

(No. 104.)



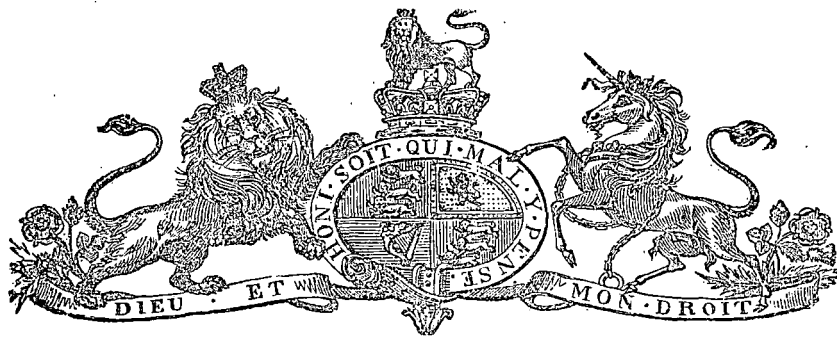
1865.

T A S M A N I A.

**MR. KIRWAN'S REPLIES**

ON DECISIONS CONTAINED IN THE PRECIS ON SIR WM.  
DENISON'S STRICTURES, LAID ON THE TABLE OF THE  
HOUSE BY THE HON. F. M. INNES.

Presented by Mr. Lewis, and ordered by the House to be printed, 19 September,  
1865.



MR. KIRWAN'S *Replies on Decisions contained in the Précis of Sir Wm. DENISON'S  
Strictures.*

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No. 1. CASE OF THE POLICE CLERK AT BOTHWELL.

THE real facts of this case are as follows:—

In October, 1851, I had occasion to refer to a legal opinion from one of the Law Officers, and requested the Police Clerk to get it. Owing to these documents being loosely kept among other documents in the office, there was some delay in getting the paper. For more ready reference, and to ensure their safety, I desired that they might be copied from time to time in a book.

The Police Clerk was not engaged at the time in any police duty—there was in fact nothing or next to nothing for him to do at any time. The order was given in the shape of a request. He replied that “he would not copy them,” or that “it was not necessary.” I repeated the request; he still refused. I gave him a peremptory order to do so; he again refused. His manner and demeanour were highly disrespectful in each instance.

I gave the order calmly and in no unfriendly spirit. It was intended rather for his future guidance in reference to those documents than to the present; and my motive was based solely and exclusively upon a conscientious regard for the public service, in a matter wherein I was the responsible officer. I could not possibly have, and have not, any other motive. I had no previous difference with the Police Clerk. I never had the slightest desire that he should scribble at my pleasure. The very same duty I asked him to perform I have myself discharged in an official school where obedience to orders was the life and soul of the public service.

I then thought, and am still of the same opinion, that where a public officer like a Police Magistrate has certain responsibilities of public duty resting upon him, he has a right to expect that his orders to his subordinate should be implicitly obeyed, otherwise the public service must suffer injury.

Shortly after the decision in this case, I felt it due to myself to wait upon the Governor and to remonstrate against the imputation of my motives contained in that decision. I emphatically stated that I could not consent to take charge of any other District under such imputation of motives. The reply of the Governor was, “I did not mean to impute any improper motive. I merely thought then, you were a little too strict; but I have since thought not, and find I was mistaken. I relieve you from any imputation of improper motive, and the stricter you are the better I shall be pleased, and shall support you.”

I omitted to state that the only person present in the Office when I gave the order to the Police Clerk, and who was witness both to my manner and the Clerk's conduct, was the Rev. Mr. Bryan; and I stated so to the Government in my Report on the Clerk's conduct, but, strange to say, he was never referred to by Government.

Upon the Governor's withdrawal of censure, I assented to take charge of the Huon.

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No. 2. CASE OF A. SWIFT; POLICE CLERK AT KINGSTON.

1. Shortly after taking charge of the Huon District, I frequently observed the Police Clerk walking about the Township smoking a pipe during those hours when he should have been attending to his duty, and which the Government have laid down as Office hours.

2. I spoke to him repeatedly in a friendly manner about his idleness, and reminded him that he ought to be preparing his Weekly Returns. His reply was, that under my predecessor he was not required to be in Office during those hours, and that he had nothing to do.

3. Finding that he continued for some time to neglect his duty and my advice, I was compelled to report his conduct to the Chief Police Magistrate. I withdrew from pressing this complaint at the suggestion of one of his friends.

4. When the Gold Fields sprung up at Victoria, he expressed to me his intention to resign, for the purpose of going there, as he said, to obtain money to enter business, or to get a better Office, as £100 per annum was not sufficient to keep him. I suggested his applying for leave of absence for six months, as the District Constable had done; but he preferred resigning and going to the diggings.

5. No sooner had he resigned, however, than he sent in a complaint to the Chief Police Magistrate, and respecting the nature of which I knew nothing until I had received the censure. It was never referred to me for my remarks. I was afforded no opportunity of demonstrating its utterly untruthful character, and how shamefully my kindness and forbearance towards him had been abused. I received the censure at the very moment I had an intimation of the complaint. He had resigned, however, and could make any statement he thought proper, being then free from the consequences which must necessarily follow had he made a false complaint while in Office.

The decision in this case was, therefore, based upon the *ex parte* statement of one who had left the Public Service, and was most unjust towards me, inasmuch as I never was afforded an opportunity of refuting it.

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### No. 3. MR. MILWARD'S CASE.

1. On receiving the Governor's decision in this case, so conscious was I of having undeserved censure, that I waited upon the Governor at once—strongly repudiated the being influenced by any private feeling in the matter—and placed the resignation of my Commission in his hands, unless relieved from such censure. In accordance with a request then made by His Excellency, I committed to writing my assurance of not having been actuated by any private feeling. Indeed, I could not possibly have been so; however, never having had one word of personal difference with Mr. Milward, but simply considered his conduct on the present occasion to have been highly insulting towards my brother Magistrate and myself while trying the case on the bench; and in point of fact, it was not the Bench who insulted Mr. Milward, but he who had insulted them, and would not answer questions put to him.

His Excellency relieved me from censure; and I am at a loss to understand why a censure which had been withdrawn, when found to have been unmerited, should be brought forward as against me.

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### No. 4. CUTTING TIMBER ON CROWN LANDS WITHOUT LICENCE.

The circumstances are these:—In common with many Public Officers, I applied for and obtained 500 acres of Land under the Regulations.

1. When I had paid the Pre-emptive Fee and intimated my intention to purchase the land, which I did, I considered then, and do still consider, that the Government had no right to claim Licence money for cutting timber on this land. I had also paid the Survey Fee; and I consider that the Government had received from me more than they were justly entitled to.

2. With respect to that portion of the Minute relating to the Surveyor-General, I had my information from Mr. Fraser, Mr. Burnett, (of the Survey Office), Captain Hawkins, and Mr. O'Callaghan. The former stated to me in his own Office that he had been allowed to pay the full purchase-money privately to the Surveyor-General—that is, before the usual period—and because made an exception to my doing so, I complained of it. Mr. Fraser, however, was the only gentleman of those I named who denied his conversation with me.

3. This matter, however, had nothing whatever to do with me as Police Magistrate. I was, like others, a private lessee of crown land.

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### No. 5. CASE OF DISTRICT CONSTABLE HARRIS, CONVICT DEPARTMENT.

This Constable and boat's crew were stationed in my District in 1852, for the purpose of aiding myself and the Police in apprehending bushrangers and absconders; and he obeyed my orders up to August, 1853, when he first indicated a disposition not to do so. On this occasion he was ordered by me to aid my Police in capturing three bushrangers then at large in the District; his answer was, that if not engaged in other duties he would attend to it.

I reported this answer to the Chief Police Magistrate on the 16th August, 1853, who replied that it was the duty of District Constable Harris to act in concert with the Police in my District ; and I had understood from a former communication that he was to act under my orders in such matters.

2. I had no difference with Mr. Harris in December, 1853 ; but in that month a report was made to me that a murder had been committed at the Snug, by the prisoners in the Sawing Establishment of Messrs. Hampton, Boyd and Co. I sent instant orders to Mr. Harris to move out his boat to the Snug, and co-operate with myself and the police. Though the emergency was great, and Mr. Harris was placed in the District for this very service, yet his answer was that "he did not think he could go at all ;" and when he did come, he was too late to be of use. The Establishment of Hampton and Co. was the terror of the neighbourhood ;—on this occasion one of the men was shot while in the act of robbing a house. To have delayed on this and similar emergencies of public service to make a reference to Hobart Town for the boat to move out would have been impracticable and injurious to public interests,—for crime would have been perpetrated, and the offender have escaped. It was only by prompt action, and exercising the discretionary powers I had with respect to the convict boat, that I could put down crime.

3. He subsequently, 15th February, 1854, disobeyed another order to proceed on public duty ; and effectually to check such obstructions in public duty, and to fix his real position in respect to such matters, I had him tried for disobedience, but fined him in the nominal penalty of 1s.

4. He never made any complaint of having to obey my orders until this occasion, and after I had ordered him to act against Hampton's establishment.

5. I never directed him or his boat on any private purposes. The facts are these :—About November or December, 1853, a gentleman and two ladies came to reside at Kingston. I immediately received a note from Colonel Last, Private Secretary then to the Governor, in which he intimated to me that they were friends of Sir W. Denison, and requested that I would, as one of the ladies was an invalid, show them attention, and enable them to move about in the District for the lady's health.

6. Acting on what I deemed the Governor's wishes, I gave them up my own private rooms, and on two or three occasions wrote to Mr. Harris, stating that the family are the Governor's friends, and that they would like to go out in the boat occasionally, when not engaged on public duty. He complied ; and this is what has been termed diverting the boat "to private purposes." But although this was known in November and December, 1853, to Dr. Hampron, he never complained about it until I had punished and removed from the District about 24 of his men for rioting and insubordination on the occasion above referred to.

7. I was censured for putting a District Constable in the Convict Department on his trial for disobeying my orders in matters exclusively connected with the Public Service in my District.

I never received any directions that this man and his boat were not under my orders, but the contrary ; and it was not until the 7th March, 1854, that the Chief Police Magistrate intimated that my orders must go this time to the District Constable, Harris ; and I gave him in consequence no further orders.

8. Mr. Harris was stationed at Bruni Island, seven miles distant from me ; so that if murder or robbery was committed, I must send to the Chief Police Magistrate in Hobart Town, a distance of twenty miles, to ask for authority to send the boat out, and then seven miles further to convey the order. The consequence would be that the criminals would have had ample time to escape, and the public service injured. But I have no doubt that the Governor, when he gave his decision, was in ignorance that I had never received any instructions not to order the District Constable and boat out on public duty, and imagined that I had acted against orders, when in point of fact I had not only never received any to the contrary, but had actually been authorised to order him out.

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#### No. 6. MICHAEL JOURDAN'S WITHDRAWAL FROM HIS MASTER'S SERVICE.

1. This man was not withdrawn from his Master's service as alleged. The case is simply this :—On my weekly visits to Port Cygnet, the District Constable brought Jourdan (a passholder) before me as idling about the township for two days. The man stated that his master, Mr. Laffer, had turned him away, because he would not enter the service of another person as Mr. Laffer had wished. The man had previously been accused of larceny. Lest he might be disposed to annoy Mr. Laffer if I assigned him to service in Port Cygnet, I ordered him up to Brown's River, there to be assigned if required 30 miles away.

2. Now Mr. Laffer knew well, as the District Constable informed me, that the man was loitering on the Township, and if he considered him in his service, he should have reported him to the police—but he did not—and I consequently believed the man's statement.

On arriving at Brown's River, he was hired by Mr. Allen through the District Constable, and unknown to me for some time.

I had lodgings in the house, but the man never attended on me, and I never saw him, as I was about four or five days each week on public duty in the District.

3. Mr. Laffer complained of my having withdrawn the man from his service, when in truth he had himself discharged him; the Deputy Comptroller-General intimated to me a wish or request that he should be returned to the Penitentiary. I communicated this wish of the Deputy Comptroller's to Mr. Allen. I again left for the remote parts of the District on public duty for several days, and when I returned I received an order from the Convict Department to have him taken from Mr. Allen's service. I gave peremptory orders then to the District Constable to remove the man by force from Mr. Allen's house, and it was done after some difficulty I learnt on Mr. Allen's part, who complained of it.

I had been under the impression that, in my first direction to Mr. Allen, the man had been sent away till I received the Comptroller-General's second letter.

4. He was not ordered by me as alleged direct to the Penitentiary, but to the service of the Government for assignment on his way up, should he be applied for. This was the invariable practice, and sanctioned by the Government. I had therefore disobeyed no order, and the Governor laboured under an erroneous impression that I saw this man daily in Mr. Allen's, for I was, as already stated, constantly absent through the District.

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#### No. 7.—THE CASE OF A TICKET-OF-LEAVE MAN REFUSED A PASS TO LEAVE THE DISTRICT.

This case has not been put fairly or justly in the precise. The facts are these:—

A. Ticket-of-Leave holder, named Holohun, mustered before me at Port Cygnet for an offence which involved his being sent to a Road Gang for three months, if I thought proper. His master, Mr. O'Callaghan, spoke in the man's favour, and I dealt with him as a free man by imposing a fine. He had no money; he appealed to his master to pay it for him, who consented, on condition that he would liquidate the fine by his labour. The man assented with gratitude. I then admonished him to return now to his service, not to leave it or break his engagement without permission, or he would be dealt with as a Prisoner of the Crown.

The District Constable the following morning reported to me that this man wanted to leave his master's service and go out of the District, and that he, the District Constable, had refused him a Pass. I inquired if his master had discharged him; he said no. Then I said you have acted quite right,—these men must not be allowed, under cover of a Pass, to break their lawful engagements and quit their service, and defraud their masters.

Had I, however, granted this man a Pass, knowing that he was then in debt to his master the amount of the fine, I should have in point of fact connived at the man's defrauding his master, and laid myself justly open to a complaint against myself by his master. The master would have applied for a Warrant, and this man might have been apprehended at Launceston, and brought back at a very great expense to the public. Nothing therefore could have justified me in allowing this man a Pass to escape his just obligations.

It was, I have always understood, the practice, not to grant Passes to Ticket-of-Leave men from one district to another without being satisfied that they had had a discharge from their master.

The Governor, under false representation and from my not fully in the first instance explaining the matter, was induced to give the decision in the *precis*; but when I received that decision, and had sent in a full and just account of the whole circumstances, the Colonial Secretary, Mr. Champ, informed me that the matter had now appeared in a different light, and that I was quite correct in acting as I had, and that had my second explanation been received before that decision, it would never have been made.

I have now stated the whole of the points in these cases, fairly and candidly. I have replied to them truthfully; and I shall now conclude with a few general remarks which may tend to impart some idea of the character of the duties I had to perform.

In 1851 I assumed charge of the whole Huon District. It contained in round numbers about 8000 souls, of whom 2000 were Prisoners of the Crown. Murder, robbery, and violence were then, and for some time after, rife.

I saw that my responsibilities were great, and my duties far more so than those of any three Magistrates in the Colony.

The means at my disposal were limited, and the agents under me not very trustworthy.

I entered on the discharge of those responsibilities and duties with a determination to perform them to the utmost of my power, faithfully and honestly to the public, whose paid servant I was, and an equal determination that every one under me should do their duty.

I had five stations at remote distances to visit—to travel 500 miles per month—one day over almost impassable roads, the next in an open boat—all seasons—my duties not ending frequently before 12 o'clock at night—rarely before 10 P.M.

Armed Bushrangers were frequently at large in the District, to the terror of the Free Settlers, rendering my duties of the most arduous nature, and my absence from home for four or five days in a week.

In the year 1853, the high price of timber brought a great influx of Prisoners of the Crown into the District,—some from Sydney,—some from Norfolk Island, and from Port Arthur,—men of the most desperate character. The high wages these men received, varying from £15 to £7 a week each man, rendered them violent and outrageous to such a degree that the Free Settlers were afraid to be in the township after dusk.

An atrocious murder had just been perpetrated, and, to preserve life and property from these lawless men, I at once adopted stringent measures. On submitting them to the Government they were opposed by Dr. Hampton, and I was left to my own discretion, guided by circumstances.

One measure I adopted, when these men were charged before me for rioting, was to remove them out of the District, (but Dr. Hampton allowed many of them to return, to the prejudice of order.) This excited the opposition of the masters and the hostility of the men, and I was informed that my life was in constant danger from them.

I had the satisfaction to find that the measures which I adopted restored tranquillity and repressed crime.

A public officer placed in my position, who had constantly to deal with the conflicting interests of masters and servants in maintaining law and order in the district, and who, from a conscientious sense of duty, had no respect for persons in his decisions, would, it is obvious, inevitably encounter hostility, and that his highest and best motives of public duty would be calumniated and misrepresented.

In conclusion, I have only to add, that my administration of the law, the impartiality of my decisions, and the efficiency of my services received the public approbation of all respectable settlers in the North and South Huon District; and that Sir Henry Young, in an interview I had the honor to have with him, stated that he considered me one of his most active and energetic Magistrates.

J. W. KIRWAN.

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#### MR. KIRWAN'S SERVICES.

1. Entered the Public Service in 1839, and continued in it till the abolition of his office in 1857, a period of 18 years.
2. During this period held the following offices:—1st, Corresponding Clerk in Colonial Secretary's Office; 2nd, Assistant Clerk of the Councils; 3rd, Private Secretary; 4th, Clerk of Executive and Legislative Councils; 5th., Police Magistrate, which was abolished in August, 1857.
3. Received the thanks of Sir Eardley-Wilmot and Mr. Latrobe for the mode in which he discharged the duties of Private Secretary.
4. Received the public expression of Sir W. Denison in the *Gazette*, August 1849, of his sense of Mr. Kirwan's fidelity and integrity while Clerk of the Councils.

5. Received in July, 1854, a Public Testimonial from the Inhabitants of the Huon as to his impartiality and ability as a Magistrate, accompanied by Service of Plate.

6. Received in July, 1857, on abolition of office as Police Magistrate, a Public Testimonial from the Inhabitants of Kingborough, North Huon District, expressive of their sense of Mr. Kirwan's services as Police Magistrate during seven years, and petitioning the Government for his retention in office, and that the office should not be abolished.

7. Received from F. Burgess, Esq., Chief Police Magistrate, in October, 1861, a Certificate of his service as Police Magistrate of the Huon, and of his service as Clerk of Executive and Legislative Councils.

Pension placed on Estimates by Mr. Henty in July, 1857, held in abeyance pending explanation on certain charges—charges explained and refuted, still Pension kept back.

Beaten on this point, Government go back for years to certain reproofs of Governor Denison,—retained in Public Service years after—reproof unjust, unmerited, and in some instances cancelled.

Extra increase of Salary of £50 per annum for efficient services granted by Mr. Henty's Ministry for 1st January, 1857.

Pensions granted to Major Schaw, Messrs. Mason, Davis, and Stuart, Police Magistrates, Mr. Power, Surveyor-General, Mr. A. B. Jones,—all of whom severely reprimanded,—and to whose Pensions Mr. T. D. Chapman was a party. Reprimands did not affect their Pensions.

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GOVERNMENT NOTICE. No. 62.

*Colonial Secretary's Office, 2nd July, 1849.*

PETER Fraser, Esq. having returned to the Colony, has resumed his duties as Colonial Treasurer and Collector of Internal Revenue; and Adam Turnbull, Esq., M.D., has returned to his office of Clerk of the Councils.

The Lieutenant-Governor is desirous of expressing his approbation of the fidelity with which Dr. Turnbull has discharged the duties of the offices of Treasurer and Collector of Internal Revenue during the absence of Mr. Fraser; and the thanks of the Government for his assistance and advice as a Member of the Executive and Legislative Councils.

The employment of J. W. Kirwan, Esq., as Clerk of the Executive and Legislative Councils having now terminated, the Lieutenant-Governor avails himself of this opportunity of notifying his satisfaction at the mode in which Mr. Kirwan has performed the several duties devolving upon him.

By His Excellency's Command,

J. E. BICHENO.

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I CERTIFY that J. W. Kirwan, Esq., served under me for several years as Assistant Police Magistrate in this Colony. Latterly and for some years he had charge of the Huon District, one of the most difficult in the Colony owing to many causes, but more particularly as being the one sought for as a place of refuge, and from the facilities afforded by it for escape from the Island of the most desperate marauders and bushrangers who then infested the Colony. He most successfully aided me in carrying out my instructions on this head. He was also active in the performance of his Magisterial duties. He was formerly Private Secretary to Lieutenant-Governor Sir Eardley-Wilmot, and then Clerk of the Executive and Legislative Councils, of both which I was many years a Member. I had opportunities of observing his attention to his duties, and I trust he may obtain employment suitable to his wishes and experience where he may seek it. I should be glad to hear of it.

F. BURGESS,

*Late Chief Police Magistrate of Tasmania and its Dependencies.*

*Belmont, near Richmond, Tasmania,  
November 22nd, 1861.*