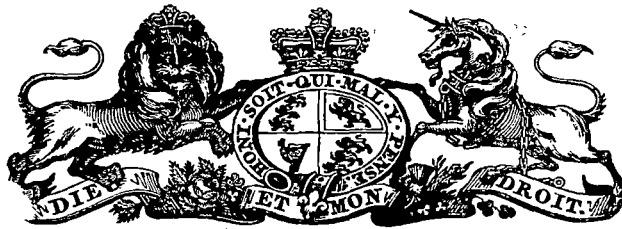


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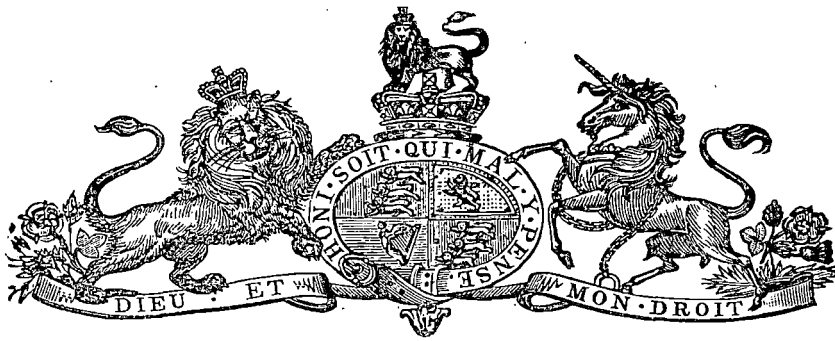
PARLIAMENT OF TASMANIA.

DERWENT PARK ESTATE :

OPINION OF SOLICITOR-GENERAL *RE* PURCHASE
BY THE GOVERNMENT.

*Return to an Order of the Legislative Council dated November 20, 1891.
(Mr. Adye Douglas.)*

Ordered by the Legislative Council to be printed, November 15, 1892.



RE DR. BENJAFIELD AND DERWENT PARK ESTATE.

OPINION.

THE Select Committee have found in effect that Dr. Benjafield sold the Derwent Park Estate to the Government for £5198 6s. 10d., and after such sale was concluded he purchased the estate for himself at £4600, so that the Government paid £598 6s. 10d. more than Dr. Benjafield gave. This finding appears to be amply justified by the evidence. There is also evidence which would justify a jury in finding that Dr. Benjafield knowingly deceived the Government in the matter—see among other evidence Question 164: “Do you call it honourable to make the Government believe you purchased at £5000?” Answer, “Yes.” Further, there is evidence which might lead a jury to conclude that Dr. Benjafield also deceived or attempted to deceive the Government in the first instance in the matter of the reservation for himself of the house and a certain portion of the land.

The question as to whether Dr. Benjafield may be compelled to refund any portion of the purchase money to the Government depends upon whether he was an actual or constructive agent of the Government in the matter. The law upon the point is clear. A Court of Equity would not for a moment permit an agent or other confidential person to acquire any pecuniary advantage to himself through the medium of his judiciary character. Such a person is accountable as a constructive trustee for such profits to his employer or other person whose interest he was bound to advance.

Was Dr. Benjafield employed as an agent? The facts above mentioned would go a long way in convincing the Court that he should be held liable as a constructive agent. It may turn out upon further enquiry that Dr. Benjafield used the money received from the Government to enable him to pay his own purchase money. See the cases of *Rimber v. Barber*, 8 L. R., ch. 57, and *Morison v. Thompson*, 9 L. R., Q. B., 485.

Having regard, however, to the evidence of the Premier, it would appear impossible to treat the matter as one of agency. The Premier says in his evidence (answer to Question 307), “Prior to his offering it to me I thought he was getting some profit out of the Park.” I assume this does not refer to mere agent’s commission. I gather that neither the Premier nor the Minister of Lands nor the Crown Solicitor would claim or would assert in the witness box that Dr. Benjafield was employed as an agent, but that, on the contrary, they believed him to be acting as a principal, and did not object to his making a profit upon the sale. If this is so then it would be impossible to recover back any portion of the purchase money.

ALFRED DOBSON.

Solicitor-General’s Chambers, 12th February, 1892.