(No. 24.)

1896.

SESSION II.

PARLIAMENT OF TASMANIA.

FOREIGN COMPANIES BILL, 1895:

DESPATCH, AND CORRESPONDENCE.

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

Cost of printing—£3 10s.

FOREIGN COMPANIES BILL, 1895.

TASMANIA.

No. 3.

Downing-street, 31*st January*, 1896.

MY LORD,

I HAVE the honour to acknowledge the receipt of your Despatch No. 44 of the 28th of September last, enclosing a Bill intituled "An Act to enable certain Foreign Companies to carry on Business and to sue and to be sued in Tasmania," which you had reserved for the signification of Her Majesty's pleasure on account of objections to Clauses 19, 20, and 21.

I caused your Despatch to be referred to the Board of Trade, which, as you are doubtless aware, is the Department concerned with Joint Stock Companies, and I now enclose for communication to your Ministers a copy of a letter from that Department pointing out some weighty objections against the new principle of allowing payment in full to local creditors, to the injury of creditors outside the Colony, which is embodied in Clause 21.

I concur in their view, and have decided to defer tendering any advice to Her Majesty with regard to the Bill until your Ministers have had an opportunity of considering this letter from the Board of Trade.

With regard to Clauses 19 and 20, to which the Board of Trade also refer, there are no doubt special reasons for making Trustees and Executors' Companies deposit caution-money, as is proposed in these clauses; but, if the deposit is to be applied solely to the benefit of the local creditors, who might thus gain payment in full on a larger dividend on winding up than creditors elsewhere, Clause 20 becomes open to the same objections of principle as Clause 21, and appears equally to require reconsideration.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

J. CHAMBERLAIN.

Governor The Right Honourable VISCOUNT GORMANSTON,
K.C.M.G., &c.

Copy.
R 22769.

Board of Trade, (Railway Department), 7, Whitehall Gardens, London, S.W., 10th January, 1896.

SIR,

WITH reference to your letter of the 4th December last (No. 19368/95), forwarding copy of an Act passed by the Legislature of Tasmania, entitled "The Foreign Companies Act," together with copy of a despatch by His Excellency the Governor of Tasmania

relating thereto, I am directed by the Board of Trade to inform you that they have carefully considered Clauses 19, 20, and 21 of the Act, and I am to submit the following observations thereon for the information of the Secretary of State.

1. Dealing, in the first place, with Clause 21, the Board of Trade concur in the opinion expressed by Lord Gormanston to the effect that this clause would prejudicially affect the rights of Her Majesty's subjects residing out of the Colony. Under the laws at present in force throughout the Empire, so far as the Board of Trade are aware, the right of all persons to associate together for trading purposes without distinction as to residence, and the right of the various classes of creditors to rank on equal footing without such distinction in the distribution of the assests of a bankrupt company, partnership, or individual, are clearly recognised. But, if the clause in question became law, a serious disability would be imposed upon the exercise of such rights by all persons residing outside Tasmania, which would probably result in a practical monopoly as regards the formation of companies, and in an undue preference in the distribution of assets in case of insolvency being established in favour of residents in the Colony. The interests of the trading community in the United Kingdom, and in all other British Colonies and Dependencies, might thus be prejudiced.

2. The Board of Trade are further of opinion that such legislation would also prejudice the interests of the majority of the residents in Tasmania, by preventing the free flow of capital into the Colony, thereby retarding the development of its resources; and that any benefit which might accrue from the creation of a local monopoly would be confined to those engaged in conducting joint stock enterprise, and would be obtained at the expense of the general inhabitants of the Colony.

3. Further, if the principle contended for were admitted in the case of Tasmania, it would probably be difficult to resist similar legislation in the case of other Colonies, should they desire it; while such enactments would not improbably lead to a demand for legislation in the United Kingdom to guard against the practice of Colonial Companies which were thus founded upon a monopoly coming to this country for the purpose of obtaining capital to be employed in the Colonies. It is hardly necessary to point out that such a result would not only be injurious to Colonial interests, but would tend to the erection of a barrier against free commercial intercourse between the various branches of the British Empire.

4. The Board of Trade also concur in the view expressed by the Governor of Tasmania, that there is no real analogy between restrictions imposed by the Legislature on the conduct of the business of life assurance and similar restrictions upon ordinary trading and banking bnsiness. Apart from the fact that Governments have found it necessary to enact special legislation with regard to the former, having regard to the special character of the business of life assurance, and to the need for protecting the interests of large masses of the population who, without such legislation, have no adequate means for judging of the trustworthiness of such institutions, and who, owing to the long periods over which the risks extend, are practically powerless to protect themselves against reckless and imprudent management, it should be pointed out that a Foreign Company engaging in the business of life assurance in Tasmania is not likely to have any large amount of its funds invested in the Colony, and that the giving of a preference to the local creditors in the distribution of local assets is not therefore likely to confer any material advantage upon them: whereas, in the case of English trading, and more especially of English banking companies establishing themselves in Tasmania, the very nature of the business carried on by such companies implies that they would employ capital raised elsewhere for local purposes, and would thus, under the proposed legislation, afford to local creditors an altogether disproportionate share in the distribution of the company's assets in the event of liquidation.

It is unnecessary for the Board of Trade to offer any opinion upon the policy of Section 11 of the Tasmanian "Life Assurance Companies Act, 1874," which confers a preference on local creditors in the distribution of the assets of a liquidating Assurance Company, beyond pointing out that it differs from English legislation, which in no case permits of a preference to English creditors, and that any justification for such a provision must be

sought for in the special circumstances affecting life assurance already referred to, and could not therefore, on grounds of analogy, be extended to similar provisions affecting ordinary trading and banking companies.

5. The considerations affecting Clauses 19 and 20 of "The Foreign Companies Act" are of a somewhat different character. Clause 19 applies exclusively to a foreign company carrying on business in Tasmania as a Trustee and Executors' Company, and requires a local deposit of £5000, which is apparently to be appropriated as a security for the payment of local liabilities, but which may be replaced at the option of the company by the acquisition and registration of "secured assets" within the Colony of £15,000 ; and Clause 20 provides that such secured assets shall continue to be invested in Tasmania, and shall, in the event of the company being wound up, be available for the payment in priority of local claims.

6. No doubt the Secretary of State will decide how far the business of a "Trustee and Executors' Company" brings it within the category of companies carrying on a special business which justifies the application of special legislation in the interests of the public, and how far it is desirable in that case to distinguish betwixt companies having their head office and business in Tasmania, where they are subject to local supervision and control, and companies having their head office and the chief portion of their business elsewhere, and not therefore subject to such supervision and control. In the event of his coming to the conclusion that such companies fall within the special class referred to, then, on the analogy of the Tasmanian Life Assurance Act, there would appear to be no objection to the principle involved in these clauses, although it would be more in accordance with the general principles of legislation adopted throughout the British Empire to apply the provisions in question to all companies carrying on business in Tasmania without reference to the question whether their head offices were situated in Tasmania or elsewhere.

7. As further bearing upon this question, I am to enclose copy of an extract from the official report of a Judgment delivered in the Supreme Court of Adelaide by the Chief Justice of South Australia upon a claim, by local creditors of the Federal Bank of Australia, Limited, to a preferential treatment over creditors outside the Colony ; and in which the law of that Colony is not only stated to be opposed to such claims, but some of the arguments against the desirability of amending the law in the direction indicated are also pointed out.

I have &c.

COURTENAY BOYLE.

The Under Secretary of State, Colonial Office.

(Extract) R. 22,769.

In the matter of the Federal Bank of Australia, Limited.

EXTRACT from a Transcript of the Official Report of the Judgment delivered in the Supreme Court at Adelaide, by His Honor the Chief Justice, (Hon. S. J. Way, D.C.L.), on the hearing of an Application to determine the right of Foreign Creditors to an equal participation in the assets collected in the South Australian Colony.

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"It is the example of Brazil. The adjacent Republic of Paraguay has been thought a suitable field for carrying out certain social experiments, but I think that in South Australia we should require something more definite on the subject before we come to the conclusion that the law in Brazil with respect to the rights of foreign creditors is desirable to be followed here. For example, as Mr. Symon has pointed out, the Federal Bank had about a million of Scotch money to carry on business in Australasia. It is exceedingly unlikely that a single sixpence of that money would have found its way to these southern countries if our northern friends had thought it possible that the local creditors would receive a preferential claim upon the assets for payment of their

debts in the event of a compulsory winding up of the institution to which their money was advanced. Further, it does not require a very powerful imagination to see that, quite apart from stopping the flow of capital into these Colonies, a provision of that kind might be locally disastrous, because, if it is the law of South Australia that the assets of a company are to be divided among South Australians, a law of that kind would probably be imitated in other Colonies, and it would not be to the interest of South Australian creditors, in the absence of local assets, to be shut out from participating in Victorian assets sufficient, it might be, to pay 20*s.* in the £."

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TRANSMITTED to the Honourable the Attorney-General.

WM. MOORE, *for Premier, absent.*
9th March, 1896.

PERUSED and returned. See Memorandum forwarded herewith.

A. INGLIS CLARK.
7th May, 1896.

Attorney-General's Office, Hobart, 7th May, 1896.

MEMORANDUM FOR THE HONOURABLE THE PREMIER.

I HAVE perused the Despatch of the Right Honourable the Secretary of State for the Colonies to His Excellency the Governor in reference to the Bill, entitled "An Act to enable certain Foreign Companies to carry on Business and to sue and be sued in Tasmania," which was passed by both Houses of the Tasmanian Parliament last year, and which was reserved by His Excellency for the signification of Her Majesty's pleasure thereon; also the communication from the Board of Trade to the Secretary of State for the Colonies upon the same Bill; and I deem it to be my duty to make the following observations upon the objections urged by the Governor and the Secretary to the Board of Trade to Clauses 19, 20, and 21 of the Bill.

1. I adhere to the opinion which I expressed in the Memorandum I addressed to His Excellency in reference to the Bill when I transmitted it to him for his assent thereto on behalf of Her Majesty, which opinion was, that none of the provisions of the Bill could be properly regarded as coming within the purview of that portion of the Governor's Instructions which require him to reserve for the signification of Her Majesty's pleasure any Bill by which the property or rights of Her Majesty's subjects residing out of the Colony could be prejudicially affected, because the Bill expressly continued the existing law with regard to all British Companies now carrying on business in the Colony, and, the operation of the Bill being necessarily confined to Tasmania, it is impossible that any of its provisions could prejudicially affect rights which have never been acquired by companies that have no existence of any kind in the Colony. The argument that the Bill would place non-resident creditors of any British Company which might hereafter establish a business in Tasmania in a different position from that which they would occupy under the existing law in relation to the distribution of the local assets of such a Company in the event of it being wound up in consequence of its inability to pay its debts, and would therefore prejudicially affect the rights of such creditors, could be urged with more or less relevancy and force against every Act of the Parliament of Tasmania which has made the laws regulating the enforcement of claims against debtors and the acquisition and devolution and enjoyment of property within Tasmania different from the law of England and other portions of the Empire in regard to the same subjects. But the power to make such laws is clearly conferred upon the local legislature by the Act of the Imperial Parliament for the better government of Her Majesty's Australasian Colonies (13° & 14° Vict. Cap. 59), and has been exercised by numerous Acts of the Tasmanian Parliament which have received Her Majesty's assent without question; and any attempt to restrict that power in any particular by means of Her Majesty's veto cannot fail to be regarded with serious apprehension, not only by the people of

Tasmania, but also by the people of all the other Australasian Colonies; and I therefore deem it desirable that the Honorable the Premier should forward copies of the Bill in question and of the Despatch of the Secretary of State for the Colonies thereon, and of this Memorandum, to the Governments of all the other Australasian Colonies for their consideration.

2. The Secretary to the Board of Trade seems to regard the existing rights of non-resident creditors in relation to the distribution of the assets of a foreign company in this Colony as if they constituted or were included in a special class of rights created or confirmed and guaranteed by a law operating throughout the Empire with a continuity and entirety of territorial authority similar to that possessed by laws expressly made by the Imperial Parliament for the whole of Her Majesty's Dominions; but no such law exists regulating the formation and dissolution of joint stock companies and the distribution of their assets among their creditors throughout the Empire; and any attempt to assert the existence of such a law, and to enforce its observance in the Australasian Colonies by an exercise of the Royal prerogative of veto upon the acts of their Legislatures, would be clearly an attempt to curtail the jurisdiction now possessed and exercised by all the Australasian Parliaments upon that subject, and, therefore, a supersession *pro tanto* of the legislative authority solemnly conferred upon them by the Imperial Parliament, and which has always been regarded by the people of the Australasian Colonies as granted without any intention of abridgment in any future contingency.

3. The opinion of the Board of Trade, that such legislation as that proposed by the Bill in question would prejudice the interests of the majority of the residents in Tasmania by preventing the full flow of capital into the Colony, and thereby retarding the development of its resources, may be well founded; but the Parliament of Tasmania, elected by the people of the Colony, ought to be the best judge of what is beneficial and what is detrimental to the interests of the people it represents, and I am not aware that the Board of Trade is in any better position than the local legislature to arrive at a safe conclusion upon the matter.

4. The assertion of the Secretary of the Board of Trade, that English banking companies establishing themselves in Tasmania would employ capital raised elsewhere for local purposes, is directly contrary to fact in regard to the English banking companies hitherto established in Tasmania, and now carrying on business here. All such banks have made a constant practice of receiving at fixed deposits very large sums of money from persons resident in Tasmania and sending it outside the Colony for investment, and their indebtedness to residents of the Colony has always been largely in excess of their assets in the Colony.

5. The extract from the Judgment of Chief Justice Way in the Supreme Court of South Australia, on the hearing of an application to determine the rights of foreign creditors to an equal participation in the assets of the Federal Bank collected in that Colony, clearly states the existing law upon the subject, and contains his own opinion as to the benefit of it in view of the commercial and financial interests that have taken root and grown up under it there. But I have already pointed out that the chief reason he gives for the beneficial operation of the existing law in South Australia, viz., the influx of foreign capital into that Colony through the medium of banking companies incorporated outside the Colony, does not apply to Tasmania, where the English banks have been the channels of a constant outflow of capital from the Colony.

I may also observe, that the convenience or benefit of a law in regard to interests and conditions that have arisen under it is not a valid argument against an alteration of it, to which future commercial and financial transactions may be reasonably expected to adapt themselves in the future, as they have adapted themselves to the existing law in the past, so long as the existing law is preserved in regard to rights and interests that have arisen under it, as the Bill in question expressly provides shall be done.

6. The insular position of Tasmania, and the smallness of its population in comparison with the larger colonies on the Australian Continent, together with its proximity to them, and the very heavy customs duties which all of them, with the exception of New South Wales, have from time to time levied upon all Tasmanian

products, have created in this Colony commercial and industrial conditions peculiar to itself; and the present law regulating the distribution of the local assets of a joint stock company incorporated in the other Colonies and carrying on business in Tasmania has been found from past experience to enable such a company to remove out of the jurisdiction of our Courts, to the detriment of local creditors, assets in which those creditors believed that they had security for their claims against the company, and in view of which they gave credit to the company and afterwards refrained from taking proceedings to enforce payment of those claims prior to the commencement of proceedings for the winding up of the company in the colony in which it was incorporated. The necessity of an alteration of the law for the protection of local creditors in such circumstances is a matter upon which the Tasmanian Parliament may legitimately claim to be the proper judge and the safest guardian of the interests of the people who elect it.

I subjoin a copy of the Memorandum which I addressed to the Governor upon the Bill when I transmitted it to him for his assent last year.

A. INGLIS CLARK,
Attorney-General.

[COPY.]

A BILL to enable certain Foreign Companies to carry on Business, and to sue and be sued, in Tasmania.

When this Bill was presented to the Governor in the first instance for the Royal Assent, a question was raised in regard to the operation of the provisions of Section 21 upon the local assets of certain Banking Companies which had been incorporated in the United Kingdom under Royal Charter or Act of the Imperial Parliament for the express purpose of carrying on business in Australasia, and His Excellency was of opinion that in regard to those and other similar Companies the provisions of Section 21 might be held to come within the purview of that portion of his Instructions which refers to Bills by which the rights or property of British subjects not residing in the Colony may be prejudiced, and the Governor was advised to send a Message to the Houses of Parliament recommending the insertion of a proviso which exempts all Companies incorporated in Great Britain or Ireland, and now carrying on business in Tasmania, from the operation of Section 21. That proviso having been inserted, I am of opinion that the Bill in its amended form does not contain anything which prevents the Governor giving his assent to it consistently with his Instructions.

Any British company that may hereafter establish a business in this Colony will place itself voluntarily under the provisions of the new law, and therefore cannot be said, in the language of the Instructions, to be "*prejudiced*" by it.

It is also to be observed that the Instructions refer in this connection to "*any Bill of an extraordinary nature and importance*," by which is evidently meant any Bill making a new departure from the ordinary and usual course of legislation; but this Bill only extends to other Foreign Companies the same law which has been in force for many years in Tasmania and in the other Australasian Colonies in regard to Foreign Life Assurance Companies, and the same reasons which make it desirable to protect the local creditors of the last-mentioned companies to the full extent of the local assets of those companies make it equally desirable to protect the local creditors of other Foreign Companies to the same extent.

For these reasons, I am of opinion that there is no objection to the Royal Assent being given to this Bill.

(S^{d}) A. INGLIS CLARK.
Attorney General's Chambers, Hobart,
30*th September*, 1895.

His Excellency the Governor of Tasmania.

WILLIAM GRAHAME, JUN.,
GOVERNMENT PRINTER, TASMANIA.

Attorney-General's Office, Hobart, 6th June, 1896.

MEMORANDUM FOR THE HONOURABLE THE PREMIER.

In re the Foreign Companies Bill.

SINCE I transmitted to the Honourable the Premier my previous Memorandum upon the correspondence which has taken place between His Excellency the Governor and the Secretary of State for the Colonies in reference to the Foreign Companies Bill, I have ascertained that *The British Companies Act of 1886* of the Colony of Queensland contains a provision that all land held by any British Company in that Colony in the event of the Company being wound up or made bankrupt shall be primarily liable for the payment of debts incurred by the Company within the Colony.

The principle of this provision is exactly the same as that of the provisions in our Bill to which the Governor and the Secretary to the Board of Trade have been pleased to take exception.

I also find that the assets of British Banking Companies in the Colonies of Victoria and South Australia have been made primarily liable by the legislation of those Colonies for the satisfaction of the claims of a particular class of local creditors in the event of the Company being wound up or made bankrupt. (See *Banks and Currency Statute, 1890*, of the Colony of Victoria, and the previous *Banks and Currency Amendment Statute, 1887*, of the same Colony, and the *Bank Notes Security Act, 1889*, of the Colony of South Australia.)

These additional examples of similar legislation in other Australasian Colonies confirm the statement I have already made in regard to the Bill now under consideration when I directed the Governor's attention to the legislation of all the Australasian Colonies in regard to Foreign Life Assurance Companies,—viz., that the Bill in question does not come within the purview of that portion of the Governor's Instructions which refers to "*any Bill of an extraordinary nature*," and they can only increase our surprise at the unusual action that has been taken in regard to it.

A copy of the Governor's Despatch which accompanied the Bill when he transmitted it to the Secretary of State for the Colonies for the signification of Her Majesty's pleasure thereon has not been forwarded to me with the other correspondence upon it. I am of opinion that the Premier is entitled to be supplied with a copy of the Despatch.

A. INGLIS CLARK,
Attorney-General.

WILLIAM GRAHAME, JUN.,
GOVERNMENT PRINTER, TASMANIA.

(In continuation of Paper No. 24.)

TASMANIA.
No. 22.

Downing-street, 7th October, 1896.

MY LORD,

I HAVE the honour to acknowledge the receipt of your Despatch No. 24 of the 27th of June, with its enclosures, on the subject of "The Foreign Companies Act," which you reserved for the signification of Her Majesty's pleasure.

The Bill will be submitted for the Queen's Assent at the next meeting of the Privy Council.

I retain my opinion as to the unsoundness of the principle involved in the clauses which have formed the subject of the recent correspondence; but, having explained to your Ministers the objections which are entertained to the clauses in question, and having learnt that these objections do not alter the views of your Ministers, I shall advise Her Majesty to give her Assent to the Bill.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

SELBORNE,
for the Secretary of State.

Governor The Right Honourable VISCOUNT GORMANSTON,
K.C.M.G., &c.

WILLIAM GRAHAME, JUN.,
GOVERNMENT PRINTER, TASMANIA.