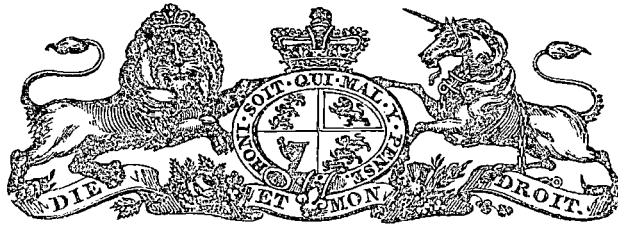


(No. 23.)



1860.

T A S M A N I A.

HOBART TOWN WATER BILL.

MR. C. DEGRAVES.

PETITION (No. 3.)

Presented by Mr. Adams, and ordered by the House to be printed, 3 August, 1860.



To the Honorable the House of Assembly of Tasmania, in Parliament assembled.

The humble Petition of CHARLES DEGRAVES, of Hobart Town, in Tasmania, Esquire.

SHOWETH :

THAT, in the year one thousand eight hundred and twenty-one, Peter Degraives, late of Hobart Town, Esquire, deceased, the father of your Petitioner, with his partner Major M'Intosh, sailed from London in the Ship *Hope*, belonging to themselves, and bound for Van Diemen's Land.

That Messieurs Degraives and M'Intosh were accompanied by their families, and took on board the *Hope* machinery for a saw-mill, to be erected in this Colony.

That, previously to their sailing in the *Hope*, they obtained from Lord Bathurst a Letter to the Governor of Van Diemen's Land, directing that a grant of land should be made to them.

That the *Hope*, having received damage at sea, put back to Ramsgate; and, in consequence of a question having arisen as to her being sea-worthy, she was detained until the year one thousand eight hundred and twenty-three, when she again sailed with Messieurs Degraives and M'Intosh and their families on board, and with their saw-mill and other machinery.

That on the second of October, one thousand eight hundred and twenty-three, Lord Bathurst addressed to Sir George Arthur, then Lieutenant-Governor of Van Diemen's Land, a Letter of which the following is a copy:—

(No. 6.)

Downing-street, London, 2nd October, 1823.

SIR,

IN consequence of various circumstances connected with the ship *Hope*,—but to which I do not deem it necessary more particularly to advert upon this occasion—the late owners of that vessel, Mr. Degraives and Major M'Intosh, have acquired some claim to the protection of His Majesty's Government; I have, therefore, been induced so far to assist Mr. Degraives and Major M'Intosh in their individual arrangements of emigration to Van Diemen's Land, by allowing to them the expense of conveying a saw-mill, which they propose to erect in the Colony; and I have further to desire that you will afford to Mr. Degraives the assistance of three convict carpenters and one smith, together with rations, for the purpose of working the mill during a period of six months: provided such arrangements can be made consistently with the exigencies of the public works. I have also to instruct you to grant rations for six months to Mr. and Mrs. Degraives and eight children, and to Major M'Intosh and one child.

I have the honor to be, Sir,
Your most obedient humble Servant,
BATHURST.

*Lieutenant-Governor ARTHUR,
Van Diemen's Land.*

That in April, one thousand eight hundred and twenty-four, Messieurs Degraives and M'Intosh arrived at Hobart Town in the *Hope*.

That on third of June, one thousand eight hundred and twenty-four, Messieurs Degraives and M'Intosh applied, by letter, to Sir George Arthur for land for the erection of a saw-mill, and that the following is an extract from such letter:—“We beg leave to refer to our Memorial, of the 20th May, addressed to your Honor, praying for a grant of forest land for the purpose of supplying our saw-mill with timber. Mr. Evans has pointed out a tract which is unappropriated, and is every way suitable, being sterile soil, thickly covered with timber, with a waterfall passing through it, but quite unfit for agricultural purposes; we, therefore, hope your Honor will favor us, in consequence of the importation of our saw-mill, with a grant of land between Mr. Lowes' Distillery and the foot of the Table Mountain, which we trust can never be better appropriated than to an extensive saw-mill.”

That on fourteenth June, one thousand eight hundred and twenty-four, a letter, of which the following is a copy, was addressed by the Colonial Secretary to the then Surveyor-General, Mr. Dumaresq:—

Survey Office, 14th June, 1824.

SIR,

I BEG to inform you, that Messieurs M'Intosh and Degraives, having obtained a location order for 2000 acres of land, have informed me that there is a Lot of 1000 acres between this location and the spot on which they are going to erect a mill, through which it will be necessary to reserve a right of road. I am, therefore, directed to acquaint you, that you will not appropriate to any body the 1000 acres alluded to by them without the sanction of the Lieutenant-Governor.

I am, Sir,

Your most obedient humble Servant,
JOHN MONTAGU.

That, in the year one thousand eight hundred and twenty-four, Messieurs Degraives and M'Intosh erected their saw-mill on the land located to them, in accordance with their application of third June, one thousand eight hundred and twenty-four, at the place now known as the Cascades.

That, in the year one thousand eight hundred and thirty-four, Major M'Intosh died, having devised his interest in the land and saw-mill to Mr. Peter Degraives.

That, after the erection of the saw-mill above mentioned, another saw-mill of greater power, two flour mills and a brewery, besides dwelling-houses and other buildings, were erected on the land referred to—many thousand pounds having been expended upon them.

That by the Act of the Legislative Council of Van Diemen's Land, 5th William 4th, No. 14, Section 1, it was enacted, that a tunnel or watercourse conveying water from the Hobart Town Rivulet, and other works therein mentioned, "and also (subject nevertheless to all private rights or interests, if any, to or in the same) all springs and streams of water forming the sources of supply of any such watercourse, and especially the water of and in the said rivulet, together with the soil and bed thereof, and the right of ingress and egress to and from the same, for the purpose of inspecting and cleansing the same, and repairing and making good the banks thereof, should be, and the same were thereby declared to be, respectively, vested in His Majesty, His Heirs and Successors, for the use of the public for ever."

That by letters patent, dated twenty-first June, 6th William 4th, and enrolled in the Supreme Court on the twenty-seventh of July, one thousand eight hundred and thirty-six, His said Majesty granted to the said Peter Degraives and his heirs 2000 acres of land, situate in the Parish of Hobart and County of Buckingham, and bounded on the north east by a grant to Robert Lathrop Murray, being a right line extending from the Sandy Bay Rivulet to the Hobart Town Rivulet and marked by stone termini, by a quarry reserve, and by a streamlet, north west by a line of one hundred and fifty-three chains along a location to William Clavey Brown, south west by a line along crown land to the Sandy Bay Rivulet, and south east by that rivulet surrounding a location of 15 acres to William Walton at the upper saw-mill.

That this description includes the bed of the Hobart Town Rivulet, the Quarry Reserve, mentioned in the grant being on the north-western side of that rivulet opposite to the said grant to Robert Lathrop Murray.

That the said Peter Degraives departed this life in the year one thousand eight hundred and fifty-four, having by his Will devised the said two thousand acres of land, with the mills and buildings thereon, to your Petitioner and his brothers Henry Degraives, John Degraives, and William Degraives.

That the mills erected by the said Peter Degraives have been worked by the water of the Hobart Town Rivulet from the periods of their erection to the present time.

That by the Bill now before your Honourable House, intituled "A Bill for providing a sufficient supply of Water for the City and Port of Hobart Town and places adjacent," it is proposed to vest in the Corporation of Hobart Town all rights, matters, and things which, by virtue of Section 1 of the said Act of Council, 5th William 4th, No. 14, were vested in His then Majesty King William the Fourth, His Heirs and Successors.

That, by the 15th and following Sections of the said Bill, provision is made for compensating all parties lawfully interested in the water of any stream taken or used under the authority of the proposed Act.

That your Petitioner has been informed that it has been held by the Supreme Court of Van Diemen's Land, that a Location Order, until confirmed by a grant, confers no *legal* right on the individual to whom land may be located.

That it has been suggested to your Petitioner that, inasmuch as the water of the Hobart Town Rivulet, and the bed and soil thereof, were, by the said Act of 5th William 4th, No. 14, vested in the crown for the use of the public, a doubt may arise whether the grant to the said Peter Degraives, issued after the passing of that Act, conferred on the said Peter Degraives a *legal* right to the use of the water of the said rivulet.

That your Petitioner is further advised that, although the said Peter Degraives and his representatives have used the water of the said rivulet for more than twenty years, for the purpose of working the said mills, and although such user would, under other circumstances, have conferred on your Petitioner and his brothers a *legal* right, by prescription, to the use of the said water, a question as to that right may also arise under the said Act of 5th William 4th, No. 14.

That your Petitioner submits that the exception of private rights or interests contained in the 1st Section of the last-mentioned Act must have had reference to the right of the said Peter Degraives under the location made to him of the 2000 acres of land afterwards granted to him, as no land lying on the south-western side of the north-eastern boundary of that grant had then been granted to any person by the crown.

That your Petitioner submits that it would be most unjust to give to the Corporation of Hobart Town the power of taking away the water which has so long worked the mills belonging to your Petitioner and his brothers, without making compensation for the injury which would be thereby inflicted on them, and that it would not be just to allow the rights of your Petitioner and his brothers to depend upon the legal questions above referred to.

That if the water which works the said mills be taken away, the land and buildings belonging to your Petitioner and his brothers will be thereby reduced to less than one-tenth part of their present value, and the larger part of the buildings and machinery will be absolutely worthless.

That, although it has been held by the Supreme Court that a Location Order confers no legal right, it has been the uniform practice of the Local Government of Tasmania to confirm such Location Orders by Crown grants: that a Court for this purpose has been established by Act of Council; and that to overlook the right of the late Peter Degraives, to the grievous injury of his sons, would be to show a total disregard of his right as the locatee of the land afterwards granted to him, such land having been expressly selected and located in respect of the water power afforded by the Hobart Town Rivulet; and large sums of money having been expended on the faith of that location.

Your Petitioner therefore humbly prays, that a clause may be introduced into the proposed Act, securing to your Petitioner and his brothers fair and reasonable compensation for such injury as may be sustained by them in consequence of all, or any part, of the water by which their mills are now worked being withdrawn, or diverted for the use of the public.

And your Petitioner further prays, that he may be heard by Counsel at the Bar of your Honourable House, and that he may be allowed to adduce evidence in support of the facts above set forth.

And your Petitioner will ever pray, &c.

CHARLES DEGRAIVES.