th July, 1878. In this letter the writer cannot understand how I could be induced to attach my signature to a letter containing a *false* accusation against Your Excellency's late Advisers, and he vouches Your Excellency's personal knowledge as to the falseness of the accusation.

Little as I desire to add one word more to what has been written, I still feel it due to my own sense of integrity to point out the misapprehension under which the writer appears to me to have laboured, in order that so grave a charge, the very existence of which I was unaware of till now, may have my answer appended to it.

The charge against me is, shortly, that I falsely accused the then Ministers of having imputed to Simpson the crime of corruptly concocting evidence against Louisa Hunt with a view of obtaining a reward for her conviction, and the writer asserts that I myself "originated the fiction." My part in the transaction is simply explained. A Petition for remission of sentence was forwarded to me to advise upon. It contained matter reflecting upon the Police, and I had also heard their conduct severely commented upon by the Prisoner's Counsel at the trial, and it was also asserted that they were influenced by the desire of securing a reward. Under these circumstances, when I asked that an enquiry should be made as to the truth or otherwise of these statements in the Petition, I suggested that the enquiries should not be made by the Police who secured the conviction. *This was no reflection upon them*, but a matter of simple justice to the Petitioner, and, I think, of common sense in trying to ascertain the real truth. I have never entertained or expressed any doubt as to the truthfulness of the testimony of the Police in this case.

I, therefore, did not "originate the fiction," but reference to what took place at the time demonstrates that your then Advisers did impute corrupt conduct to Detective Simpson.

1st. In their reply to what is "now called a 'fiction,'" commencing "There is a darker side," the then Ministers (the Attorney-General excepted) did not impugn its accuracy, but wrote, "Ministers answer by stating a fact, that if a reward was not openly offered one was actually paid;" thus impliedly admitting the truth of the accusation, and asserting that in fact a corrupt motive did exist.

2nd. The Attorney-General, on 17th February, 1877, in answering the passage, "*There is a darker side*," does not deny that Ministers imputed corrupt conduct to Detective Simpson, but writes, "in my humble opinion, and I know also in the opinion of many others, no one of unbiassed mind could help admitting that a portion of the evidence brought against the accused at the trial was concocted evidence."

3rd. Your Excellency is aware that your then Ministers did impute corrupt conduct to Simpson; for in your Despatch of 17th March, 1878, you write, "the presiding Judge's view of the amount of reliance to be placed in Detective Simpson did not seem to materially differ from that of Ministers." At that time it is clear that Your Excellency was aware that your Ministers did impute corrupt conduct to Simpson; and Your Excellency is pointing out that I, in your opinion, did not greatly differ from them; an opinion which I know Your Excellency no longer entertains.

4th. Before Ministers had seen my Memorandum, which is said to have "originated the fiction," the Attorney-General of the day, in justifying the course taken by Ministers, stated in Parliament to the effect that the carpet was bought by a woman whose husband was a particular friend of Detective Simpson; that Detective Simpson had a large reward offered to him by the Insurance Company to

obtain a conviction against Mrs. Hunt; and he (the Attorney-General) did not hesitate to say that the evidence was concocted for the purpose of convicting Mrs. Hunt, and obtaining the reward for the Detective Policeman. That statement is the origin of the so-called "fiction," and the paragraph "There is a darker side," &c. was directly based upon it.

In what I have written I do not desire to make or reiterate any charge against any individual, but I desire simply to defend myself against a grave charge which could only have been made in forgetfulness of the real facts of the case.

I have, &c.

His Excellency F. A. WELD, Esq., C.M.G.

W. L. DOBSON.

For Ministers. No objection to this letter being laid before Parliament if Ministers so advise

FRED. A. WELD.
26th May, 1879.

Government House, 26th May, 1879.

SIR,

I AM directed by the Governor to acknowledge your Honor's letter of Saturday, 24th instant, and to say that His Excellency has communicated it to Ministers.

I have, &c.

W. H. ST. HILL, *Lt.-Col., Private Secretary.*

His Honor Mr. Justice DOBSON.

Colonial Secretary's Office, Hobart Town, 27th May, 1879.

SIR,

I AM directed by His Excellency the Governor to acknowledge your letter of Saturday, the 24th instant, and to inform you that His Excellency has referred it to Ministers.

The Governor trusts that you will excuse him from dealing with any points you may have raised personal to himself.

I have, &c.

THOS. REIBEY, *Colonial Secretary.*

The Honorable WILLIAM L. DOBSON, Puisne Judge.

Judges' Chambers, 28th May, 1879.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of yesterday's date.

I have, &c.

W. L. DOBSON.

The Honorable THOMAS REIBEY, Esq., Colonial Secretary.