

(No. 163.)



1890.

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PARLIAMENT OF TASMANIA.

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TASMANIAN MAIN LINE RAILWAY :

OPINION OF CROWN SOLICITOR AS TO LIABILITY OF  
GOVERNMENT.

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Presented to both Houses of Parliament by His Excellency's Command.



*Crown Solicitor's Office, Hobart, 22nd October, 1890.*

MEMORANDUM.

*Re T. M. L. RAILWAY.*

I AM asked to advise as to the liability of the Government to a passenger upon the Tasmanian Main Line Railway in case of injury during the journey, and as to the necessity, if any, for legislation to render the Government liable to persons injured while travelling on the Railway. I entertain no doubt that, in the ordinary case of a passenger travelling by the T. M. Line Railway and injured in an accident, an action would lie at the instance of the injured person, or of his executors in case of his death from the injuries received, because the action would be founded on contract. In respect of every passenger who travels on the Main Line or any other Government Railway for hire, there is a contract between him and the Crown for his reasonably safe conveyance; and although for a breach of such a contract a plaintiff might, if suing a subject, seek redress either in the form *ex contractu* or *ex delicto*, the substance of the cause of action would be none the less contract. For such a case the Crown Redress Act provides (see Sect. 1), which is as follows:—  
“Any claim against Her Majesty founded on and 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, which would, if such claim had arisen between subject and subject, be the ground of an action at law or suit in equity, shall be a claim cognisable under this Act.” See also *Alton & Anr. versus the Midland Railway Company*, 34 L. J. C. P., p. 292, and “*Browne on Carriers*,” pp. 371, 408, and 409. There is, therefore, no need for legislation on the point.

With regard to the general question of making the Crown liable for torts, that is a large matter of policy, which ought not to be dealt with without very careful deliberation. It is impossible to foretell all the consequences of such a measure. It is not a question of any urgency, and I respectfully submit it ought not to be hurriedly dealt with, especially in the absence of the Chief Law Adviser of the Crown.

EDW. D. DOBBIE.

*The Hon. the Minister of Lands.*