(No. 132.)

1892.

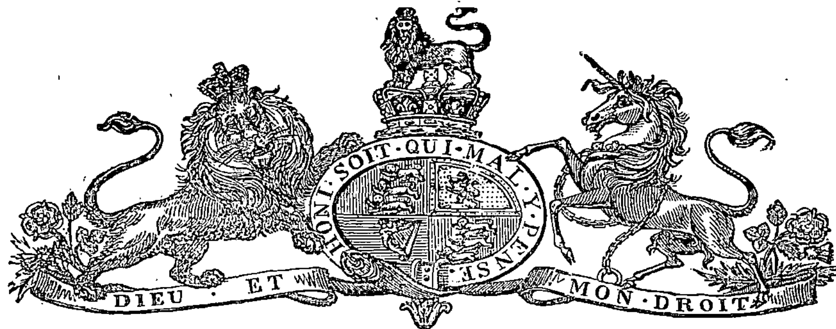
PARLIAMENT OF TASMANIA.

MR. JAMES BRYANS' LAND:

CORRESPONDENCE.

Return to an Order of the House of Assembly. (Mr. S. J. Sutton.)

Laid upon the Table by the Attorney-General, and ordered by the House of Assembly to be printed, December 15, 1892.



Lands' Titles Office, Hobart, 3rd January, 1891.

DEAR SIRS,

Re Bryans' Application.

THIS was passed under Section 20 of the Real Property Act, No. 5, and £50 fixed as "the additional sum of money" to be contributed to the Assurance Fund as an indemnity against an "uncertain claim" appearing on the face of the title. Your Mr. Chambers was aware of all the circumstances, and I understood at the time, that as soon as the month for advertising the application had expired, the £50 would be paid. It has not been as yet, and therefore of course the title has not been prepared. The application is for a grant, and not for a certificate. Immediately on receipt of the extra assurance money I will forward the necessary instructions to the Survey Office to prepare the grant deed.

Yours faithfully,

JAMES WHYTE, *Recorder of Titles.*

Messrs. POWELL, LETHBRIDGE, & CHAMBERS,
Solicitors, Launceston.

TELEGRAM.

Mr. JAMES BRYANS, *Launceston.*

YOUR grant taken up by Mr. Chambers.

JAMES WHYTE,
Lands' Titles Office, Hobart.
7.3.91.

Sandhill, Launceston, 10th August, 1892.

DEAR SIR,

I HOPE it will be within your recollection that in October last I made an application to yourself and the Hon. the Attorney-General for a refund of the £50, being amount of an extra insurance charged to me by your Department on an application for a grant to 10 acres of land in the city of Launceston. You will also remember that I based my claim on the fact that Messrs. Hatton & Laws obtained a grant from your Department in 1877 without an extra insurance being demanded, Messrs. Hatton & Laws having purchased their property at the same time, and was part of the same estate as mine, their title being the same in every particular as mine. Now, Sir, I respectfully beg leave to make a few remarks on the objections raised to my claim by yourself and the Attorney-General. Your first objection was that Hatton & Laws had applied for and obtained their grant in 1877, no extra insurance being demanded; but that in 1878 an amendment in the law relating to the Lands' Titles Department, or a short Act was passed giving the Commissioners power to charge an extra insurance in doubtful cases, and that if Hatton & Laws had been one year later in applying they would have had to pay a higher rate. To this objection I respectfully beg to submit that if Messrs. Hatton & Laws' title was thought good enough to get them a grant in 1877 (before the new Act came into force), mine also ought to have been considered good enough (all things being equal) 13 years after, viz. 1890, without the application of the new Act in my case—or else the longer a person has been in possession the worse his title is. The objection raised by the Hon. the Attorney-General was that now the £50 being invested, along with other funds of the Department, he knew of no law by which it could be returned to me. Now the Attorney-General admitted to Mr. Wm. Hartnoll that a bond would have been accepted in lieu of the £50 had it been offered at the proper time (of which I was ignorant). This being so, if my solicitor had acted justly to me and given a bond instead of the £50, you could not have invested the bond; but now the Government is receiving interest on the £50, this, in my opinion, is where the hardship comes in. The objections to my claim for a refund may be perfectly legal, but at the same time they are unjust to me. I have spoken to several Members of Parliament on the matter, and they all admit I am being hardly dealt with. When I reflect on the whole affair, I think I am

quite justified in again applying to you for a refund of the £50, which, I believe, I am justly entitled to. In conclusion, sir, I trust you will now favourably consider my claim, and kindly bring it before the Hon. the Attorney-General or the Commissioners; and if you should require a bond, I will have one prepared to your entire satisfaction.

Anxiously waiting your reply,

I am, Sir,

Yours respectfully,

JAMES BRYANS.

J. W. WHYTE, *Esq.*

Lands' Titles Office, Hobart, 12th August, 1892.

SIR,

Re your Application No. 844, for a Grant to 10a. 1r. 21p., Launceston.

I HAVE the honor to acknowledge the receipt to-day of your letter of 10th instant, setting forth, among other grounds upon which you claim the return of a sum of £50 paid on your account herein to the Assurance Fund as an indemnity against an outstanding claim arising upon the title, that Messrs. Hatton and Laws obtained a grant under the Real Property Act in 1877 under the same title "without any extra assurance" being demanded. The position was fully explained by me to you in presence of the Attorney-General many months ago; and I thought that you understood that your case and Mr. Hatton's were not analogous, and that you were satisfied. The application quoted by you was by J. D. Hatton, and was passed in 1877. The same flaw existed in his title as in yours, but the then Commissioners appeared to have been satisfied to take the risk. Had "The Real Property Act, No. 5," which was passed in 1886 (not in 1878, as you thought) then been law, I have no doubt that he would have been called upon to contribute an extra amount to the Assurance Fund, as you were. At any rate the Lands' Titles Commissioners sitting on your case in 1890 could not be bound as a matter of course by what was done in another case in 1878, especially as the law was then different. There was no compulsion on you to make payment of the amount now claimed by you, but it was a condition precedent to your obtaining a title clear of the outstanding interest of one George White, which you may, I think, regard as cheap at £50. There is no provision in the law which would at that time or can now authorise the department to take a bond in place of the money paid by you, so that you have no cause to blame your Solicitors for not tendering one. This money could only be repaid under the authority of an Act of Parliament; and it is obvious that, although you consider your case a hard one,—wrongly I think—I cannot agree with you, and would not recommend the adoption of that course.

I have, &c.

JAMES WHYTE, *Recorder of Titles.*

JAMES BRYANS, *Esq., Sandhill, Launceston.*

Sandhill, Launceston, August 29th, 1892.

DEAR SIR,

IN reply to yours of the 12th instant, I beg to thank you for replying so promptly to mine of the 10th inst. At the same time in justice to myself, I beg leave to explain that I take exception to some of the statements contained therein. You stated in your reply that you thought you had explained everything to me a few months ago in the presence of the Attorney-General, and that my case and Mr. J. D. Hatton's were not analogous, and that you thought I appeared satisfied; but further on you admit that the same flaw existed in Mr. Hatton's title as in mine, but the then Commissioners appeared satisfied to take the risk; but had "The Real Property Act, No. 5" passed in 1886 then been in force, Mr. Hatton would have been called upon to contribute an extra amount to the Insurance Fund, the same as I was, but that the Lands' Titles Commissioners sitting on my case in 1890 could not be bound by what was done in another case in 1877, or thirteen years later, as the law then was different. In the above explanation I respectfully beg leave to differ with you, on the following grounds:—First, you refer me to a short Act passed in 1886, a copy of which I have now before me, and the only reference I can find in that Act dealing with the question at issue is contained in Clause 20, an isolated clause, which is only permissive at best, and in my opinion should never have been applied to my case, on account of the number of years (13) which I held my property longer than Mr. Hatton had held his before applying for a grant. Mr. Hatton purchased his the same year as I purchased mine, viz., 1876. The next year he applied for and obtained his grant; but, according to your explanation, the weak point in my application is that I held possession of my property too long before applying for a grant. If this is law, I am sure it is not equity.

Re the bond: you further explained that there was no provision in the law that would at that time, or now, authorise the Department to take a bond in place of the money payment made by me, and that I had no cause to blame my solicitor. To this statement I beg leave to say that I can-

prove to your satisfaction that Mr. Chambers had the option of giving a bond instead of the money. While looking over the bill of costs, after I had settled up with my lawyers, I found the following entry :—

"July 4, 1890.—Attending Solicitor at Lands' Titles Office, ascertaining result of further consideration of application, and as to contribution by applicant of £50 to Assurance Fund of Department or a bond for outstanding interest."

The above I believe to be conclusive evidence that the then Solicitor to the Department did give Mr. Chambers the option of tendering a bond in lieu of the £50. In support of the above, I quote the Attorney-General's admission to Mr. Hartnoll in October last, that a bond would have been accepted had it been given at the proper time.

Now, Sir, when I reflect on the trouble and unnecessary expense I have been subjected to, I cannot help thinking that some of the legal profession have a far greater influence at head-quarters than others; and that had I been fortunate enough to have employed the same firm of solicitors (Messrs. Ritchie and Parker) as Mr. J. D. Hatton employed, I would have obtained my grant without all this trouble and extra expense. In making these remarks I do not desire to cast any reflections on anyone in particular.

I enclose the bill of costs referred to, and marked entry with red pencil for your inspection. I also enclose a letter from Messrs. Powell, Lethbridge, and Chambers, dated July 5, 1890, in which you will note that they were also of the opinion that the deposit would be returned at some future date.

In conclusion, Sir, I trust that you will yet see your way clear to recommend my case in the proper quarter if I should apply to Parliament to have the £50 returned to me.

I am, &c.

JAMES BRYANS, *Sandhill, Launceston.*

P.S.—Kindly return bill of costs at your convenience.

J. B.

J. W. WHYTE, *Esq.*

[Memo. referred to in Mr. Bryan's letter of 29th August, 1892.]

DEAR SIR, *5th July*, 1890.

Re your Application.

After very considerable difficulty we are now able to acquaint you of the gratifying intelligence that the Commissioners will give you a certificate of title to your land subject only to your depositing the sum of £50 in the Assurance Fund of the Lands' Titles Department. This sum is to remain deposited for about five years, after which it will be returned, provided no one in the meanwhile claims the outstanding interest. Considering the difficulties surrounding the title, we feel we can congratulate you on the result, more especially as only a few weeks ago the Commissioners refused to give you a title. We shall be glad to see you hereon at your convenience.

Yours, &c.

POWELL, LETHBRIDGE, AND CHAMBERS.

Mr. JAMES BRYANS, *Sandhill.*

September 7th, 1892.

SIR,

Re your Application No. 844, for a grant to 10a. 1r. 21p., Launceston, I have the honor to acknowledge the receipt of your letter of 29th ultimo, and regret that it is quite evident that I have been unable to satisfy you in the matter.

Section 20 of "The Real Property Act," No. 5, which you refer to as "an isolated clause, which is only permissive at best, and in (your) opinion should never have been applied to your case, &c.," nevertheless enabled the Lands' Titles Commissioners to accept your title, and authorise the issuing of a grant upon terms, notwithstanding the defect in that title. I think it a fair assumption that one, at any rate, of the objects of your application was to get rid of this defect, which consisted of the interests of the children of Adelaide and George White being still outstanding. Those interests represented one-ninth of the property (valued by you at £3500), or £388 odd, and must, while so outstanding, have rendered your title unmarketable. Your vendor, Mr. J. K. M'Kay, did not purchase those interests, and therefore could not sell them to you. Whether this was taken into consideration at the time in fixing the purchase money I am unaware, but it would be immaterial to the present question, so far as this office was concerned, when it was issuing you a title for interests the claim to which was not evidenced by any muniments of title. £50 does not therefore appear to be an excessive contribution to the assurance fund against claims which might amount to £388, and which, so far as you are concerned, may therefore be considered as cheaply purchased at the first-named sum.

As to the bond in lieu thereof, and the entry of July 4th, 1890, in the bill of costs of your solicitors, Messrs. Powell, Lethbridge, and Chambers, I can only refer you to my previous letter of 12th ultimo, with this addition, that there appears to have been a misunderstanding, for how it could have been contemplated that this money, once paid, should be returned in five years, or at all, any more than the ordinary and usual contributions to the assurance fund should be returned, I cannot understand. This, however, could not have altered your present position, unless indeed you had refused to pay the £50, in which case your application would not have been acceded to, and there would have been an end of the matter so far as this Office was concerned, for the land being ungranted there would not have been an appeal from the Commissioners' decision to the Supreme Court. True, you could then have made an entirely new application to that Court for a grant under the old system of conveyancing; but the proceedings would have had no effect on this application so far as the cost thereof was concerned. I think you may, therefore, consider that it was fortunate that you adopted the course you did. Your statement, "I cannot help thinking that some of the legal profession have a far greater influence at head-quarters than others, and that had I been fortunate enough to have employed the same firm of solicitors (Messrs. Ritchie & Parker) as Mr. J. D. Hatton employed I would have obtained my grant without all this trouble and expense," cannot be allowed to pass unchallenged, for it is a direct reflection on the Lands' Titles Commissioners, notwithstanding your statement that "you do not desire to cast any reflection on any one in particular." I do not think you could have intended it in this light, and that you will readily say so now that your attention has been drawn to the point.

It is obvious that I do not consider your case made out; but as you appear to contemplate asking Parliament to pass a private Act for the return of the £50, you would perhaps desire to have the correspondence laid before the Ministerial Head of the Department. On this point I await your reply. I have kept a copy of your solicitor's letter of 5th July to accompany the correspondence. The only material item in their bill of costs is quoted *verbatim* in your letter now under reply; the bill and your copy of the said letter is therefore returned herewith.

I have, &c.

JAMES WHYTE, *Recorder of Titles.*

JAMES BRYANS, *Esq.*, *Sandhill, Launceston.*

Sandhill, Launceston, 30*th September*, 1892.

SIR,

IN reply to yours of the 7th instant, I desire to draw your attention to an error of some importance therein. You stated that the outstanding interest was one-ninth; this is a mistake, as the missing link in Mr. Hatton's title and mine was one eleventh, not one ninth. Mr. J. H. M'Kay purchased the whole of the Cobb Estate except that of Adelaide Cobb, afterwards the wife of George White—her share being one eleventh. Mrs. White died many years previous to Mr. M'Kay purchasing the estate, leaving two daughters; the youngest, if now alive, would be 31 years of age. If the missing share was ever claimed (which is most improbable) Mr. M'Kay would be bound to purchase it in order to make his estate complete. This estate is situated in New South Wales, and is a large one. Should Mr. M'Kay have purchased the missing share he never could make any claim on me, as the conditions of sale would prohibit him from doing so.

Sir, you stated in both of your letters that my grant may be considered cheaply purchased at £50: if so, how much cheaper still was Mr. Hatton's, with the same defect, 15 years ago, when no extra demand was made towards the insurance fund? I am prepared to prove that Mr. Hatton's title and mine were the same in every particular, being part of the same estate, purchased of the same vendor, and each title contained the same defect; yet the Commissioners granted Mr. Hatton's application free of extra costs, and the same Department refused my application unless I paid £50. This inconsistency is what I complain of, and on this ground I base my claim and seek redress.

It is useless to refer me to Section 20 of "The Real Property Act, No. 5," and tell me that this Section enabled the Commissioners to authorise the issuing of a grant to me on certain terms. You are well aware that the Commissioners had the same power in the principal Act to authorise the issue of a grant to me that enabled them to issue a grant to Mr. Hatton. The principal Act is still in force, and should have been applied to my case; and, as I said before, Section 20 of 'The Real Property Act, No. 5," is only a permissive Act at most, and never ought to have been applied in my case, owing to the number of years (13) I held my property before applying for a grant.

I thank you for the offer of bringing the correspondence under the notice of the Ministerial Head of the Department, and trust that my reasonable request may be granted.

May I be allowed to ask am I the only applicant who has been made to pay such an extra insurance rate?

I am, &c.

J. W. WHYTE, *Esq.*

JAMES BRYANS.

(No. 132.)

October 10*th*, 1892.

SIR,

Re your Application No. 844G.

I HAVE the honor to acknowledge the receipt of your letter of the 30th ultimo. I find on reference that you are correct in quoting the outstanding share as $\frac{1}{11}$, and that I was in error, therefore, in referring to it as $\frac{1}{9}$. This is, however, of slight importance, as the reduced value thereof, £318 instead of £388, is still proportionately very large in comparison to the extra amount contributed to the assurance fund in respect thereof (£50). Your statement "Mr. M'Kay would be bound to purchase it (the outstanding interest) in order to make his estate complete . . . Should Mr. M'Kay have purchased the missing share he never could make any claim upon you, as the conditions of sale would prohibit him from doing so" does not affect the question so far as this Office is concerned, and refers alone to the state of affairs as between you and him. At the time he sold to you he had not purchased such share, and therefore could not sell it to you. If you do not desire to add anything further to the correspondence before it is laid before the Ministerial Head of the Department, will you be good enough to so inform me?

I have, &c.

JAMES WHYTE, *Recorder of Titles.*

JAMES BRYANS, *Esq., Sandhill, Launceston.*

Sandhill, Launceston, 11*th October,* 1892.

SIR,

YOURS of the 10th to hand, and I beg to state I have nothing further to add to the correspondence. If the correspondence is fully gone into the matter will be explained as to the matter on which I base my claim, viz., that I wish to be dealt with in the same manner as Mr. J. D. Hatton—a similar application.

As to the outstanding interest, if I had the slightest apprehension that this would be claimed, I would not be so desirous of entering into an approved bond.

Trusting to receive a favourable reply,

I am, &c.

JAMES BRYANS.

J. W. WHYTE, *Esq.*

MEMO.

Re J. Bryans' application No. 844G.

SUBMITTED for the consideration of the Hon. the Attorney-General, as Mr. Bryans in the correspondence speaks of bringing the matter before Parliament. The first letter of January 3rd, 1891, is strictly speaking no part of the correspondence, but it bears upon the subject-matter so far as it is in explanation to Mr. Bryans' solicitors as to alleged delay in issuing the grant on his application. Attention is drawn to page 3 of Mr. Bryans' letter of 10th August, wherein he refers to Mr. Hartnoll, and further says :—"I have spoken to several Members of Parliament on the matter, and they admit I am being hardly dealt with." This has no doubt caused him to persevere in making a claim which from the correspondence you will perceive I consider cannot be entertained, and of which the Members referred to could only have heard from his point of view.

JAMES WHYTE, *Recorder of Titles.*

The Hon the Attorney-General. Oct. 12*th*, 1892.

MEMO

Re Bryans' application.

I HAVE carefully perused all the correspondence connected with this case. The Commissioners had the power to grant the application put in by Mr. Bryans, or to refuse it; or, if they saw fit, to grant it upon the applicant contributing such additional penalty as they saw fit by way of extra assurance. They, in the exercise of the power vested in them, directed the payment of £50 into the Assurance Fund, in addition to the sum payable on the basis of the value of the property. This was entirely within their discretion, and I do not see any reason why I should question the wisdom of the course of action they adopted. Mr. Bryans could have declined to pay this sum and withdrawn his application. He did not see fit to adopt this course. In order to free his property from the outstanding claims that might arise, and to obtain a title good as against all the world, he paid the £50 and obtained a grant for his property. There is no power vested in the Recorder of Titles to refund this money.

Mr. Bryans' solicitors seem to have been under some misapprehension with regard to the giving of a bond in lieu of the payment of the money. No provision is made which will allow

any person to give a bond instead of paying cash, nor would the Recorder of Titles have been justified in accepting such a bond. The fact that the then Commissioners of Titles saw fit in 1877 to give a title to Messrs. Hatton and Laws is in no way binding upon the present Commissioners.

I shall be glad if the Recorder of Titles will communicate my decision upon this case to Mr. Bryans in order that he may take such further action in the matter as he may think proper.

N. E. LEWIS.
8th November, 1892.

Lands' Titles Office, Hobart, November 14th, 1892.

Sir,

Re your Application No. 844G, I have the honor to inform you that the correspondence herein was, as arranged, duly submitted for the consideration of the Ministerial Head of this Department, and that I received a Memo. from him thereon, dated 8th instant, the contents of which is therefore hereunto annexed.

I have, &c.

JAMES WHYTE, *Recorder of Titles*.

James Bryans, *Esq., Sandhill, Launceston.*

WILLIAM GRAHAME, JUN.,
ACTING GOVERNMENT PRINTER, TASMANIA.