(No. 60.)

1858.

TASMANIA.

MR. EDWARD ABBOTT.

FEIGNED ISSUE DIRECTED BY THE CHAIRMAN OF THE CAVEAT BOARD TO BE TRIED, TOGETHER WITH THE CHAIRMAN'S MINUTE.

Return to an Order of the House. (*Mr. Nutt.* 21 *October*, 1858.)

Laid upon the Table by the Clerk of the House, and ordered by the House to be printed, 22 October, 1858.

(No. 60.)

CAVEAT BOARD.

IN the Matter of the Application of EDWARD ABBOTT, *of Kangaroo Point, in Van Diemen's Land, for a Grant of* 9A. 3R. 0P. *of Land situate near Launceston, in Van Diemen's Land aforesaid.*

The Twenty-first day of May, A.D. 1858.

WHEREAS the above-named Edward Abbott has applied to the Crown for a Grant of nine acres and three roods of land situate in the District of Launceston, in Van Diemen's Land aforesaid, and bounded on the north east by 4 chains and 98 links south-easterly along a grant to Michael Connolly commencing at the west angle thereof on Henry-street, again on the north east by 11 chains and 50 links south-easterly along grants to the said Michael Connolly and William Archer respectively and along part of a grant to the said William Archer, on the south by 10 chains and 40 links westerly along land occupied by the Launceston Cricket Club (crossing Race-course Crescent), on the west by 13 chains and 30 links northerly also along land occupied by the Launceston Cricket Club and along Race-course Crescent to Henry-street aforesaid, and thence on the west by 2 chains and 45 links north-easterly along that street to the point of commencement: And whereas the said Edward Abbott alleges that the same nine acres and three roods are part of Two hundred and ten acres of land alleged by him to have been by location order or some other good and valid authority located to the late Major Edward Abbott, formerly Judge Advocate of Van Diemen's Land aforesaid, under whom the said Applicant Edward Abbott claims as heir at Law: And whereas the said application is now before the Commissioners appointed to examine into Claims for Grants of Land, together with a Caveat filed on behalf of the Crown by James Sprent, the Surveyor-General for the Colony of Van Diemen's Land aforesaid, setting forth that the said nine acres and three roods of land have never been alienated by the Crown: And whereas the said Applicant Edward Abbott has moved me, one of the said Commissioners, to direct the trial of a Feigned Issue between the said parties in the Supreme Court of Van Diemen's Land aforesaid, for the better enquiry into and determination of the fact hereinafter mentioned: And whereas it seems to me expedient to direct the Trial of such Feigned Issue: Now therefore I, being one of the said Commissioners as aforesaid, do hereby, by virtue of the power and authority vested in me by the Thirteenth Section of the Act of Council, 6 William 4th, Number 11, direct the Trial of a Feigned Issue between the said Applicant Edward Abbott and the said James Sprent in the said Supreme Court, for the better enquiry into and determination of the following fact; (that is to say),—

Whether the nine acres and three roods of land for which the said Edward Abbott has made such application as aforesaid were ever according to equity and good conscience in any manner located to or reserved for Major Edward Abbott, by Location Order or other authority, from any Governor of New South Wales or any Lieutenant-Governor of Van Diemen's Land aforesaid.

FR. HARTWELL HENSLOWE,

One of the Commissioners for examining into and reporting their opinion upon Claims and Applications for Grants of Land in the Island of Van Diemen's Land and its Dependencies.

In the Matter of the Application of EDWARD ABBOTT *for a Grant of 9 acres 3 roods in the Launceston District.*

ON the 13th February, 1858, Mr. Edward Abbott filed an Application in the Office of the Commissioners for investigating Titles to Land for Eleven Acres of Land at Launceston under a location to Major Abbott.

On the 5th March, Mr. Sprent, the Surveyor-General, filed a Caveat alleging that the Crown had never alienated the land in question.

On the 8th May last, Mr. Abbott addressed a letter to me intimating his desire to apply to me to direct a Feigned Issue to be tried by a Jury upon a *Question of Fact;* and subsequently his Counsel, Mr. Adams, called upon me to request me to fix a day for hearing such an Application. I fixed Monday, the 17th May, and on that day Mr. Adams attended before me at the Caveat Board.

I first called upon Mr. Adams to show that it was competent for me at that stage to entertain this Application. He argued that the 2nd Clause of the 13th Section of the Act gave any one Commissioner power *at any time* to direct the trial of a Feigned Issue to inquire into any fact or facts, and quoted authorities to show that the present Applicant had peculiar claims for obtaining such an Order. He also drew attention to the circumstance that there was no opposition on the part of the Crown.

To this I replied, that I could not anticipate any of the particulars of the *claim to a Grant* itself; that, sitting as a single Commissioner, I could not look at *that* claim, but only hear arguments for directing the Feigned Issue, if satisfied even that I could do that. 2ndly, that the whole Section must be read together; and that, therefore, before I could be called upon to direct a Feigned Issue a *point of difficulty* must have arisen, and it must have arisen in a *matter before the Board.* I expressed a doubt whether issue had been joined, and whether the matter was properly before the Board.

After hearing argument, I was satisfied that the Crown by filing a caveat *had* joined issue, and that the whole matter was before the Board. Adverting also to the only precedent within my practice of an application under the 13th Section (that of the Odd Fellows for a *Case*), in which, although the Board had *met* and the claim had been called on, yet, upon the mere suggestion that there was a point of difficulty in Law, the Board suspended its operation, and left one of the Commissioners to send a case to the Supreme Court. Adverting to this precedent, and seeing that the point of difficulty to be raised was one which formed the very first step in the present claim, it appeared to me that it would be a mere idle matter of form to summon the other Commissioners; and that any single Commissioner had authority at that stage to adjudicate.

Next, as to the "*point of difficulty*," I suggested that if a claimant were to be at liberty to assume on his own judgment that a point of difficulty existed, it would be giving any claimant a power to elect whether a point should be heard by the Board or by a Jury.

On the other hand, it was argued that the Commissioner was, according to the wording of the Section, the sole judge whether such a point of difficulty had arisen.

That point was then stated, viz.,—"Whether the land claimed had ever been located to or reserved for Major Abbott by a Governor of New South Wales or a Lieutenant-Governor of Tasmania."

It was alleged that that very question had occupied the attention of the Board, as its records showed; that the Commissioners were unable to agree among themselves upon that question; and that the Government had differed with the majority of the Commissioners; and that these simple facts offered abundant evidence that the question must be one of "difficulty."

Mr. Adams offered to swear Mr. Abbott to a voluminous Affidavit in support of these facts; but being in equity and good conscience satisfied upon the facts, it appeared to me unnecessary and inconvenient that a document containing an *ex parte* history of the whole claim should be sworn to, and I thought myself justified in waiving that form.

I thus arrived at the following conclusions:—

First.—That it was competent for me at that stage of the proceedings to entertain the application.

Second.—That such a point of difficulty as was contemplated by the Act had arisen; and

Lastly.—As no arguments had been offered in opposition,—nay, as I had a right to believe, from the fact of no Officer appearing on behalf of the Crown, that the Government acquiesced in the application,—that I was bound to grant the Application, and, upon the representations of Counsel, to interpose no unnecessary delay in the proceeding.

Accordingly, on the 21st May, I signed the document which directed the trial of a Feigned Issue.

On Thursday, the 27th May, the Crown Solicitor called upon me, and informed me that the Government now questioned my decision, and requested me to hear arguments on the next day.

Accordingly, on Friday the 28th, the Attorney-General and Crown Solicitor attended at the Caveat Board, as also Mr. Adams.

It was now argued on the part of the Crown, that the question which I had considered myself bound to send to a Jury was *not* a question of *Fact* but a question of *Law*, inasmuch as the *evidence* which must be adduced to enable a Jury to decide the question would consist of *documents;*—that upon the *construction* of those documents would the verdict depend; and that the *construction of documents* was matter of law, not fact.

At the very outset I had deemed it my duty to decline going into the merits of the *claim for a Grant;* and I still hold that I am precluded from anticipating the nature of the evidence that may be offered in support of it either to the Board or to a Jury. I cannot foretel that the evidence *will* consist of documents,—I cannot foretel that their decision will depend upon their construction. It will be for the Judge to interpose his authority as to the admissibility of evidence. But upon every principle of common sense, after anxious deliberation I hold that the nature of the possible evidence to be adduced cannot affect the character of the question; and that when it is asked, "whether one individual has given an article to another," that question is simply a question of Fact.

Now the *sense* of the question, stripped of technicalities, amounts simply to this;—"Did a Governor give such and such land to Major Abbott?"

The question proposed is, "Was the land in question ever *located* to or *reserved* for Major Abbott?"

Some difficulty was hinted at in reference to the word "*locate.*" But that word is not a technical nor a legal term; it is simply an *Americanism* which has been imported into our Colonial language, and which is used without any reference to its real signification, but from some confusion of ideas it has been used to signify "*apportion:*" instead of saying that the Crown locates (or places) *A.B. upon a piece of Land*, it has become customary to say that the Crown has located (or apportioned) such and such a piece of Land *to A.B.* And surely the explanation of a misused word—a word introduced not into the English, but the Colonial language—can scarcely come within the province of a Judge directing a Jury. But it must be borne in mind that, in the question under consideration, "locate" is not the only word used. The question is, whether the land was "located to" or "*reserved for,*" and it can never be contended that any difficulty of construction can arise as to the word "*reserve.*"

Let now the test of precedent be applied to the decision I have given.

I believe the only case in which the trial of a Feigned Issue has been directed under the Act was that of Robinson and Everall. The question tried in that case was, "Whether a certain Will had been *executed?*"

No exception appears to have been taken to the Commissioners' authority in that case. And yet, upon comparing the two questions, how wide a difference exists between them in point of simplicity. To the latter such an objection might most justly have been raised—for there can be no doubt that the word *execute* is one of a highly technical character; it is used in many different ways—and the *execution* of a Will is clearly a *mixed* question of Fact *and* of *Law.*

In putting the question to a Jury, "Whether certain land had been located to, or reserved for, or given to an individual," a Judge could have nothing to explain,—he

would have no opportunity of expounding any law,—the most unlearned Juryman in the Colony would at once fully understand the meaning of the question.

But is that the case in regard to the *Execution of a Will?* Most assuredly not. It may be safely affirmed that not one in Ten Jurymen would know, without the explanation of a Judge or a Lawyer, what was the import of the question referred to him.

It would be necessary for the Judge to explain to him the provisions of an Act of Parliament, defining what was to be understood as *executing*, before he could even enter upon the consideration of the question.

It would be necessary for the Judge to explain the several facts required by law to constitute the execution of a Will, and to tell him that the very nature of the complicated operations which constitute the execution of a Will would vary according to the date of the Will.

If then a *mixed* question of Fact and Law has been held to come within the provisions of the Act, surely a question so simple as the one under consideration must be a legitimate question for its operation; a question which, on the face of it, raises no doubt as to its meaning, is independent of any legislative enactment whatever, and which does not admit of any legal or professional or technical explanation, construction, cavil, or subtlety.

It was also contended by the Attorney-General, that it would be contrary to the provisions of the Act to remit such a question to the Supreme Court; that by so doing I should be requiring the Supreme Court to try that which it is the special province of the Caveat Board to try.

To the Attorney-General's opinion of a point of law I am naturally disposed to look with the utmost respect; but in this case the Attorney-General appeared simply as the advocate of one of the parties. His view of the law was combated by another Counsel learned in the law, who supported his opinion upon strong reasonable grounds, and by arguments in which I entirely concurred; and it was manifestly my duty to give equal consideration to the arguments on both sides, without regard to the *person* of the Counsel, forming my own judgment between them.

The Attorney-General appeared to me to assume that the peculiar and exclusive province of the Caveat Board is to "*construe Location Orders;*" that no other tribunal has any authority even to assist the Board in that special duty. But I contend that there is nothing in the Act, nor in the practice of the Board, to show that this is the case.

The object of the Caveat Board Act, 6 W. 4, No 11, as set forth in the preamble, was "the quieting of Titles to Land by providing for the settlement of disputed and other *Claims* to Grants."

It was evident that the investigations necessary to such an end could not be made by an ordinary Judicial Tribunal, trammelled by all the technicalities of the law; and therefore a lay Tribunal was instituted with power to decide according to *equity and good conscience*, and to receive evidence such as could not be admitted before a Law Tribunal. But, at the same time, the Act provided that the Board should receive *the assistance* of the Supreme Court and of Juries on EVERY *and* ANY point of difficulty that could arise.

The authority of the Commissioners (Sect. 4.) is "to examine into and report their opinion upon *all claims* and applications for Grants of Land, or to any particular estate or interest in or lien on such land, WHETHER *such claim or application be made by persons claiming in their own right by Location Order* or OTHER authority from any Governor of New South Wales, or any Lieutenant-Governor of Van Diemen's Land, or by or on behalf of persons claiming derivatively," &c. &c.

The 8th Section provides that the Lieutenant-Governor shall not be *compelled* to make any Grant.

The 10th Section gives power to appeal against the decision of *two* of the Commissioners.

The 13th Section provides that "it shall be lawful for *any one Commissioner* from time to time, upon *any* point of difficulty arising in any matter, to state a case thereon for the opinion of the Judges as to the Law or Equity; and also any Commissioner shall have power and authority *at any time* (either in addition to or without any such case stated) to

direct the trial of a Feigned Issue between the parties in the Supreme Court, for the better inquiry into and determination of *any* fact or facts as to such Commissioner may seem expedient."

Had the question to be tried under the Feigned Issue been, "Whether the present Applicant is entitled to a Grant?" then I admit that the duty imposed by the Act upon the Caveat Board would have been delegated by the Commissioner to the Judge, and that the Commissioner had no power to send *such* a question to the Supreme Court, because it embraces the whole chain of investigation; but the simple question, whether in the first instance a Governor did or did not give to a particular individual a piece of land, is only *one* of the elements incidental to the investigation required of the Board. It is no doubt an important element, but in practice it is one which I believe has seldom occasioned any difficulty. Within my experience, Mr. Abbott's is the *only* case in which the dispute has arisen upon the question whether a Governor did or did not give certain land to the original locatee; nor can I find in any part of the Act any proviso limiting, even by inference, the duty of the Commissioners to the mere construction of a Location Order, or excluding that particular point of difficulty from the operation of the Section which affords them the assistance of the Supreme Court.

Innumerable points of difficulty arise in the investigation of a claim, but these are of a varied character arising out of acts subsequent to the location.

Appended hereto is an example of such a point of difficulty, which arose in an *uncontested* claim. I select it, not because it is one of *peculiar* difficulty, or one which demanded from me an unusual amount of labour and research, but simply because in this particular case (the Solicitor to whom the case had been entrusted being at Launceston) I took the trouble of reducing to writing the result of my inquiries and deliberations.

I am totally unable to divest my own mind of the conviction, that the object and intention of the Act was *not* to make the *construction of location orders* the exclusive or principal duty of the Board, but to ensure an ample, *fair*, equitable, and *common sense* examination of all claims to grants of land; and further, that it was the intention of the Legislature that the Board should receive the assistance of the Court *at any stage* in their investigation *upon any question of law*, and of a Jury upon *any question* of fact whatever; and that the Legislature never contemplated the exclusion of such a point as the one now raised.

After giving to the matter the most careful and earnest consideration, I believe in my conscience that *I could not* without violating my oath of office refuse the application made to me. Had I done so, I should have done it not from conviction, but from fear and favour—motives by which I trust I shall never be capable of being swayed.

FR. HARTWELL HENSLOWE, *Chairman.*

May, 1858.

APPENDIX I.

CLAIM of W. Wright. 13 *Perches.* *Launceston.*

1. The Surveyor-General certifies that the land was located to Nightingale. His allotment contained 2 roods 2 perches, that is *more* than half an acre.

2. Nightingale *assigned* his interest in the location to Milne. Date, 10 Dec. 1834. Consideration, £19.

3. Milne mortgaged the land to Messrs. Dunlop, 22 Jan. 1841.

4. On the 16 August, 1844, Milne, his wife, and Messrs. Dunlop joined in a deed which recites the mortgage; that Evans has contracted for the absolute purchase of the allotment &c.; and in consideration of the sum of £16 they grant, bargain, sell, assign, transfer and set over to W. Evans, his executors, administrators, and assigns all that allotment &c. containing 13 perches, part of the original location to Nightingale, to have and to hold the said &c. &c. unto the said W. Evans, his executors, administrators, and assigns from henceforth for all such term or terms of years, estate and interest, which they the said Milne and Dunlop now have or may have in the same.

5. By a very short Will, dated in 1846, Evans "left" all he died possessed of to his wi e, Charlotte Evans, and left her his residuary legatee.

6. Charlotte Evans married Neville, and died.

7. NEVILLE by his Will (May, 1853) "*gives* and *devises* to Lydia, wife of his son Henry, the allotment of land in question to and for her absolute use and benefit, free from the control of her present or any future husband."

8. Lydia Neville (the Legatee) married Richard Nettlefold.

9. Richard and Lydia Nettlefold (July, 1856) "grant, bargain, sell, allign, release, and confirm to W. Wright and his heirs all that allotment &c.; to have and to hold to the use of W. Wright, his heirs and assigns for ever" (consideration £150.)

10. The question arises, *What right had* NEVILLE *to devise or convey the land?* What title to or interest in the land had he?

11. If Evans had a freehold interest in the land, all the interest which Neville could have acquired by his marriage with Evans's widow would have been—(1.) During her life, a *joint* interest; (2.) And after her death, *supposing him to have had issue by her,* the interest of a *tenant by courtesy;* But (3.) if they had *no* issue, then *his* interest would determine upon the death of the wife, and revert to her heir-at-law, whoever that might be.

12. But it is contended that the interest left to Charlotte Evans by her first husband was *not* a freehold interest but a leasehold interest, and that therefore Neville by his marriage obtained the absolute right and title to the property as a chattel real. And this argument is supported by the allegation that *all* town allotments were located upon *lease.*

13. Is this the case? I have diligently searched for any Regulations or information which might enable me to arrive at the truth, and the result is a belief that *no Regulations* existed prior to 1828. In this belief I am supported by Sir Alfred Stephen's Reports, in which (under date June, 1830) I find the following observations:—

"I have in vain sought for information from every office and from every official publication and paper which I thought was likely to supply it. The truth is that there never were any specific Regulations expressly applying to this Colony defining the terms on which town allotments were or would be given, excepting only an Order of Governor Macquarie in 1811 prescribing the size of allotments in Hobart Town for buildings of particular classes, and entitling such allotments to leases either of 21 or 14 years. But as to the kind or value of buildings, if any, which would entitle a party to a grant in fee simple, there seems to have been nothing at any time defined.

But Governor Macquarie in the year 1813, and thence up to 1822, virtually abrogated the whole of the Regulations promulgated by that Order, for he in repeated instances issued grants in fee simple of allotments in Hobart Town.

It has been the general understanding that, inasmuch as the nature of the title given to an allotment depended upon the nature and value of the buildings and improvements thereon, the holder would at any time be enabled to obtain a grant in fee, although he should originally have obtained or been entitled to a lease only, upon completing the necessary extent of outlay."—"Governor Sorell issued Certificates in the year 1824 authorising a great many individuals, being proprietors of allotments with buildings of a superior class *then* erected upon them, to receive grants, who a very few years or months previously would only have been entitled to leases for 14 or 21 years."

It appears, therefore, that no general rule existed prior to 1828 which could justify this Board, without any evidence as bearing upon a particular case under examination, in deciding that the mere fact of an individual *holding* an allotment must decide the nature of his tenure.

But in 1828 Regulations *were* adopted and promulgated, and by these it appears that Town Allotments were divided into *three classes* :—

Those of the first class consisted of *One acre* and under 3 acres.

The second class consisted of *Half an acre* and under 1 acre.

The third class consisted of *a Quarter of an acre* and *not exceeding Half an acre.*

It was required that certain improvements should be made, of greater or less extent according to the class, within a period of *Two* years, 18 months, or 12 months (also according to the class), on the expiration of which period the Locatee, if he had complied with these conditions, was entitled to a *Grant* for the *first* and *second* class, subject to the payment of a quit-rent at 6*d.* per rod in Hobart Town and Launceston, but to a *lease for* 21 *years* for an allotment of the *third class.*

14. For all allotments, therefore, located *subsequently* to 1828 there can be no difficulty, whatever might have been the case in reference to allotments located *prior* to that date.

Now, on reference to the Survey Department, I find that *the date* of Nightingale's Location Order for this allotment is *the 25th February* 1831, and the *class* in the Register of Allotments ordered is specified as being the *second class,* as indeed it evidently must have been, seeing that the area of the allotment was 2 *roods and* 2 *perches* or *more than half an acre.* Supposing

therefore that, at the end of 18 months, he had shown to the satisfaction of the Government that he had complied with the conditions as to *improvement*, he would have been entitled, upon payment of the quit-rent, NOT to a *lease* but to a grant. It certainly does not appear that he *did* improve the allotment, for he only received £19 in December, 1834, for his interest in the allotment.

In 1844 Evans purchased the portion now applied for for £16, and in 1856 the present applicant paid £150. It may be inferred, therefore, that Evans, Neville, or Nettlefold *improved* the allotment, and by so doing entitled themselves to *convert the tenure*. But the only conclusion to be drawn from this fact is that, strictly speaking, Nightingale never *entitled* himself to receive *anything*, whereas those who have occupied *since* have entitled themselves to receive what Nightingale *might* have claimed had *he* effected the improvements,—and *that* according to the Regulations under which the allotment was ordered to him was *a Grant*, NOT *a Lease*.

15. The Regulations of 1832 contained the following clauses:—

(No. 23.) Respecting allotments originally entitled only to a lease for years, the term of which has now expired, as also the case of leasehold allotments, the term of which having only partially expired, is still in existence; *leases will be given in each case* for the original *full* term, notwithstanding such expiring, upon the party paying a quit-rent at the rate of sixpence per rod per annum from 1 Jan., 1829.

(No. 24.) In all such cases, if the party does not *now* avail himself of the opportunity of *converting the lease into a freehold*, it must be understood that the Government does not pledge itself to any renewal. If, however, any party *now entitled* to any such lease shall be *desirous of obtaining* instead thereof a *grant in fee*, he may receive one, in the first instance, upon payment (in addition to the amount of quit-rent) of a sum equal to the amount of *seven years'* quit-rent at that rate.

16. In 1847 Regulations were published which contained the following notification:—(Paragraph 8.) "That the fine for non-improvement or alienation, and the payment *for the conversion of a lease* into a grant in fee shall be reduced to three pence on every rod in Hobart Town and Launceston, and to half that amount elsewhere."

17. From the tenor of these various Regulations I gather that the Board is justified in treating the occupiers of original locations of the *third* class as tenants having a leasehold interest only in the land, or rather a quasi or equitable leasehold interest in the land, but the interest of the occupiers of original locations of the *two first classes* as equitable *freeholds*. Now Nightingale belonged to the *second* class of locatees. He cannot, therefore, have been looked upon as a *leaseholder*, unless indeed it be argued that *all* locatees of town lots were *leaseholders until their tenure* (of whatever nature it might be) was converted into a grant in fee,—a position which it will not, I apprehend, be attempted to maintain.

18. There is another element which has been admitted by the Board into its investigations of similar questions, and that is *the light in which locatees* THEMSELVES *or their successors have looked upon their tenure*. In applying this test to the present case the materials are scanty,—for it appears, unfortunately, that Nightingale's conveyance to Milne is lost, and also Milne's mortgage to the Dunlops.

The instruments which have been produced are,—

First. The Conveyance from Milne to Evans, in which his interest does appear to be treated as leasehold, inasmuch as he "grants, bargains, sells, assigns, transfers, and sets over to W. Evans, *his executors, administrators, and assigns*,—the allotment."

Secondly. Evans's Will, a short and simple document by which he *leaves* all his property to his wife.

Thirdly. Neville's Will, by which he gives and *devises* the allotment to his daughter-in-law.

Fourthly. A Conveyance by which Nettlefold and his wife (the said daughter-in-law of Neville) "grant, bargain, sell, allign, release, and confirm to *W. Wright*" (the present applicant) "*and his heirs* all that allotment, &c. to have and to hold to the use of W. Wright, *his heirs* and assigns for ever."

19. Thus it would appear that the first instrument treats the interest as *leasehold*, the second is silent, the third and fourth treat it as freehold.

20. Upon the whole, I am unable to arrive at any other conclusion than that Nightingale, *supposing that he fulfilled the conditions imposed by the Regulations*, was *entitled not to a lease* but to a grant in fee; that it was *that right* or claim—*an equitable freehold*—which he conveyed to Milne, which Milne conveyed to Evans, and which Evans left to his wife. That equitable freehold descended to *her heirs*, but could not be acquired by Neville as a chattel real.

The question of non-improvement could not affect the tenure, inasmuch as the Government have agreed to waive that condition upon the payment of a fine.

FR. HARTWELL HENSLOWE, *Chairman of the Commissioners.*

(No. 60.)

APPENDIX II.

Attorney-General's Office, 13*th Sept.* 1858.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 10th instant, with its enclosures.

The transfer of the jurisdiction of the Caveat Board to the Judges of the Supreme Court is proposed as an improvement of the existing law, and is in no way whatever a consequence of the decision to which you refer, but was suggested by the difficulty experienced in finding fit persons to fill vacancies at the Board.

I have never entertained the slightest doubt that your decision in the case referred to was founded on conviction, and therefore such as you felt yourself bound to give;—that it was the result of the same earnest, conscientious, and impartial zeal which you bring to the discharge of all your public duties, and to which I most willingly bear testimony.

Under these circumstances, it appears to me that to lay before the Executive Government or the Legislature your statement of the reasons for your decision would be not only unnecessary but objectionable, as being calculated to give some countenance to an idea that your conduct in the matter had been impugned,—an idea for which there is not, so far as I am aware, the slightest foundation.

I regret that your interests should be prejudicially affected by the measure. Some individual hardship is a necessary consequence of almost every reform in the law; and I apprehend that a Government could scarcely be deemed to discharge its duty faithfully if it allowed a regard for private interests to impede its efforts for the public good. In accordance with your request, I return you herewith the papers enclosed in your letter, and

Have the honor to be,
Sir,
Your obedient Servant,

FRANCIS SMITH.

FR. HARTWELL HENSLOWE, *Esq.*

JAMES BARNARD,
GOVERNMENT PRINTER, TASMANIA.