

(No. 44.)



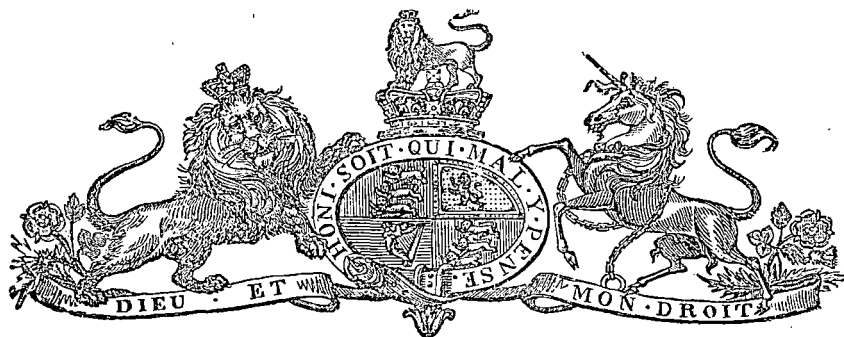
1861.

TASMANIA.

TRANSFER OF IMPERIAL BUILDINGS TO
THE COLONY.

COPIES OF DESPATCHES.

Laid upon the Table by Mr. Henty, and ordered by the Council to be
printed, 18 October, 1861.



COPIES of Despatches from His Excellency SIR HENRY YOUNG and Her Majesty's Secretary of State for the Colonies, relating to the Transfer of Buildings and other Property belonging to the Imperial Government to the Government of Tasmania: together with other Papers, and the Correspondence between the Colonial Government and COLONEL BROUGHTON, in command of Her Majesty's Forces in Tasmania, in relation to the Cottage and Lands in Launceston, known as the "Engineers' Office."

TASMANIA. (No. 129.) [EXECUTIVE.]

Government House, Hobart Town, 30th August, 1855.

MY LORD,

I HAVE the honor to submit that all Buildings not required by the Convict Department, or for the use of Her Majesty's Troops, should at once be delivered over to the Colonial Government for the Public Service of this Island.

The land on which they stand is Crown Land, to be used by the Local Government for the general benefit of the inhabitants of this Island; and most of the Convict Buildings in question, in the Town of Launceston, have large portions of land attached to them.

I have, &c.,

H. E. F. YOUNG.

The Right Hon. LORD JOHN RUSSELL.

(No. 11.)

Downing-street, 22nd August, 1855.

SIR,

WITH reference to your predecessor's Despatch, No. 160, of the 8th of September last, reporting the arrangements which he would recommend for carrying into effect the transfer of the various Buildings no longer required by the Convict Department to the Local Government, I transmit to you herewith, for your information, Copies of a Correspondence which has passed upon the subject between this Office and the Board of Treasury: and I have to acquaint you that the arrangements proposed by Sir W. Denison appear, in themselves, fit and expedient; but that before any final measures are taken by you for carrying them into effect, it will be necessary that you should ascertain from the Officers of the Ordnance on the spot that none of the Buildings are required for Military purposes.*

I have, &c.,

W. MOLESWORTH.

*Governor SIR H. E. F. YOUNG,
Van Diemen's Land.*

*The words "Military purposes" mean the avoidance of lodging-money, or hiring quarters.—*Vide* War Office Circular.

ENCLOSURE 3, from Under Secretary War Department to Assistant Secretary to Treasury states

THAT, taking into consideration the want of public buildings at the disposal of the Ordnance Department at that station (V. D. Land) for the Staff and Departmental Officers and others, whereby lodging allowances are necessarily required to be issued to them, it appears to be desirable that their Lordships should inform the Secretary of State for the Colonies that, before the Convict Buildings are transferred to the Colonial Government, the Ordnance Officers at that Station should have the opportunity of examining these Buildings, for the purpose of ascertaining whether any of them could be adapted as quarters for the Staff and Departmental Officers now in the receipt of lodging money; in which case such Buildings should be transferred to the charge of the Ordnance Department for that purpose.

HENRY ROBERTS.

(No. 56.)

Downing-street, 20th December, 1855.

SIR,

I HAVE received your Despatch, No. 129, of the 30th August last, recommending that all Buildings not required by the Convict Department, or for the use of H.M. Troops, should at once be delivered over to the Colonial Government for the Public Service of the Island.

On this subject, I have to refer you to the instructions addressed to you from this Department in No. 11 of the 22nd August last. In conformity with those instructions, you will be at liberty to transfer, as proposed to the Colonial Government, all Buildings no longer required for the Convict Department, subject only to your ascertaining from the Resident Officers of Ordnance that they are not wanted for Military purposes.

I have, &c.,

H. LABOUCHERE.

Governor Sir H. E. F. YOUNG.

Office of Public Works, Hobart Town, 10th November, 1858.

SIR,

AS I understand that the premises occupied by the Barrack Sergeant at Launceston, the property of the Colony, have been vacated by his removal to the Military Barracks, I have the honor, on the part of the Colonial Government, to request you will be good enough to sanction possession being taken over by this Department.

I have the honor to be,

Sir,

Your most obedient Servant,

WM. P. KAY, *Director of Public Works.*

The Commanding Royal Engineers.

MEMORANDUM.—Mr. Kay is informed that the Building in question is the Royal Engineer's Offices. The occupation of Launceston Barracks in the course of a few weeks by Troops will necessitate its being retained. Mr. Kay, it is apprehended, has been misinformed as to this Building being the property of the Colony as it is an Imperial Building.

With Colonel Broughton's compliments.

Hobart Town, 12th November, 1858.

FORWARDED for Mr. M'Cracken's information.

For Director of Works,

J. GRAY.

13 November.

Colonial Treasury, 9th October, 1860.

THE Colonial Treasurer presents compliments to Colonel Broughton, and, as the Director of Public Works is urgent in his requirements for the accommodation afforded by the Quarters in Launceston fronting on St. John-street, Cameron-street, and Cimitiere-street, the Treasurer hopes that Colonel Broughton is prepared to surrender the premises in question to the Local Government.

*Commanding Royal Engineers' Office,
Hobart Town, 9th October, 1860.*

SIR,

I HAVE the honor to acknowledge the receipt of your application to obtain possession of the Royal Engineer Office at Launceston, on the part of the Local Government. If you will be kind enough to refer to the Correspondence which took place on this subject with the Colonial Government on the 15th November, 1858, and following February of 1859, I shall feel obliged; to which I have nothing to add, beyond that—as this Office has been in undisturbed possession of the Engineer Department for upwards of 16 years, I still adhere to the necessity of retaining its possession.

I have the honor to be,

Sir,

Your most obedient humble Servant,

W. E. DELVES BROUGHTON,

Colonel Commanding Royal Engineers.

The Hon. the Colonial Treasurer.

Colonial Treasury, 9th October, 1860.

SIR,

I HAVE the honor to acknowledge your reply to my communication, both of this day's date; and, having referred, at your instance, again to the Correspondence of November, 1858, and February, 1859, respecting the premises at the junction of John and Cameron-streets, Launceston, I can find only this—that the Director of Public Works, at that date, denied the right of the Ordnance Department to these premises, and that the Surveyor-General, beside furnishing a tracing of the plan showing the appropriation of the Crown Lands in Launceston, which went to disprove such a claim, certified that there was no record in his office to the effect that the land in question had ever been made over by the Colonial Government to the Officers of H.M Ordnance.

In these circumstances, it is my duty to request the surrender to the Local Government of the premises in question, and to urge an early compliance with this request, as the Local Government has immediate occasion for the site.

I have, &c.,

F. M. INNES.

COLONEL BROUGHTON, *R.E.*,

Colonel Commanding the Troops in Tasmania.

*Commanding Royal Engineers' Office,
Hobart Town, 10th October, 1860.*

SIR,

I REGRET extremely the Local Government should be put to any inconvenience on account of the premises at Launceston. I have no power to alienate the Imperial Government property; and it is not my intention to recommend that the Building in question should be abandoned, as I consider it necessary for the Imperial Government to retain it, under the limitations of the Secretary of State's Despatch, of 22nd August, 1855.

I have the honor to be,

Sir,

Your most obedient humble Servant,

W. E. DELVES BROUGHTON,

Colonel Commanding Royal Engineers.

The Honorable the Colonial Treasurer.

Colonial Treasury, 29th August, 1861.

SIR,

REFERRING to your letter of the 10th October, 1860, in which you refuse to surrender the premises at Launceston, at the corner of St. John and Cimitere-streets, the property of the Colonial Government, and also to an advertisement in the papers of the present date from Mr. A. C. G. Maule, inviting Tenders for renting the premises referred to from 1st September next, I have the honor now, reluctantly, to acquaint you that, unless these premises are surrendered to the Local Government, immediate legal steps will be taken to obtain possession. In conveying this intimation

to you, I have to recall your attention to the decided opinion given by the late Attorney-General. (now Mr. Justice Smith), when you sat with him in the Executive Council, that you had no legal claim to the premises in question.

I have, &c ,

F. M. INNES.

Colonel BROUGHTON, R.E.

It appears, from records in the Colonial Secretary's Office, Vol. 102, that application was made in 1848, by the Ordnance Department, that the Building and piece of land then occupied by the Royal Engineer Department at Launceston should, among other Buildings and portions of land, be conveyed to the Ordnance Department; which application was not acceded to, on the ground that the works carried on by the Royal Engineer Department at Launceston were not strictly Military, but Convict, and that subsequent arrangements of Her Majesty's Government relative to transportation might materially reduce the work thus performed by the Engineer, and render the occupation of the Buildings unnecessary, an event which has happened. It is clear, therefore, that the Ordnance Department has no title to the land in question; and, being now required for Colonial purposes, I think possession ought to be resumed by the Colonial Government.

F. SMITH.

25th February, 1859.

Commanding Royal Engineers' Office, 29th August, 1861.

SIR,

I HAVE the honor to acknowledge the receipt of your communication of this date, T 1086; and in reply, beg to assure you I shall not be deterred from performing my duty to Her Majesty's Government by any unseemly threats on the part of yourself; at the same time, I take the opportunity of informing you, that I hold an exactly opposite opinion (in writing) of the late Attorney-General, Mr. Smith, as regards my duties to the Imperial Government.

I have the honor to be,

Sir,

Your obedient humble Servant,

W. E. DELVES BROUGHTON,

Colonel Commanding Royal Engineers, 29th August, 1861.

The Colonial Treasurer, Hobart Town.

STATEMENT prepared by the Attorney-General as to the Title of the Colonial Government to the Premises known as the "Engineer Office" and Land at Launceston.

IN 1836, after the arrival of the Ordnance Establishment, Lieutenant-Governor Arthur was pleased to appoint a Committee, consisting of the Senior Officer of the Forces, the Colonial Secretary and Treasurer, the Commanding Royal Engineer, and the Ordnance Storekeeper, for the purpose of reporting upon the arrangements which the instructions received from England required should be adopted.

This Committee reported at considerable length, but were not unanimous on several points. The recommendation of the majority was, however, adopted generally. Amongst other papers which formed the basis of the Instructions, was a Treasury letter addressed to the Commissary in Charge, of which the following is an extract:—

"It has likewise been determined that the Military Works and Convict Buildings, and the Ordnance and other Military Stores, as well as the various articles kept in store for the service of the Convicts, should be placed under the charge of the Officers of the Ordnance Department who are forthwith to be despatched to the Colonies."

A Schedule of all the Public Buildings in the Colony was prepared, distinguishing them under the heads "in charge of the Royal Engineer," which embraced Military and Convict Buildings in separate columns, and "in charge of Colonial Engineer," which included the Colonial Buildings, whether hired or the property of the Government.

Of the Military and Convict Buildings, the Ordnance Officers were put in temporary charge; but it was not until March, 1839, (after passing of the Act of Council, 2 Victoriae, No. 9,) that any

steps were taken for the legal conveyance of any of the properties to their Department. During that month, on the recommendation of a Board, it was decided at once to transfer to the Principal Officers of Her Majesty's Ordnance in England (under the Act above referred to), the several Buildings and Land attached to them belonging to the Military Department, *subject, however, to the final decision of the Lieutenant-Governor on each case*, upon having before him diagrams, verified by the Commanding Royal Engineer and Surveyor-General, showing correctly the amount of Land intended to be conveyed.

It appears, by this arrangement, to have been the intention of the Local Government not to alienate those lands which the circumstances of the Colony had placed temporarily in the hands of the Convict Department, and the retaining of which, by that Department, altered circumstances might render unnecessary.

Many of the properties were granted, but in the month of December, 1848, there remained of the original list a few ungranted.

A letter, dated Office of Ordnance, 9 June, 1848, signed by R. Bylan, and addressed to the Officers of Ordnance in Tasmania, is in the words following:—

“I am directed by the Board to acknowledge the receipt of your letter, dated 5th January last, forwarding Returns of the Ordnance Lands and Buildings in Van Diemen's Land; and, in reference to your statement that such Returns comprise all the lands belonging to the Ordnance in the Colony, although they do not embrace all that was recommended in 1839, I am to request you will now report, with reference to the document dated Colonial Secretary's Office, 27th October, 1838, whether any lands and Buildings then recommended remain to be transferred to the Ordnance, and accompany your Report with an explanation of the present state of transfer in each case.”

In accordance with the instructions contained in that letter, the Officers of Ordnance addressed the Colonial Secretary by letter, dated 6th December, 1848, and requested to be informed, whether it was the intention of His Excellency the Lieutenant-Governor that the Lands and Buildings detailed in a statement therein enclosed should be transferred from the Colonial Government to the Ordnance Department, as originally recommended by the Board of Officers assembled by a Government Order, 27th October, 1838, and subsequently approved by His Excellency Sir John Franklin, per Colonial Secretary's letter, 28th March, 1839.

The statement referred to as being enclosed in the last-mentioned letter, is entitled “List of Buildings and portion of ground which have not yet been conveyed to the Ordnance in Van Diemen's Land.”

And in that List the following appears:—“Launceston, Royal Engineer Office, and Land attached thereto,” and, by way of remark, “These premises, containing 2 roods 1 perch, *were not included in the Lieutenant-Governor's Order, 28th March, 1839, but it is very desirable that they should be now transferred*, having been occupied as an Office by the Royal Engineer Department since the establishment of the Ordnance in this Colony in 1836, and still required for the same purpose.”

The Colonial Secretary, by the direction of His Excellency Sir William Denison, replied by letter, dated 24th March, 1849, “That this is the first time any application has been made by you for the property in question,” (*i.e.* the Engineer Office and Land at Launceston) “and the transfer of it is open to the same objection which exists with regard to the Office at Hobart Town. The works which are carried on there are not strictly Military, but Convict.”

On the 18th April, 1849, the Officers of Ordnance, by letter to the Colonial Secretary, request him to submit to His Excellency their earnest hope that he will reconsider that part of his decision which relates to the land on which the Royal Engineer Office at Hobart Town had lately been built, but in no way questions the propriety of the decision of the Governor as to the Engineer Office and Land at Launceston.

So far, therefore, from the Office and Land in question being the property of the Ordnance, it appears that the Officers of Ordnance applied that the Office and Land should be granted to the Ordnance, but their application was expressly negatived; and up to the present time no grant has been issued or authorised to be issued, and the Office and Land remain the property of the Colony.

In November, 1858, the property in question was vacated by the removal of the Barrack Sergeant (who had for some time previously occupied it) to the Military Barracks, and on the 10th of that month the Director of Public Works applied to the Commanding Royal Engineer to sanction possession being taken by the Public Works' Department.

The Commanding Engineer (Colonel Broughton), on the 12th of the same month, replied, stating that the Building was the Royal Engineer Office, and that the occupation of Launceston Barracks in the course of a few weeks by Troops, would necessitate its being retained, and also stating that the Building was Imperial property.

Applications for the delivery of possession of the property in question were again made, October, 1860, and the Colonel refused to comply with those applications.

In August, 1861, there appeared in the Launceston Newspapers the following advertisement:—

COTTAGE AND GARDEN TO LET.

Commissariat Office, Hobart Town, 21st August, 1861.

TENDERS will be received at this Office until noon of the 30th instant, for renting the cottage in Launceston, known as the "Royal Engineer Offices," with the large garden adjoining, by the year, from 1st September 1861.

The rent will be payable quarterly, to the Military Accountant, Commissariat Department, Hobart Town; and satisfactory security must be found for the regular payment of the rent, and proper care of the whole premises.

HENRY MAULE, *Assistant Commissary-General.*

The cottage and garden have since been let to one Robert Bain, at the yearly rent of £40 who is now in possession of the same.

W. L. DOBSON.

*Attorney-General's Office, Hobart Town,
October 1st, 1861.*

AT a Meeting of the Executive Council, held at the Executive Council Chamber, Hobart Town, on Thursday, October 3rd, 1861.

PRESENT.

His Excellency the GOVERNOR.
The Honorable T. D. CHAPMAN.
The Honorable W. HENTY.

The Honorable F. M. INNES.
The Honorable W. L. DOBSON.

MINUTE, No. 287.

THE Governor and Council, having had under consideration a Summary, prepared by the Attorney-General, of the case of the Cottage and Land at Launceston known as the Engineer's Office, by which it is shown that the Title to the Property is absolutely vested in the Colonial Government; together also with the Correspondence from 1858 to August, 1861, including the Advertisement from the Commissariat for the renting of the premises by the year, from the 1st September, 1861, at which date a Tender to rent was accepted by order of Colonel Broughton

It is ordered that these Papers be printed, and sent to Colonel Broughton, in the hope that the Legal Proceedings to obtain possession, which were announced to him on the 29th August as about to be taken by the Local Government, may be yet rendered unnecessary.

Certified to be a true Extract.

CHESTER EARDLEY-WILMOT,

*Commanding Royal Engineers' Office,
Hobart Town, 21st September, 1861.*

SIR,

I HAVE the honor to report, as directed by Circular 34, that I have let the Barrack-field at Launceston for one year, at the rate of £32 4s. 8d. per annum, under the usual conditions, and also the Cottage, formerly used as an Engineer Office, at the same place, for £42 per annum. This Office became vacant on the removal of the Barrack-Serjeant, who had been allowed to occupy it; and I beg to forward a correspondence connected with it, as it is another case in which the Colonial Government is seeking to obtain possession.

This Office was one of those buildings reserved for Military purposes by my predecessor, in his report to you dated 1st August, 1855, on a correspondence relative to the disposal of Convict buildings in this Colony; has been seventeen years in undisturbed possession of the Department; and I have resisted its being taken possession of by the Colonial Government.

At the same time, I believe the land attached is required by them as the site of some contemplated public buildings; and I do not think the Imperial Government should stand in the way their obtaining it.

At a moderate calculation, I should consider the site worth from £2000 to £3000; and I do think the Colonial Government should build similar accommodation elsewhere if it is allowed to be given over to them, as, on these conditions, I should recommend it should be.

I have, &c.,

W. E. DELVES BROUGHTON, *Colonel Commanding Royal
Engineers, Commanding the Troops in Tasmania.*

The Under Secretary of State for War.

True copy.—W. E. DELVES BROUGHTON,
Colonel Commanding Engineers.

*Commanding Royal Engineers' Office,
Hobart Town, 7th October, 1861.*

SIR,

I HAVE the honor to acknowledge the receipt of your communication, dated 7th October, 1861, T 1066, in reference to the property known as the Royal Engineer Office at Launceston. In reply, I beg to state the matter was referred home for instructions by the last mail, as was understood to be arranged with the Attorney-General at my last interview with that Officer.

I feel obliged by the admission of the Colonial Government, that the property in question has been in the possession of Her Majesty's Government undisturbed since the year 1836, now 25 years, instead of 17 as I had apprehended.

I have the honor to be,

Sir,

Your most obedient humble Servant,

W. E. DELVES BROUGHTON,

Colonel Commanding Royal Engineers.

The Honorable the Colonial Treasurer.

REFERRED to the Attorney-General.

F. M. INNES,

8th October, 1861.

I WAITED upon Colonel Broughton, at his request, in my capacity as Legal Adviser to the War Department. I distinctly and unhesitatingly deny that there was any such arrangement, or understanding as to an arrangement, as stated by the Colonel. I was not in any way authorised to treat, and did not treat, with the Colonel on behalf of the Colonial Government; and that must have been known to the Colonel, as it was at his request I attended to afford him the assistance of my professional advice, and nothing said by me could have led him to believe that I came in any other capacity than as the Legal Adviser of his Department.

W. L. DOBSON.

8th October, 1861.

Colonial Treasury, 12th October, 1861.

SIR,

REFERRING to your letter of the 7th instant, I think proper to state that I received it on the 8th; that, immediately on receipt of your letter, I referred it to the Honorable the Attorney-General; that, by that gentleman it was returned to me, with a distinct and emphatic disclaimer of your statement as to any understanding or arrangement having been entered into by him at the interview to which you have referred in your letter; that, on the 8th instant, I addressed you a letter embodying the disclaimer of the Attorney-General; that, on the 9th instant, you called upon me, bringing with you my letter of the 8th instant, when you explained to me that the passage in your letter of the 7th relating to your interview with the Attorney-General had been misapprehended; and that, as the Attorney-General's contradictions would entail a correspondence of explanations which it was desirable to avoid, you appealed to me whether I would not, on your verbal explanation, withdraw my letter of the 8th containing the denial of your statements by the Honorable the Attorney-General,—a course to which I assented, from a desire to exclude, as far as possible, from our correspondence, all occasion at least of personal irritation.

I have now, however, to revert to the main purport of your letter of the 7th instant; and it is my duty to acquaint you that, having laid that letter before my colleagues, it is the opinion of the Executive that were it to refrain from insisting on the immediate restitution of the property known under the designation of the Engineer Office at Launceston after the clear evidence it has obtained, and which it has placed in your hands, of the property in question being the property of the Local Government, the Executive would betray the interests entrusted to it; and I have therefore to acquaint you that, unless the Engineer Office, &c. in Launceston is surrendered to the Surveyor-General by Tuesday next, at noon, the disagreeable necessity of compelling a surrender by a resort to legal measures will be imposed on that Officer.

I have, &c.

F. M. INNES.

Colonel BROUGHTON, R E.