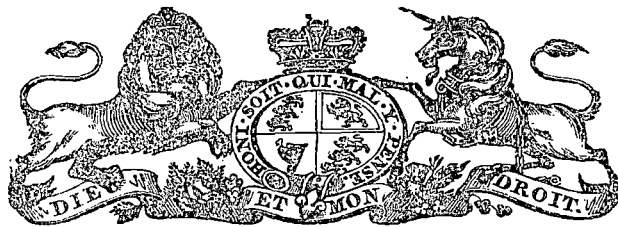


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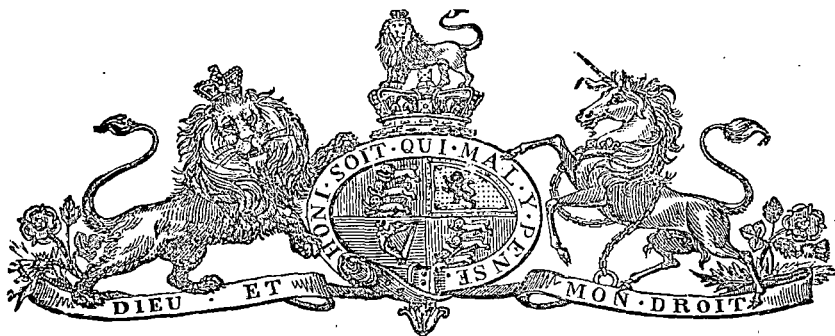
1862.

TASMANIA.

CORONER'S FEES, &c.

RETURN TO AN ORDER OF THE HOUSE. (*Mr. John Meredith.*)

Presented by the Colonial Treasurer, and ordered by the House to be printed,
21 August, 1862.



FEES of Courts of General Sessions in Municipalities.

MEMO.

THE accompanying Documents on the above subject form part of the Correspondence called for by Mr. John Meredith, but which could not at the time be found.

B. TRAVERS SOLLY.
15 August, 1862.

The Hon. the Attorney-General.

THE Copies of the other Documents were laid on the Table of the House by the Colonial Treasurer. These had better be forwarded to him.

W. L. DOBSON.
16 August, 1862.

FORWARDED accordingly to the Honorable the Colonial Treasurer.

B. TRAVERS SOLLY.
18 August, 1862.

Swansea, 11th February, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 7th instant, enquiring whether, since the election of the Municipal Council, any Fees have been received in the Office of the Registrar of the Court of Requests, and, in reply, to inform you that no such Court exists here.

Upon the election of the Municipal Council, it was found to be inconsistent to allow the Municipal Officers to be placed under any one not a Member of the Council, and a Correspondence took place between the Council and the then Attorney-General, in which the inconveniences likely to arise were pointed out; and, in the end, the Council positively refused to let their Officers act under any one appointed by the Governor. The Court was thus virtually abolished, as no sitting was held afterwards.

This circumstance, I know, led the late Attorney-General to prepare and introduce into Parliament the measure for vesting in Courts of General Sessions the power of adjudication in cases for the recovery of Debts and Demands within a certain limit, and on the 1st December, 1860, the provisions of the said Act were extended to Glamorgan by an Order in Council.

The duties are wholly performed by the Magistrates of the District, with the assistance and labor of the Municipal Officers, as well as all the expenses thrown upon the Municipal Funds. The Government thus being relieved from all charges, so far as this Municipality is concerned, can have no claim to the Fees received in the Court of *General Sessions* established therein; and, although that Court has been empowered to charge a Scale of Fees similar to those formerly enforced in Courts of Requests, I would submit that it is obvious that such Fees can only be intended to cover the expenses attending the holding of such Court, and not as a source of Revenue to the Executive Government.

I have the honor to be,
Sir,

Your most obedient Servant,
A. GRAHAM, *Warden.*

The Hon. the Colonial Treasurer.

THE Registrars of the Courts of Requests and Courts of General Sessions in the several Rural Municipalities have been called upon to pay over the Fees received by them to the Government, no provision being made in any of the Rural Municipalities Acts for the appropriation of such Fees to

the use of the Municipalities. The Warden of Swansea demurs, on the grounds stated in his letter ; and the Crown Solicitor is requested to give his opinion in the case, for the guidance of the Colonial Treasurer.

THOS. V. JEAN, *Assistant Colonial Treasurer,*
14 February, 1862.

24 Vict. No. 6, Sect. 6, expressly casts upon the Council Clerk and the Superintendent of Police the duties and offices of Registrar and Summoning Officer respectively. It is one of the Registrar's duties to receive the Fees and to transmit the same to the Government. It may or may not be a hardship upon Rural Municipalities that their Officers should be required by Law to perform the duties of Government paid Officers, but that they are so required there can be no doubts.

ROBERT BYRON MILLER.
15 February, 1862.

Swansea, 7th March, 1862.

SIR,

I have the honor to acknowledge the receipt of your letter of the 27th ultimo, accompanied by the Crown Solicitor's opinion respecting the Fees received in the Court of General Sessions in Glamorgan, and, in reply, to inform you that my views are in no way altered by the opinion expressed by that learned gentleman. I have looked at the Clause mentioned by him, and indeed through the whole of the Act, and cannot see where the Registrar is required to forward to the Government the Fees received in General Sessions.

Other business is performed at the same Court, on the same days, and the Fees received by the same Officers. Why not then, with equal reason and justice, call upon us for the whole of the Fees? Why limit your demand to one particular class? It will surely never be contended that the Legislature intended to impose on Municipal Councils the cost of providing Officers to do duties for the General Government. The Crown Solicitor says, "The Municipal Officers are required by Law to perform the duties of Government paid Officers." If he means by this to infer that they are to be held responsible by the Executive Government for the performance of those duties, I, for one, repudiate such a doctrine, and assert most positively that no power on earth but the Municipal Council has the slightest control over the Municipal Officers. They can only be viewed as the servants of those who pay them.

The Court of General Sessions is purely of a local character, for the disposal of business in a summary manner. And as the expense of maintaining such Court is thrown entirely upon the Council, I again submit, with all due respect, that we are entitled, upon every principle of equity and justice, to the Fees derived therefrom ; and I am strengthened in this opinion by a reference to the 23rd *Victoria*, No. 28, and the 24th *Victoria*, No. 6.

As Rural Municipalities are now becoming general, and as the point at issue is one of considerable importance as affecting the rights and privileges of local Councils, I desire to have the matter fully discussed ; and if it is found that we are to be looked upon as subservient to the Executive Government, and that the present Law inflicts upon us the extreme injustice of compelling us to maintain a Court and Officers, and at the same time to pay the Fees of that Court to the General Revenue, the sooner that position is clearly pointed out the better, so that no time may be lost in preparing an appeal to Parliament to remedy such an unsatisfactory state of things.

While I regret to be placed in antagonism to the Executive Government, I feel impelled, from a sense of duty to my constituents generally, and, the Council particularly, to take the course I have done on the present occasion ; and, in the hope that what I have now urged may induce the Government to take a more liberal view of the matter than heretofore,

I have the honor to be,

Sir,

Your most obedient Servant,

A. GRAHAM, *Warden.*

The Hon. the Colonial Treasurer.

Colonial Treasury, 26th March, 1862.

SIR,

I HAVE the honor to submit to you the accompanying Correspondence relating to the Fees received by the Registrar of the Court of General Sessions in the Rural Municipality of Swansea ; and request that you will be so good as to take such steps as you may deem necessary for the protection of the Revenue.

I have the honor to be,
Sir,

Your obedient Servant,

THOS. V. JEAN, *Assistant Colonial Treasurer.*

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 28th March, 1862.

SIR,

I AM in receipt of a communication from the Colonial Treasurer, enclosing a Correspondence between that Officer and yourself respecting the payment into the General Revenue of the Fees received by the Registrar of the Court of General Sessions in the Rural Municipality of Glamorgan, and to which payment you demur, claiming to retain the Fees, as of right belonging to the Revenues of the Municipality.

I regret that, after the receipt of the opinion of the Solicitor-General, you should still deem it your duty to withhold the payment of the Fees collected, for unquestionably they form part of the Public Revenue of the Colony, and must be paid into the Colonial Treasury.

By the 6th Section of the 24th Vict. No. 6, the Council Clerk is made the Registrar of the Court of General Sessions.

By the 9th Section, the provisions of the 6th Vict. No. 9, relating to Courts of Requests and the Officers thereof, are made applicable to Courts of General Sessions appointed under the Act.

And the 25th Section of the 6th Vict. No. 9 directs that the Fees of such Courts shall be paid into the Colonial Treasury. It therefore follows that the Law requires the Fees in question to be paid into the Treasury ; and I trust you will allow no further delay to arise in your complying with the requirements of the Law.

I have, &c.,

B. TRAVERS SOLLY,
(*for the Colonial Secretary, absent.*)

A. GRAHAM, *Esq., Warden, Swansea.*

Swansea, 31st March, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 28th instant, in reference to a Correspondence that has taken place between myself and the Honorable the Colonial Treasurer respecting a difference of opinion that exists between us as to the proper appropriation of the Fees received in the Court of General Sessions at Glamorgan.

Before entering generally into the matter with you, I wish the several objections taken by me, in my letter of the 7th instant, fully replied to ; although I think nothing can be more conclusive that the position I have taken is the correct one than your judicious reference to the 25th Section of 6th Victoria, No. 9.

I had carefully read every Act bearing upon the case before deciding on my course of action ; and, strange to say, the very Clause mentioned by you as forming your stronghold, contains the very essence of what I have all along contended for ; viz., that "*the Fees of the Court were intended by Law to be applied towards its maintenance.*"

This brings me again to the consideration of the question, By whom is the Court in Glamorgan maintained ? I unhesitatingly affirm the whole expense is borne by the Municipal Council. Can it then for a moment be supposed that we are to keep up a Court and Officers for the performance of public business *at our own cost*, and hand over the Fees of such Court to the Executive Government, *for the purpose of maintaining Courts of Requests in other parts of the Island*, when we receive nothing from them in support of the very Court from which the Fees in question are derived ?

I am, like yourself, an Executive Officer, and responsible for my acts. It is, therefore, my bounden duty to be clearly satisfied in every step I take before consenting to any course that would jeopardise the interests of the Municipality, and to the utmost of my ability defend its rights when I consider I see an attempt made to invade them.

I have taken up the discussion of this question on the broad grounds of right and justice, and not with a view of annoying the Executive Government, whose duty it is, I consider, to treat me with the same respect they claim for themselves; and, holding this opinion, I cannot but feel that your letter is unnecessarily dictatorial.

I have the honor to be,
Sir,

Your most obedient Servant,

A. GRAHAM, *Warden of Glamorgan.*

The Hon. the Colonial Secretary.

FOR THE ATTORNEY-GENERAL.

Fees of Courts of General Sessions in Municipalities.

THE Warden of the Rural Municipality of Glamorgan, upon being called upon by the Colonial Treasurer for an account of the Fees of the Court received since the establishment of the Municipality, demurs to the right of the Government to any Fees received in such Court, inasmuch as the Court is composed of, and the duties performed by, gentlemen and officers under the control of the Municipality, and not in the receipt of pay from the General Government.

The Warden specially depends on the 25th Sect. 6 Vict. No. 9, relating to the application of Fees payable in Courts of Requests; and would argue that, as such Fees are to be appropriated towards the maintenance of the Courts of Requests in the Island, and as it would be impossible to suppose that the Fees collected in a Court solely maintained at the expense of the Municipality should be devoted to the support of Courts of Requests maintained at the Government expense, it follows that the Fees of the Glamorgan Court justly belong to the funds of the Municipality.

The question has received the consideration of the Solicitor-General, who clearly states his opinion, but Mr. Graham still declines to act upon it; and a further letter from the Colonial Secretary's Office, endeavouring to point out that it was the Law and not the Government that rendered the payment of these Fees into the Treasury imperative, is not received by Mr. Graham as conclusive, and thus he virtually declines to remit the Fees.

Under these circumstances the papers are forwarded to the Honorable the Attorney-General, in order that such course may be adopted as he may deem advisable.

FRED. M. INNES,
(*for the Colonial Secretary, absent.*)

Colonial Secretary's Office, 5th April, 1862.

I HAVE been in correspondence with Mr. Graham on the subject of Courts of Requests Fees, and he now informs me that he is prepared to recommend the Council to pay the amount (£3) of Fees received into the Treasury.

W. L. DOBSON.

6th May, 1862.

THESE Papers are now forwarded to the Honorable the Colonial Treasurer. The Warden of Glamorgan having stated to the Attorney-General his intention of recommending to the Council the payment of the Fees in dispute into the Colonial Treasury.

B. TRAVERS SOLLY.

7th May, 1862.