

(No. 51.)



1864.

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T A S M A N I A.

LEGISLATIVE COUNCIL.

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CARRIAGE DUTIES ACT.

CORRESPONDENCE IN REGARD TO PROSECUTIONS.

*Return to an Order of the Council dated July 26, 1864. (Mr. Carter.)*

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Presented by Mr. Whyte, and ordered by the Council to be printed, July 29, 1864.



*Attorney-General's Office, 16th May, 1864.*

SIR,

I AM directed to inform you, that the Governor in Council has caused your name to be erased from the Commission of the Peace, for wilful resistance to the Law.

His Excellency is aware that, notwithstanding such erasure, you are still entitled by law to act as a Justice of the Peace so long as you continue to hold the position of Warden of the Municipality.

I have, &c.,

GEO. GIBSON, *Esq., Longford.*

R. B. MILLER.

*Attorney-General's Office, 16th May, 1864.*

SIR,

I AM directed to inform you, that the Governor in Council has caused your name to be erased from the Commission of the Peace, for wilful resistance to the Law.

I have, &c.

H. B. NICKOLLS, *Esq., Longford.*

R. B. MILLER.

GEO. RITCHIE, *Esq., Longford.*

*Longford, 17th May, 1864.*

SIR,

I HAVE to acknowledge receipt of your letter of the 16th instant, informing me that the Governor in Council has caused my name to be erased from the Commission of the Peace, for wilful resistance to the Law.

I request to be informed in what particular I have resisted the Law?

I have the honor to be,

Sir,

Your obedient Servant,

*The Hon. the Attorney-General.*

H. B. NICKOLLS.

*Attorney-General's Office, 18th May, 1864.*

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 17th instant, requesting to be informed "in what particular you have resisted the Law;" and to state that your request shall be submitted to His Excellency at the next meeting of the Executive Council.

I have, &c.,

H. B. NICKOLLS, *Esq., Longford.*

BYRON MILLER.

*Attorney-General's Office, 26th May, 1864.*

SIR,

YOUR request for information as to the "particular in which you have resisted the Law" having been submitted to the Governor in Council, I am now authorised to state, that it having been shown that you, a Magistrate placed in authority for the purpose of causing the Laws to be respected by others, not only set an example of disobedience in your own person to the clear and explicit prohibition of an Act which declares,—

"It shall not be lawful for any person to keep and use any Carriage, described in the Schedule

(1) and the Rules therein, and not therein described as exempted, who shall not be the holder of a Licence issued under the provisions of this Act,"—

but you availed yourself of your position in the Municipal Council of Longford to prevent the Police of the District from furnishing that information and assistance to the Inspector of Police, without which it became difficult to obtain legal proof of your disobedience and that of others.

This conduct on your part (even without the admission of your Counsel at the hearing of the information against you) satisfied the Governor in Council that you *wilfully resisted the Law*, and that you could no longer be safely entrusted to administer any Act of Parliament which might conflict with or be obnoxious to your personal feelings.

I have the honor to be,

Sir,

Your most obedient Servant,

H. B. NICKOLLS, *Esq.*, Longford.

R. B. MILLER.

Longford, 27th May, 1864.

SIR,

I HAVE to acknowledge receipt of your letter of the 26th instant.

Your obedient Servant,

*The Hon. the Attorney-General.*

H. B. NICKOLLS.

Longford, 19th May, 1864.

SIR,

I HAVE to acknowledge the receipt of your communication informing me that the Governor in Council had caused my name to be erased from the Commission of the Peace for wilful resistance to the Law.

I have to request you will inform me of one single instance in which I have committed the alleged offence.

I have the honor to be,

Sir,

Your obedient Servant,

*The Hon. Attorney-General, Hobart Town.*

GEORGE RITCHIE.

Attorney-General's Office, 20th May, 1864.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 19th instant, requesting to be informed of one single instance in which you have resisted the law; and to state, that your request shall be submitted to His Excellency at the next meeting of the Executive Council.

I have, &c.,

GEORGE RITCHIE, *Esquire*, Longford.

R. B. MILLER.

Council Chambers, Longford, 20th May, 1864.

SIR,

I HAVE the honor to lay before you a Resolution of the Council of this Municipality, passed unanimously at a Meeting held this day, and to request an early reply thereto:—

“That this Council request that the Warden will enquire of the Attorney-General upon what specific charge of resistance of the law his name has been erased from the Commission of the Peace.”

I am, Sir,

Your most obedient Servant,

*The Hon. the Attorney-General, Hobart Town.*

GEORGE GIBSON, *Warden.*

*Attorney-General's Office, 26th May, 1864.*

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 20th instant; and to inform you that, whilst any request from yourself to be informed of the specific charge of resistance to the law for which your name has been erased from the Commission of the Peace will, with the sanction of the Governor, be complied with, I cannot for an instant recognise any right on the part of the Municipal Council to interrogate me as to an act of the Executive Council which does not affect your official status as Warden of the Municipality.

GEORGE GIBSON, *Esquire, Warden, Longford.*

I have, &c.,

R. B. MILLER.

*Cheshunt, Deloraine, 23rd May, 1864.*

MY DEAR SIR,

As I am interested, in connection with my position as a Warden, and a Justice of the Peace, in knowing the meaning attached by the Government to the words "wilful resistance to the Law," as regards the conduct of Messrs Nickolls, Gibson, and Ritchie, I shall feel obliged if you will inform me, at your earliest convenience, what was the actual offence against the Law committed by those gentlemen.

Believe me,

My dear Sir,

Yours very truly,

W. ARCHER.

*The Hon. R. BYRON MILLER, Attorney-General.*

*Attorney-General's Office, 26th May, 1864.*

MY DEAR SIR,

IF you ask for the information in your private use, you are welcome to it; but if you ask for it for the purpose of laying it before the Municipal Council, you are to understand that I decline furnishing it, as I have already refused to recognise the right of the Municipal Council of Longford to demand the reasons on which the Executive acted when erasing Mr. Gibson's name from the Commission. Assuming, however, that you want the information for your own guidance, I forward a copy of the letter addressed to Mr. Nickolls, from which you will see that his dismissal has been the consequence of a review of the whole of his conduct; and that our decision could not have been affected by any decision of the Supreme Court upon the technical grounds which were urged by his Counsel as being sufficient to *shelter him from punishment* for disobedience to the clear prohibition contained in Section 1 of *The Carriage Duties Act*. Whether he could be punished or not, his duty of obedience was perfectly clear.

You and Mr. Douglas were appointed Coroners to-day, in compliance with the suggestion made by you.

I am, &c.

BYRON MILLER.

WM. ARCHER, *Esq., Cheshunt, Deloraine.*

*Longford, 27th May, 1864.*

SIR,

IN the communication which I had the honor to receive from you this morning is the following paragraph:—

"This conduct on your part (even without the admission of your Counsel at the hearing of the information against you) satisfied the Governor in Council that you *wilfully resisted the Law*."

May I further beg to be favoured with an explanation as to what admissions are herein alluded to, as this is the first that I have heard of them?

I have the honor to be,

Sir,

Your most obed'ent Servant,

GEORGE RITCHIE.

*The Hon. the Attorney-General, Hobart Town.*

*Attorney-General's Office, 28th May, 1864.*

SIR,

I HAVE, in reply to your letter of the 27th, to refer you to the report of the proceedings upon the hearing of the information against you and others in the *Mercury* and *Advertiser* newspapers.

I have, &c.

R. B. MILLER.

GEORGE RITCHIE, *Esq.*, *Longford.*

*Council Chambers, Longford, 31st May, 1864.*

SIR,

SINCE the publication of the Notice contained in the *Government Gazette* of the 17th May instant, my authority to act as a Justice of the Peace in virtue of my office as Warden of the Municipality of Longford, or otherwise, has been disputed.

Being perfectly satisfied with the legality and integrity of the course of conduct pursued by me in my official capacity, I shall leave the vindication of my character in the hands of my fellow Colonists; but, being anxious to continue to discharge the duties devolving upon me as Warden, I am desirous of ascertaining whether I am still entitled by law to act as a Justice of the Peace. When appointed a Justice of the Peace, in the year 1857, I took the usual Oaths, and therefore there was no necessity for my doing so again on my election to the office of Warden; but doubts have arisen—

1st. As to the legality of the mode adopted by the Governor for removing me from the Commission of the Peace.

2nd. As to whether, if legally removed from the Commission, I can act as a Justice by virtue of my Office, without being sworn in the same manner as the other Councillors who were appointed to act as Justices within the Municipality.

His Excellency in Council having placed me in my present doubtful position, will not, I presume, object to inform me by what law or authority he has been guided in erasing my name from the Commission of the Peace. I also wish to be informed whether, at the time you stated to me in your letter of the 16th instant that "His Excellency was aware that, notwithstanding such erasure, I was entitled by law to act as a Justice of the Peace so long as I continued to hold the office of Warden of a Municipality," you were of opinion that it would be unnecessary for me to take the usual Oaths before acting as a Justice by virtue of my Office under the circumstances before stated; for, considering that the legality of such a statement, emanating as it did from the highest Law Officer of the Colony, could not be disputed, I have continued to act as a Justice without again taking the Oaths.

I have the honor to be,

Sir,

Your most obedient Servant,

*The Honorable Attorney-General.*

GEORGE GIBSON.

*Attorney-General's Office, 3rd June, 1864.*

SIR,

I REGRET that my attendance in the Supreme Court during the last three days has prevented me from replying earlier to your letter of May 31st.

I have no doubt whatever as to your being entitled to discharge the duties of your statutable Justiceship of the Peace without taking any fresh Oath.

The mode adopted by the Governor for removing you from the Commission of the Peace has been the one which has been invariably adopted since Tasmania has been a Colony, where it has not been thought advisable to issue a fresh Commission; and it is not for me to suggest now any alteration in the practice which has hitherto prevailed, and been found convenient.

I have the honor to be,

Sir,

Your obedient Servant,

GEORGE GIBSON, *Esq.*

BYRON MILLER.