

(No. 17.)



1865.

---

T A S M A N I A.

LEGISLATIVE COUNCIL.

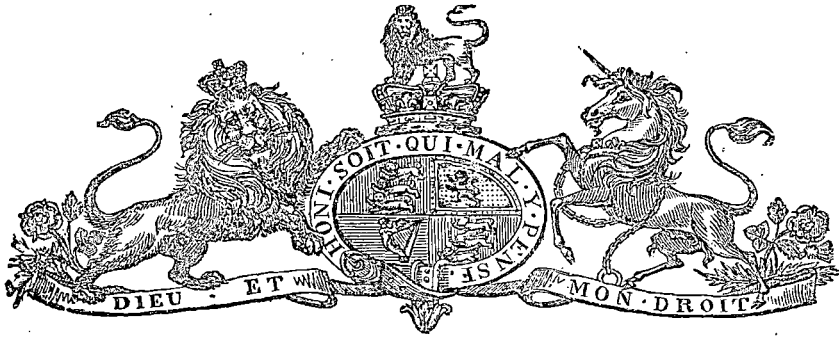
---

CONVICTS CHARGEABLE TO COLONY.

DESPATCHES TO AND FROM SECRETARY OF STATE.

---

Laid upon the Table by Mr. Whyte; and ordered by the Council to be printed,  
July 25, 1865.



No. 25.  
Executive.

*Government House, 19th March, 1864.*

MY LORD DUKE.

I HAVE the honor to forward a letter, signed by all my Responsible Advisers, covering a copy of a Resolution passed by both Houses of the Legislature during the last Session of Parliament, to the effect that persons transported to the Colony should not be chargeable thereto in case of their subsequent conviction in Tasmania, unless a period of six years shall have elapsed from the termination of the original sentence of transportation. Ministers refer in their letter to a Despatch from Sir William Denison, in which he says,—“It would seem hardly fair to charge the Colony with the expense of maintaining a man to whom a prison is almost a home:” and I concur in this opinion with Sir William Denison. There can be no doubt that during the last few years in which Prisoners were transported to this Colony few but the most abandoned characters were sent out.

Memo. by  
Ministers, 16  
March.

These men are frequently Criminals by profession: reformation on their part is hopeless; and if they are not convicted in a short time after their release from prison, it is more often because they are undetected than because they are innocent.

I beg, therefore, to recommend the request contained in the enclosed documents to Your Grace's favourable consideration.

I have the honor, &c.,

(Signed) T. GORE BROWNE.

*His Grace the DUKE OF NEWCASTLE.*

*Colonial Secretary's Office, 16th March, 1864.*

#### MEMORANDUM.

WE have the honor to transmit to Your Excellency herewith a copy of a Resolution passed by both Houses of the Legislature during the last Session of Parliament, to the effect that persons transported to the Colony should not be chargeable thereto in case of their subsequent conviction in Tasmania, unless a period of Six years shall have elapsed from the termination of the original sentence of transportation.

The Ministry feel that they would be wanting in the discharge of their duty if they did not impress upon Your Excellency the great injustice under which the Colony is, and has been, suffering since the adoption of the Regulations promulgated in the Despatch of His Grace the Duke of Newcastle, of the 14th February, 1854, No. 23, limiting the liability of the Imperial Government in cases of reconviction to one twelvemonth from the expiration of the Convict's Imperial sentence.

The Ministry trust that Your Excellency will bring under the consideration of the Right Honorable the Secretary of State the accompanying Return, which will prove that, in thus seeking relief from the Imperial Government of a portion of the enormous and unjust expenditure now pressing upon the Colony for the maintenance of incorrigible British offenders, they are supported by undeniable testimony in favour of the observation of Sir William Denison in his Despatch, No. 154, of the 2nd July, 1853, that “it would seem hardly fair to charge the Colony with the expense of maintaining a man to whom a prison is almost a home.”

By existing regulations published in July, 1854, the Secretary of State authorised the Convict authorities to shorten the period during which a Convict remained under

Imperial control, that the British Treasury might thereby be the sooner relieved from the liability for his maintenance, ignoring, it would seem, the increased probability that the funds of the Colony would be called upon to support him as a Criminal upon the commission of some new offence.

That such has been the result, the perusal of the enclosed return conclusively proves : and the Ministry cannot for a moment conceive that it could be the premeditated design of the British Government to impose upon any possession of the Crown the task of supporting and controlling in prison Imperial offenders whose history develops such a total absence of the moral principle that, upon being liberated, their return to criminal courses may be predicted with almost unerring certainty.

The Ministry beg to express the hope that Your Excellency will lay before the Secretary of State, in the most forcible manner, the views embodied in the Resolution : and they submit that, in strict justice to a Colony suffering in no ordinary degree from the presence of British Criminals of the most abandoned character, the maintenance of all Imperial offenders now in prison at Port Arthur or elsewhere, who have committed crimes within six years of the termination of their Imperial sentences, and chargeable under existing regulations upon Colonial, may be transferred to Imperial Funds from the date of their last conviction ; and that, for the future, the liability on the part of the Colony in such cases shall not commence until the expiration of a period of six years from the date of their freedom from any sentence during which they were chargeable upon British Convict Funds.

JAMES WHYTE.  
CHARLES MEREDITH.  
ROBERT BYRON MILLER.  
JAMES MILNE WILSON.

*His Excellency the Governor.*

---

TASMANIA.  
No. 57.

*Downing-street, 25th August, 1864.*

SIR,

I HAVE the honor to acknowledge the receipt of your Despatch No. 25, of the 19th of March, forwarding, with certain Returns, a Memorandum which has been addressed to you by your Responsible Advisers, covering copy of a Resolution passed by both Houses of the Legislature to the effect, that persons transported to the Colony should not be chargeable thereto in case of their subsequent conviction in Tasmania unless a period of six years shall have elapsed from the termination of the original sentence of transportation.

I request that you will inform your Responsible Advisers that I have given my best attention to their representation, but that I must adhere to the decision on the subject which was contained in my predecessor's Despatch to Sir H. Young, dated the 5th of March, 1861.

I have, &c.

(Signed) EDWARD CARDWELL.

*Governor GORE BROWNE, C.B.*

---

No. 102.  
Executive.

*Government House, 16th December, 1864.*

SIR,

I HAVE the honor to forward a letter from my Responsible Advisers dated 7th December, 1864, in answer to your Despatch No. 57, 25th August, 1864.

2. These gentlemen urge you to reconsider the decision given in that Despatch, and call attention to the Duke of Newcastle's Despatch of 3rd May, 1854, by which it will be seen that the Imperial Government "shortened the periods of punishment materially, and hastened the time when these men, the offscourings of British Gaols, should by their return to their former habits of life become chargeable upon Colonial instead of Imperial Funds."

3. In that Despatch His Grace instructs the Governor, that "the time of granting Tickets-of-leave to all Convicts not yet possessed of that indulgence should be accelerated by at least one half of the period which they would have to serve under existing regulations; and that it may be accelerated by more if you see no objection; and further, that I should be prepared to acquiesce in accelerating the period at which holders of Tickets-of-leave may be recommended for Conditional Pardons."

4. It appears that these instructions were acted on; and consequently a heavy burthen, and one which the writers do not think equitable, has been thrown on the Colony,—and they therefore pray you to reconsider your decision.

5. There can be no doubt that no one had a right to complain of the course pursued by Her Majesty's Government in dealing with Imperial Convicts so long as Tasmania was a Convict Colony. When, however, it ceased to be a Convict Colony and was required to support its own Convicts, the mode in which Imperial Convicts have been dealt with, more especially of late years, becomes an object of great importance to the Colonists, and affects the numbers which the Imperial and Colonial Governments have each respectively to maintain. If a Convict sentenced for a long term of years has undergone the usual amount of punishment and probation, he will be older when pardoned, and less likely to be so long burthensome, or to become again a prisoner, than if that sentence had been curtailed as directed in the Duke's Despatch.

6. Viewing the case in this light, I beg to recommend the request contained in the accompanying letter to your favourable consideration.

I have, &c.

(Signed) T. GORE BROWNE.

*The Right Honorable* EDWARD CARDWELL.

---

*Colonial Secretary's Office, 7th December, 1864.*

SIR,

WE have the honor to acknowledge the receipt of Mr. Secretary Cardwell's Despatch, No. 57, of the 25th August, which Your Excellency was pleased to forward for our perusal, and upon which we feel it our duty respectfully to submit the following observations.

Mr. Cardwell acknowledges the receipt of Your Excellency's Despatch, No. 25, of the 19th March last, forwarding a Return showing the large number of men at that time under sentence at the Penal Establishment, Port Arthur, who, having been originally Imperial Prisoners, had, after becoming free, again resorted to criminal courses; but who, not having been detected in the commission of crime for a period of 12 months after the expiry of their sentence, on the receipt of a Conditional Pardon were made chargeable upon the Colonial Government.

This Return was accompanied by a Memo. from us, covering copy of a Resolution passed by both Houses of the Legislature, to the effect that the period of 12 months above referred to should in justice be extended to 6 years.

Mr. Cardwell, in his Despatch now before us, is pleased to say that, after giving our representations his best attention, he must adhere to the decision on the subject which was contained in his predecessor's Despatch to Sir H. Young, dated 5th March, 1861.

We respectfully submit, that the subject of the Resolution of the Legislature and our Memorandum was not brought under the consideration of His Grace the Duke of Newcastle in the Despatch of Sir H. Young to which the Duke replied. That Despatch referred to a joint Address from both Houses of Parliament, praying that the sum of £5000 might be placed on the Estimates for the year 1861, to be expended in conveying to England all those persons whose maintenance was considered to be unfairly charged against the Colony: "the persons thus sought to be removed are Convict Paupers, free by servitude, and now chargeable to the Colonial Government." To this His Grace replied, that he could not sanction a compliance with the request, as he was unable to authorise the Governor to make provision for retransporting to England, at the public expense, Convicts who have been lawfully transported to Tasmania whilst the practice of Transportation to this Colony was still in force.

We would point out that there is no connection between the retransportation of infirm Convict Paupers to Great Britain, the burthen of whose support falls so heavily upon the Colony, and the maintenance of the doubly and trebly convicted felons of the

Mother Country, which by the regulations has been forced upon this Government contrary to all principles of justice and equity, and rendered still more oppressive by the instruction contained in His Grace the Duke of Newcastle's Despatch of the 3rd May, 1854, on the subject of the Convict Estimates for 1854-5, by which it will be observed that the Imperial Government, exercising a direct interference with the sentences passed upon offenders by the Judges, shortened the periods of punishment materially, and thus hastened the time when these men, the offscouring of British Gaols, should, by their return to their former habits of life, become chargeable upon Colonial instead of Imperial Funds:—

“I have to convey to you distinct instructions that the expenditure after the 31st March, 1855, must be placed upon altogether a different footing from that which, unfortunately, it is necessary to sanction for the current year. \* \* \* \* But the choice of the practical measures of retrenchment must unavoidably be left, in a great degree, to the discretion of yourself and your proper Official Advisers on the spot. I have to instruct you, however, that the time of granting Tickets-of-Leave to all Convicts not yet possessed of that indulgence should be accelerated by at least one-half of the period which they would have to serve under existing regulations; and that it may be accelerated by more if you see no just objection; and further, that I should be prepared to acquiesce in accelerating the period at which the holders of Tickets-of-Leave may be recommended for Conditional Pardons.”

These instructions were fully carried out, with manifest injury to the interests of the Colony, however much they may have relieved the Imperial Government of its Convict Expenditure.

We cannot suppose it necessary to repeat or enlarge upon the arguments contained in our Memorandum of the 16th March last; and we trust that Mr. Secretary Cardwell, upon referring to that document, supported by the incontrovertible evidence of the return which accompanied it, will see that the decision of his predecessor, to which he alludes, does not affect the present question: and we respectfully submit, that a refusal to acknowledge the justice of the application, as contained in the Memorandum, of necessity involves an approval of the principle that it is just and equitable to adopt any means to relieve the Imperial Government of the maintenance of its most hardened and incorrigible felons,—even though, to effect that object, the sentences of the Courts must be ignored, and the burden deliberately cast on the shoulders of the Colonists, and the just remonstrances of the Colonial Legislature utterly disregarded.

We rely with confidence upon Mr. Cardwell's sense of what is in justice due to this Colony, to reconsider and modify the terms of his reply; and we trust that, as we seek no favour, but simply an equitable re-adjustment of the regulations, he may be disposed to accede to the terms of our request.

We have, &c.,

(Signed) JAMES WHYTE.  
CHARLES MEREDITH.  
ROBERT BYRON MILLER.  
JAMES MILNE WILSON.

*His Excellency the Governor.*

TASMANIA.  
No. 24.

*Downing-street, 26th April, 1865.*

SIR,

I HAVE received your Despatch, No. 102, of the 16th of December last, accompanied by a letter from your Responsible Advisers, written in consequence of my Despatch to you, No. 57, of the 25th of August last.

The existing rule in Tasmania is, that if a person who has been transported from England shall within twelve months after acquiring his freedom be reconvicted, the expense consequent on his second sentence shall be defrayed by this Country, but that otherwise it shall be defrayed by the Colony. The Colonial Legislature expressed a desire that the period named in this rule should be extended from one to six years. I informed you in my Despatch, No. 57, of August, that I must adhere to the decision on this subject which was contained in my Predecessor's Despatch, dated the 5th of March, 1861.

Your Ministers have thereupon turned to a Despatch from the Duke of Newcastle, dated the 5th of March, objecting to a grant for retransporting persons under certain circumstances to England, and they point out, very justly, that this Despatch did not

bear on the subject on which it had fallen to me to express a decision. But I am surprised that you did not at once perceive and correct the mistake into which your Advisers had fallen. In order more effectually to remove any error, I will very briefly trace the thread of the correspondence from an earlier period.

In a Despatch, No. 75, of the 12th of August, 1858, Sir Henry Young forwarded Resolutions of both Houses of the Legislature, claiming relief from some of the charges arising out of the presence of Convicts, and especially complaining of the reduction of the contribution to Police and Gaols.

On the 25th of February, 1859, Sir Edward Lytton, being then the Secretary of State for this Department, explained the reasons why the Queen's Government declined to add to the contribution to Police and Gaols, but intimated that it would be continued for some years longer than had been intended when transportation ceased.

Both of these Despatches are contained in the Papers on Convict discipline laid before Parliament in August, 1859.

On the 14th of May, 1860, Sir Henry Young transmitted a Memorandum from his Ministry controverting the view taken by Sir Edward Lytton of the contribution to Police and Gaols, and adding the topic (which has been continued in your correspondence with me) of the expenses of reconvicted offenders.

To this the Duke of Newcastle replied in his Despatch, No. 21, of the 5th of March, 1861, in which he entered into a review of the whole question of the claim of the Colony to any re-adjustment of the distribution of the expenditure between itself and this Country, and explained the reasons why Her Majesty's Government declined to alter the existing arrangement. I need scarcely say that this is the Despatch to which I referred in mine to you, No. 57, of the 25th of August. It is printed on the very same page of the Parliamentary Paper as the other Despatch of the same date, which your Ministers have pointed out as irrelevant to the question which I had to determine.

I enclose two spare copies of the Parliamentary Paper containing the Despatch, and I should be obliged to you to take care that it is duly brought within the notice of your Advisers, with this explanation of the misconception which has arisen on the subject.

Will be sent  
via South-  
ampton next  
Mail.

I continue to adhere to the principles laid down by the Duke of Newcastle. My view is that the arrangement respecting expenditure must be regarded as a whole, and that, looking to the length of time which has elapsed since Transportation was discontinued, and to the very large sums which continue nevertheless to be annually contributed from Imperial Revenue both in direct connection with Convicts and in the payment of Troops, there is no sufficient ground to warrant any additional claim on this Country.

I have the honor to be,  
Sir,

Your most obedient humble Servant,

EDWARD CARDWELL.

Governor Gore BROWNE, C.B.