

(No. 2.)



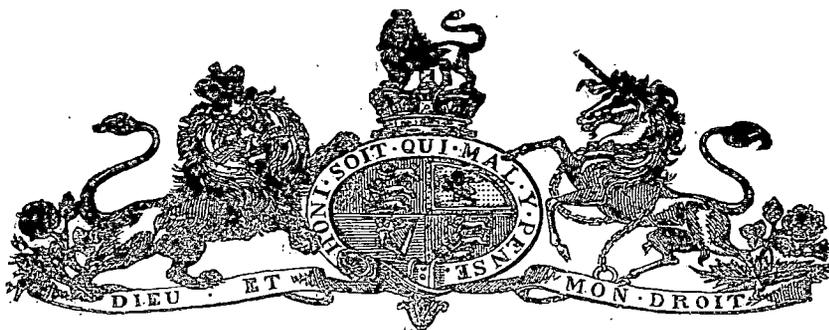
1891.

PARLIAMENT OF TASMANIA.

A BILL TO AMEND "THE CROWN REDRESS ACT":

MEMORANDUM AND CORRESPONDENCE.

Laid upon the Table by the Attorney-General, July 8, 1891, and ordered by the House of Assembly to be printed.



MEMORANDUM and Correspondence in connection with a Bill to amend "The Crown Redress Act."

A BILL TO AMEND "THE CROWN REDRESS ACT."

I AM of opinion that this Bill goes beyond the intention expressed in its title, and may be held to affect Imperial interests, and that under the provisions of Section 31 of 5 & 6 Vict. Ch. 76, and Clause IX. of the Governor's Instructions, it should be reserved by the Governor for the signification of Her Majesty's pleasure thereon.

The Governor.

A. INGLIS CLARK, *Attorney-General.*
28th November, 1890.

(Copy.)

MEMORANDUM for His Excellency the Governor upon the Bill to amend "The Crown Redress Act."

I HAVE advised His Excellency the Governor to reserve this Bill for the signification of Her Majesty's pleasure thereon, on the grounds that the Bill goes beyond the intention expressed in its title, and that it may be held to affect Imperial interests; and I desire to inform His Excellency that the Bill was introduced by a private Member, and carried through both Houses of Parliament against the protestations of Ministers, who urged postponement of further consideration of the Bill until next Session of Parliament, when they would be prepared, under the advice of the Attorney-General, who was then absent from the Colony, to introduce a Bill upon the subject. "The Crown Redress Act," (23 Vict. No. 1), which this Bill professes to amend, recognises only "any claim against Her Majesty founded on or arising out of any *Contract* entered into on behalf of Her Majesty by or by the authority of Her Majesty's Local Government of the Colony," and does not mention in any manner claims against Her Majesty founded on *Tort*. But the Bill in question provides—"all claims founded on or arising from *Tort* against Her Majesty shall be subject to an action at law in the same manner as if the claim had arisen between subject and subject." It therefore deals with a totally distinct class of claims from those recognised by the Act it purports to amend, and is a radically new and momentous departure in the legislation of the Colony. I desire also to call His Excellency's attention to the fact that while "The Crown Redress Act" limits its operation to claims "founded on or arising out of any *Contract* entered into on behalf of Her Majesty by or by the authority of Her Majesty's Local Government of the Colony," the Bill in question imposes no similar limitation on its operation, and unless it should be held by judicial decision to be controlled by some paramount enactment of the Imperial Parliament, or some fundamental doctrine of the Common Law, it would make the officers and men of Her Majesty's naval forces serving in the territorial waters of the Colony liable for acts which they might do under instructions from the Admiralty Department, or in their own discretion, in the exercise of their duties. But the fact that the operation of this Bill would be so controlled after it obtained the Royal Assent could be determined only by a Court of competent jurisdiction upon a case arising under it, and it would seem preferable on this account that the Royal Assent should be withheld so that there may be no ambiguity in such an Act. It is also to be noted that the language of the operative clause of the Bill is very ambiguous, and that it might be read as purporting to confer on Her Majesty a right of action at Law against any of her subjects who committed a tortious act resulting in damage to any property vested in Her Majesty. For these reasons I am of opinion that it would be for the public benefit if Her Majesty's assent to the Bill were withheld so that a Bill dealing more circumspectly with the subject may be introduced and passed into law in the next Session of Parliament.

A. INGLIS CLARK, *Attorney-General.*

Chambers, Franklin Square, Hobart,
2nd December, 1890.

To His Excellency SIR ROBERT GEORGE CROOKSHANK HAMILTON, K.C.B.,
Governor and Commander-in-Chief in and over the Colony of Tasmania and
its Dependencies.

WE, Her Most Gracious Majesty's most dutiful and loyal subjects, beg leave to approach Your Excellency with the assurances of our unabated loyalty to Her Majesty's Throne and person.

We desire to draw Your Excellency's attention to the following facts in connection with the passing by the Legislature of Tasmania of a Bill, intituled "A Bill to amend the Crown Redress Act."

The Main Line Railway of Tasmania (until recently worked by a Company, which was liable to the public for acts of negligence committed by their servants) was, on or about the 1st October last, taken over by the Government of this Colony under an Act of Parliament passed last Session, but no provision was contained in such Act to render the Crown liable for accidents arising through the negligence of the Government employees, although such a provision is contained in every other Act dealing with railways constructed or acquired by the Government.

On the 17th of October last it was moved by Mr. Mugliston in the House of Assembly, "That in the opinion of this House, having regard to the fact that the Government have purchased the Main Line Railway, and should therefore be responsible for any acts of negligence in the same manner as the Tasmanian Main Line Railway Company would have been if the Line had still remained in their possession, it is desirable that the Government should bring in a Bill this Session to render the Crown liable for actions of Tort." This Motion was carried on the voices.

On the 21st of October, Mr. Mugliston asked the Government whether it was their intention to bring in a Bill to give effect to the Motion carried on the 17th of October, and not receiving a satisfactory reply, Mr. Mugliston moved for leave to bring in a Bill without notice to give effect to such Motion. This was opposed by the Government, but was carried on a division by 13 to 7, three Ministers voting in the minority. (See Paper attached hereto marked A).

On the 24th October, Mr. Mugliston moved the second reading of the Bill, and although the Government strongly opposed such reading, it was carried on a division by 16 to 6; three Ministers, the Acting Attorney-General and two other Members, constituting such minority. (See Paper attached hereto marked B). An amendment limiting the operation of the Bill was negatived on a division, the Bill was then passed through all its stages, and was ordered to be sent on to the Legislative Council for their consideration.

On the said 24th of October, the Bill was transmitted to the Legislative Council, and was read the first time on that date, and ordered to be read a second time on 28th of October. (See Paper attached hereto and marked G).

From the said 24th of October until the 13th of November such Bill was always placed at the bottom of the list of the Orders of the Day of the Legislative Council, as appears by the Notice Papers attached hereto, and marked D, E, F, G, H, I, J, K, L, M, and N).

On the 13th of November the Hon. Abye Douglas moved the second reading of the Bill, and, although the Premier offered strenuous opposition, it was carried on a division by 8 to 3. (See Paper attached hereto marked O). During the course of the debate on the Bill the Premier made use of a threat to the effect that the Government would hesitate before recommending it to the Governor for the Royal Assent; and thus, as the Hon. Abye Douglas pointed out, the defeat of the Premier caused him to divulge his reason for keeping the Bill at the bottom of the list of the Orders for the Day. The Bill passed the Legislative Council without any amendment being made.

A copy of the Bill as it was passed by both Houses is attached hereto, marked P, and it will at once be seen by an inspection of it that there are no commas in Clause 1 of the Bill, although in a paragraph in the *Mercury* of 2nd of December (supplied, as it is believed, by the Law Department of the Colony), commas are inserted, and inserted in such a way as to alter the true reading of the Bill, and we respectfully submit that if such has been done to the copy of the Bill transmitted to England, such punctuations have been inserted *since* the Bill passed the House of Assembly and the Legislative Council. In such paragraph it is also stated that "the title of the Bill as it passed was to amend the Crown Redress Act, but the old Act is not amended in any way by this measure." We submit that such a statement is not correct, inasmuch as the "old Act" was limited to contracts, whilst this Bill purports to make the Crown liable for torts as well as for contracts, as is shown by the preamble, which is as follows:—"Whereas the said Act does not provide for redress against the Crown in claims arising from tort." Further, it can never be contended that by extending the scope of an Act such Act is not amended. A copy of the newspaper is attached hereto.

In most, if not in all, of the self-governing Colonies, as well as in nearly all of the Crown Colonies, the Crown is liable to its subjects in torts as well as in contracts; consequently, should this Bill obtain the Royal Assent, the people of this Colony will be placed on an equal footing with those of the other Colonies; and no reason exists why the Crown in this Colony, where public works are largely entered into by the Government, should be exempt from liability for damages in the construction or management of such works any more than in other Colonies.

We have thought it incumbent upon us to lay before Your Excellency the above circumstances, and to request that Your Excellency will be pleased to authorise a copy of the Minute which Ministers submitted

to you recommending Your Excellency to reserve this Bill for the Assent of Her Majesty may be forwarded to us, and that Your Excellency will also be pleased to transmit this Address to the Secretary of State for the Colonies, so that the views of those who supported the Bill may be received by the Secretary of State for his consideration as well as the views of the Ministers who so strenuously but unsuccessfully opposed the passing of such Bill.

We are,

Your Excellency's obedient Servants,

W. H. BURGESS.
 NICHOLAS J. BROWN.
 H. B. MUGLISTON.
 N. E. LEWIS.
 WM. SIDEBOTTOM.
 WILLIAM HARTNOLL.
 WILLIAM H. BENNETT.
 HENRY H. GILL.
 H. I. ROOKE.
 DAVID SCOTT.

Premier's Office, Tasmania, 27th January, 1891.

SIR,

HIS Excellency the Governor having referred to Ministers the Petition signed by you, eight other Members of the House of Assembly, and by the Honorable H. I. Rooke, Member for North Esk, in the Legislative Council, on the subject of the Bill to amend "The Crown Redress Act," which was passed by both Houses of Parliament last year, and subsequently reserved by His Excellency for the signification of Her Majesty's pleasure therein, I have the honor to inform you that the same will be transmitted by His Excellency in due course, as desired by the Petitioners, to the Right Honorable the Secretary of State for the Colonies.

With regard to the request contained in the Petition, that His Excellency will be pleased to authorise a copy of the Minute which Ministers submitted to him recommending His Excellency to reserve the Bill for the Assent of Her Majesty may be forwarded to the Petitioners, I am not aware of any precedent or other authority that will justify him in furnishing to private persons a copy of any communication that has passed between him and his Responsible Advisers. In all cases where copies of such communications are ultimately presented to Parliament, or published for public information, "it is a general and reasonable rule of the Public Service that documents forwarded to the Imperial Government should not be published until they have been received and acknowledged by the Secretary of State."

I am surprised, and I regret, that the Petitioners should have thought it fitting, in referring to a paragraph that appeared in the Press upon the subject-matter of the Petition, to use language that implies the possibility, and which a portion of the Press has interpreted as directly charging such a dereliction of duty, on the part of both his Responsible Advisers and the Clerk to the Legislative Council, as would permit a Bill to be presented to His Excellency for the Royal Assent in a different form from that in which it ultimately passed through both Houses of Parliament.

I would have thought that whatever insinuations an ungenerous suspicion in the minds of the Petitioners might suggest to them as to the nature of the standards of public duty and private honor recognised by their political opponents, the unimpeachable character of such a highly respected and long-standing officer of the Public Service as the Clerk of the Legislative Council would have been sacredly safe in the midst of whatever disgraceful mud-throwing some Members of the Legislature, and their supporters in the Press, deem it becoming on their part to practise.

It only remains for me to add that the paragraph in the *Mercury* of 2nd December was not supplied by the Law Department.

I have, &c.

P. O. FYSH.

The Honorable W. H. BURGESS, M.H.A., Hobart.

Premier's Office, Tasmania, 31st. January, 1891.

MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

THE Premier has the honor to acknowledge the receipt from Your Excellency, on the 23rd instant, of a Petition signed by ten Members of the Legislature of this Colony in reference to the Bill passed during the last Session of Parliament to amend "The Crown Redress Act, (23 Vict. No. 1), and reserved by Your Excellency for the Royal Assent.

It has not appeared to Ministers to be desirable to advise compliance with the request of the Petitioners in regard to furnishing them with a copy of the Minute of Your Excellency's Responsible Advisers when recommending the reservation of the Bill for the signification of Her Majesty's pleasure, and they have, in replying to the imputations contained in the Petition, quoted a generally acknowledged authority on this subject—(Todd's Parliamentary Government in the British Colonies, page 94.) They have, further, endeavoured to defend a justly honoured officer of the Legislature against an insinuation which in reality cloaks a most serious charge.

Presuming that Your Excellency contemplates compliance with the desire of the Petitioners that their representations may be laid before the Right Honorable the Secretary of State for the Colonies, Ministers respectfully request that a copy of their reply to the Honorable W. H. Burgess, M.H.A., whose name heads the list of signatories, may be forwarded to Lord Knutsford by the same mail.

Tasmania.
No. 8.

Downing-street, 4th March, 1891.

SIR,

I HAVE the honor to acknowledge the receipt of your Despatch, No. 62, of the 9th December, enclosing a Bill, entitled "A Bill to amend the Crown Redress Act," which you had reserved for the signification of Her Majesty's pleasure. I have advised Her Majesty to withhold her assent to this Bill.

I have, &c.

KNUTSFORD.

Governor Sir R. HAMILTON, K.C.B., &c.

PERUSED and returned. I think copies of this Despatch ought to be laid upon the Table of both Houses of Parliament as soon as Parliament assembles.

A. INGLIS CLARK.
21. 4. 91.

Tasmania.
No. 9.

Downing-street, 21st March, 1891.

SIR,

I HAVE the honor to acknowledge the receipt of your Despatch, No. 6, of the 31st January, with its enclosures, respecting the Crown Redress Act Amendment Bill.

In my Despatch, No. 8, of the 4th instant, I informed you that I had advised Her Majesty to withhold her Assent to the Bill.

I do not, however, suppose that it is wished to deprive of all redress persons who, by the negligence of railway servants or other causes, have suffered wrongs which would give a cause of action against a Railway Company.

I understand that in Victoria actions in such cases would be brought against the Victorian Railways Commissioners, and apparently, under Sections 38, 39, 41, 44 of the Tasmanian Railway Construction Act, 1885, redress might in like manner be had against the Manager of the Railways mentioned in that Act.

If this be so, an extension of the principle would seem to meet the present case; but if I am mistaken as to the effect of that Act, I would suggest that the matter is one which appears to deserve the consideration of your Ministers.

I have, &c.

KNUTSFORD.

Governor Sir R. G. C. HAMILTON, K.C.B., &c.

Hobart, 25th April, 1891.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of 27th January last with reference to a Petition which I, with other Members of the Legislature, deemed desirable in the discharge of our public duty to address to His Excellency the Governor on the subject of the Crown Redress Bill, which was passed by the Legislature during the last Session of Parliament.

I am at a loss to understand on what ground you can justify the offensive terms in which you have alluded to the Members of the Legislature who signed the Address; but I have no desire to enter into any controversy with you on this point, and the public no doubt will judge justly between you and those whom you have so unwarrantably assailed.

I have the honor herewith to forward you a letter upon the same subject addressed to His Excellency the Governor (which communication is rendered necessary by the false light in which the matter would be left if your letter was allowed to pass unnoticed), and have to express the hope that you will take the earliest opportunity of forwarding the same to His Excellency.

I should have replied to your letter earlier but for the fact that I left town a day or two after I received it and did not return till the middle of February, and then had my time so fully occupied that I was unable to acknowledge it prior to my leaving for the National Convention in Sydney.

I have, &c.

W. H. BURGESS.

The Hon. the Premier of Tasmania.

Hobart, 25th April, 1891.

To His Excellency Sir R. G. C. HAMILTON, K.C.B.

YOUR EXCELLENCY,

I HAVE the honor to acknowledge the receipt of a letter (copy of which I enclose) sent to me by the Hon. the Premier in reply to the Address forwarded to Your Excellency *re* the Crown Redress Bill, and respectfully draw your attention to the unusual position taken by the Premier, who, instead of merely acknowledging on behalf of Your Excellency the receipt of the Address, has thought fit to make an unwarrantable and undignified attack upon your Petitioners.

From a perusal of such letter, Your Excellency will observe that not only does the Premier go out of his way to attack those who signed the Address, but also endeavours to show that the Petitioners directly accuse the Clerk of the Legislative Council of a dereliction of duty. It is certainly a far-fetched idea on the Premier's part to assume that your Petitioners intended in any way to hold the Clerk responsible, and I challenge the Premier to point out any part of the Address which makes such an accusation against that gentleman. But, doubtless, the Premier's reason for attempting to import the Clerk into this question is to divert attention from the real issue raised by the Address—viz., that Ministers were using their utmost endeavours to prevent the Crown Redress Bill from becoming law. For no one knows better than the Premier that, when he made use of a threat in the Legislative Council to the effect that the Government would hesitate before recommending the Bill to Your Excellency for the Royal Assent, such a course of procedure was in itself sufficient to excite suspicion in the minds of your Petitioners. But when such conduct is supplemented by a paragraph in a newspaper attempting to cast ridicule upon the Bill and those who supported it, your Petitioners had no alternative but either to forward the Address to Your Excellency, or to submit to having the will of the House treated with contempt by Ministers.

Further, the Premier says that such paragraph was not supplied by the Law Department. This statement, to use the words of the *Mercury*, is untrue; the paragraph in question was written from information given by the Attorney-General to one of the reporters of that newspaper, who was careful to give the Attorney-General's reading of the Bill, and had not the paragraph been rendered in the *Mercury* in the sense that the Attorney-General chose to attribute to it, it was clearly his duty to have taken immediate steps to have rectified the matter, and to have put the subject in its right light before the public. Instead of so acting, the Attorney-General has allowed the paragraph to pass uncontradicted or unrectified from December 2nd to the present time, and the natural inference to be drawn from such conduct is that the paragraph was allowed to remain uncontradicted because the paragraph correctly set forth the views of the Attorney-General. From the above it will appear incontestably that the Premier was utterly mistaken in his assertion that the paragraph was not supplied by the Law Department, seeing that the words were actually furnished by the Attorney-General himself, who is the head of that Department.

I have, &c.

W. H. BURGESS.

Attorney-General's Office, Hobart, 18th May, 1891.

MEMORANDUM *re* BILL TO AMEND "THE CROWN REDRESS ACT."

IN returning to the Hon. the Premier the correspondence on this matter, which he sent to me for my perusal, I forward to him the accompanying copy of a letter addressed by me to the Hon. W. H. Burgess on the same subject, and I shall be pleased if the Premier transmits the same to His Excellency the Governor with other correspondence on the matter.

A. INGLIS CLARK, *Attorney-General.*

The Hon. the Premier.

Attorney-General's Office, 7th May, 1891.

MY DEAR MR. BURGESS,

I HAVE read your letter to His Excellency the Governor on the subject of the Crown Redress Bill, and I feel compelled to take exception to that part of it which describes the Premier's statement that the paragraph which appeared in the *Mercury* on the subject was not supplied by me, as "untrue."

In support of your assertion that "the Premier was utterly mistaken in his assertion that the paragraph was not supplied by the Law Department," you affirm that the words of the paragraph "were actually furnished by the Attorney-General himself." This statement is absolutely erroneous.

The insinuation contained in the Petition presented to the Governor on the matter, and which was signed by yourself and other Members of Parliament—viz., that the punctuation of the Bill had been altered since it left the Houses of Parliament—was grounded upon a quotation from the Bill itself which was embodied in the paragraph published in the *Mercury*; but I never mentioned the question of the punctuation of the Bill to the reporter who interviewed me upon the matter, and I was informed by him some time ago that the comma which appeared in that quotation, and which occasioned all the controversy, was not in his manuscript.

I am, &c.

A. INGLIS CLARK.

The Hon. W. H. BURGESS, Franklin Wharf.

Premier's Office, Tasmania, 20th May, 1891.

SIR,

I HAVE the honor to acknowledge the receipt, on the 6th instant, of your letter of the 25th ultimo, covering a communication of the same date, addressed to His Excellency the Governor, in further reference to the Bill to amend the Crown Redress Act. This has been forwarded to Sir Robert Hamilton, together with copy of a letter from the Attorney-General to you, dated the 7th instant, respecting the statement which appeared in the *Mercury*.

I propose to take the first convenient opportunity of laying all the correspondence in connection with this matter before Parliament, and, therefore, I have no desire to make any further comments on the representations made by yourself and the other Petitioners,—a course which, I venture to hope, will recommend itself to you.

I have, &c.

P. O. FYSH.

The Hon. W. H. BURGESS, M.H.A.

Premier's Office, Tasmania, 20th May, 1891.

MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

THE Premier has the honor to forward to Your Excellency a letter from the Honorable W. H. Burgess, M.H.A., in further reference to the Bill to amend the Crown Redress Act, to which Her Majesty has been advised to withhold her assent, together with a memorandum by the Attorney-General enclosing copy of a reply which he has addressed to Mr. Burgess. The Premier proposes to lay all the correspondence on this subject before Parliament at the first convenient opportunity.

P. O. FYSH.