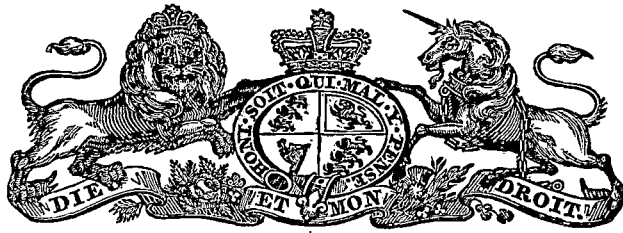


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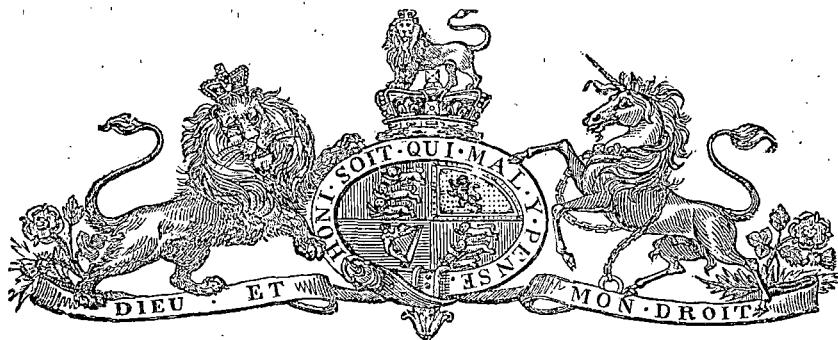
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D E S P A T C H E S.

INQUIRY INTO THE CONVICT DEPARTMENT.

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Presented to the House, and ordered to be printed, 11 December, 1856.



(No. 81.)  
[EXECUTIVE.]

*Government House, Hobart Town, 16th July, 1855.*

MY LORD,

I HAVE the honour to report to Your Lordship that very reiterated and distinct charges against the Comptroller-General and the Officers of the Convict Department having been preferred with much circumstantiality in a local Newspaper called the *Tasmanian Daily News*, alleging fraud, peculation, and embezzlement in the misappropriation of Prison Labour, and of materials the property of the public, I directed the attention of the Comptroller-General to these charges, and obtained answers thereon from him and his Officers.

These documents were then laid before my Executive Council with a Minute, of which copy is enclosed. After perusal and consideration of the papers, and a *vivâ voce* examination of the Civil Commandant at Port Arthur, and of the late Visiting Magistrate of the Hobart Town Penitentiary, the advice of the Executive Council was expressed as herewith enclosed.

I have to report my concurrence in the advice of the Executive Council.

The Comptroller-General and the Officers of the Convict Department are exonerated from all the defamatory characteristics of the acts charged. These acts are either denied, or are admitted for the most part to have taken place under authorised regulations and practices of the Imperial Establishments for Convicts, in use prior to, or soon after, the appointment of the present Officers, who all have held office for many years.

I have disallowed these regulations and practices for the future, and have restricted the Officers to the receipt of their fixed emoluments as requital in full of their official services, under exemptions which are specific and necessary at the two stations of Port Arthur and Impression Bay on Tasman's Peninsula,—the intercourse between which and Hobart Town it is desirable should continue to be as restricted as it is at present.

The Comptroller-General recommended the exemptions to be extended to resident stipendiaries in Hobart Town on salaries not exceeding £150 per annum; but I have deemed it expedient to limit the sphere of the exemptions to the Peninsula.

Mr. May, the Superintendent of the Penitentiary in Hobart Town, and Lieutenant-Colonel Hamilton, R.E., Commanding Royal Engineer in charge of Convict Works and Buildings, and late Visiting Magistrate, have received my severe reprobation for unauthorisedly using prison labour for their own benefit in the erection of private houses their joint property; and Mr. Boyd, the Civil Commandant at Port Arthur, has received censure for allowing the shipment of stone from Port Arthur for the private use of Mr. May and Lieutenant-Colonel Hamilton.

I have also expressed to the Comptroller-General my regret that he cannot be considered as altogether free from blame, in that he appears not to have exercised sufficient vigilance as head of the Department in preventing the abuses above mentioned.

The local Press has teemed with strictures against the Convict Department, on the text of the charges to which I have alluded; and has strongly urged the appointment of a Board of Public Inquiry, and the reception of evidence in proof of the accusation.

As, however, the acts charged as criminal are admitted by the accused to have been done under the regulations, and are therefore divested of that defamatory characteristic,

and that any further evidence thus obtained would necessarily be from Convicts against Officers under whose authority their discipline and punishment had been carried out, and that there would be risk of excitement and insubordination at the Penal Stations in the event of legitimate support not being afforded by the Government to Officers whose efficiency and success in the management and custody of the Convicts had received invariably the high approbation of my predecessor,—and appeared to me to deserve it,—I concurred with my Executive Council in deeming an investigation into the charges, and their disposal in the manner now reported, to be sufficient.

I enclose copy of the Comptroller-General's letter in acknowledgment of my decision.

I have the honor to be,

My Lord,

Your Lordship's most obedient Servant,

H. E. F. YOUNG.

*The Right Hon.* LORD JOHN RUSSELL.

No. 119.

[EXECUTIVE.]

*Government House, Hobart Town, 16th August, 1855.*

MY LORD,

In my Despatch, No. 81, of the 16th July last, I had the honor to report that an inquiry by the Governor and Executive Council had taken place into charges of fraud, peculation, and embezzlement alleged in the *Tasmanian Daily News* against the Officers of the Convict Department on the score of an unauthorised use of prison labour for their private benefit, and I explained the decision which was arrived at thereon; viz., an exoneration of the Officers from the *gravamen* of the charges, and an end for the future to the regulations or practices under which the acts complained of were acknowledged in some instances to have taken place.

I have now to inform Your Lordship that the proceedings of the Local Legislature, subsequently to the decision of the Governor and Executive Council on this question, portend considerable embarrassment to the Imperial Government on the Convict question.

Seven days after the Session commenced questions were put to the Colonial Secretary in the Legislative Council, which were answered in terms of the decision of the Governor and Executive Council, reported in the Despatch above quoted.

Other questions were subsequently renewed, to which replies were given that the answers already returned were to be considered final and conclusive; and lastly, the Council, after negating an amendment by the Solicitor-General to the effect that Your Lordship's reply to my Despatch above mentioned should precede any further action by the Local Legislature, divided on a motion for the appointment of a Select Committee, and the motion was carried against the Government by a large majority.

The points referred to the Select Committee to ascertain are six in number, and relate ostensibly to Convicts under Colonial sentences, who, for better classification and discipline, as well as for the economy and convenience of the Colony, are now detained on Tasman's Peninsula in Penal Establishments, the cost of which is defrayed by grants from the Imperial Parliament.

The inquiries addressed to the Local Government prior to the appointment of the Select Committee were comprehensive of all Convicts, whether British or Colonial; nor is it at all likely that the objects of the Select Committee will be in reality confined within the narrower limits which, in the wording of the motion, are now assigned to them.

I enclose the copies of the Votes and Proceedings of the Legislative Council.

My present intention is not to permit the Officers of the Convict Department to be arraigned before the Special Committee of the Council, as I cannot acknowledge their right to arrogate to themselves the power and privilege of interfering with Imperial questions except with the consent of Her Majesty's Government; and I have, therefore, to request that Your Lordship will signify to me, with the least possible delay, whether that consent is granted or withheld.

I cannot foresee what difficulties may arise out of this question; but Your Lordship may rely upon my doing all to the best of my judgment to conciliate the Local Legislature, consistently with the maintenance of the exclusive control of the Governor, subject to Your Lordship's direction, over Her Majesty's Penal Establishments in Tasmania.

I have the honor to be,

My Lord,

Your Lordship's most obedient Servant,

H. E. F. YOUNG.

*The Right Hon.* LORD JOHN RUSSELL.

(No. 126.)

[EXECUTIVE.]

*Government House, Hobart Town, 27th August, 1855.*

MY LORD,

REFERRING to my Despatch No. 119, of the 16th instant, on the subject of the interference of the Legislative Council with my decision in Executive Council on charges against the Convict Department as published in the *Daily News*, I have the honour to enclose the Votes and Proceedings on the 17th instant, containing an Address presented to me on the 21st instant, to direct the attendance of Officers and the production of papers, to enable their Select Committee to enquire into and ascertain six points set forth in the Address.

On the following day, for the reasons set forth in my reply, I declined compliance with the Address.

On the 24th instant a Notice of Motion was given, embodying a resolution dissenting from my grounds for declining to accede to the Address, and intimating the determination of the Council to exercise its rights and powers, and order the attendance of such Witnesses as may be requisite. This motion will, in all probability, be adopted by the Council to-morrow.

As the mail closes to-day, I have deemed it expedient to profit by this opportunity of informing Your Lordship of the stage at which this embarrassing case has arrived.

I enclose also the accounts of the Meetings of the Select Committee that have as yet taken place. The Committee sits with open doors; and the publication in the *Tasmanian Daily News*, of the 22nd instant, shows the proceedings to have assumed a judicial as well as an inquisitorial character.

I have the honour to be,

My Lord,

Your Lordship's most obedient Servant,

H. E. F. YOUNG.

*The Right Hon.* LORD JOHN RUSSELL.

(No. 132.)

[EXECUTIVE.]

*Government House, Hobart Town, 10th September, 1855.*

MY LORD,

WITH my Despatch No. 81, of the 16th July last, I forwarded answers from the Comptroller-General and his Officers, and a Minute of the Governor and Executive Council with its supporting documents, disposing of certain charges against the Convict Department; and also the numbers of the *Daily News* newspaper in which those charges were published by the Editor.

Portions of the statements which came under the notice of myself and the Executive Council were so voluminous that they were not copied at the time of the transmission of my Despatch above quoted: and I now send a complete collection of every thing on which my decision, with the advice of the Executive Council, was founded.

I take this opportunity of transmitting also the replies which I have received from the Comptroller-General, the Director of Public Works, the Port Officer, the Officer of Royal Engineers in charge of Convict Works and Buildings, and the Superintendent of

the Hobart Town Penitentiary, on the six points referred by the Legislative Council to their Select Committee to ascertain; and it is obvious that there is nothing in these six points which has not already been disposed of by the Governor and Executive Council.

I have the honour to be,

My Lord,

Your Lordship's most obedient Servant,

H. E. F. YOUNG.

*The Right Hon.* LORD JOHN RUSSELL.

(No. 136.)

[EXECUTIVE.]

*Government House, Hobart Town, 26th September, 1855.*

MY LORD,

IN my Despatch No. 126, dated 27th August last, I had the honour to report that an Address from the Legislative Council had been presented requesting me to direct the attendance of witnesses to enable their Select Committee to enquire into and ascertain six points relative to the Convict Department,—which points were set forth in the Address; and I transmitted my reply, declining to give the directions sought. On this reply, notice was given in the Legislative Council of resolutions expressive of their dissent from the grounds of my refusal, and of their determination to order the attendance of the witnesses they required.

2. I have now to report that these resolutions, as I anticipated, were adopted on the 8th August.

3. In continuation of my Report I have to state that the Legislative Council, on the 29th August, gave leave to its Select Committee to enquire into the Convict Department, to send for persons, papers, and records.

4. On the 7th September Mr. Hampton was summoned, and refused to attend the Select Committee; which being reported to the Council, he was ordered to attend at the Bar of the House on the 11th September; and not having then appeared, it was moved and carried, "that he is guilty of contempt," and "that the Speaker shall issue his Warrant for his apprehension, to be held in the custody of the Sergeant-at-Arms during the pleasure of the House."

5. The next day, namely, the 12th September, the Sergeant reported that Mr. Hampton said the Warrant was illegal, and that he would forcibly resist being deprived of his liberty.

6. It was then moved and passed, "that the Speaker do issue out his Warrant requiring all Sheriffs, Bailiffs, Constables, and all other Her Majesty's officers and subjects, to be aiding and assisting to the Sergeant-at-Arms attending this House in the apprehension of John Stephen Hampton."

7. On the 14th September the Sergeant-at-Arms reported to the Speaker that, on application to the Chief Police Magistrate for Constables, he was told that he did not consider himself warranted to act; and he asked for copy of the Warrant in order to obtain the opinion of the Law Officers of the Crown for his guidance, which he feared he could not have without copy of the Warrant. The Sergeant also reported the answer of the Sheriff to be that, as a feeble man in the 75th year of his age, it was utterly impossible for him to act personally; that he had no force of officers or men of any description; and with respect to raising the *posse comitatus*, he was at a loss whether he could legally do so.

8. On the same day Mr. Hampton wrote to the Speaker that he believed the Warrant to be illegal; but, as the Council intend to employ force in execution of its assumed right to punish his alleged contempt, he is desirous, without compromise of his rights as one of Her Majesty's subjects, to adopt a course to prevent a breach of the peace, and in the maintenance of his rights held in common with the rest of his fellow-subjects not to lead to any unseemly disturbance, and proposes therefore to allow the Sergeant alone to enter his house, and hold him prisoner there, until a Writ of *habeas corpus* and the judgment of the proper tribunal on the legality of the arrest.

9. After an amendment by the Solicitor-General, "that the Speaker's Warrant for the apprehension of John Stephen Hampton be carried out in such a manner as will be sufficient to raise the question of the legality of the Warrant, and that therefore the Sergeant-at-Arms be directed to arrest John Stephen Hampton in his house, and there to

detain him, until sufficient time has elapsed for John Stephen Hampton to obtain a Writ of *habeas corpus* and to try the validity of the return thereto,"—the question was put and carried, that "the proposal contained in the letter addressed to the Honourable the Speaker by John Stephen Hampton cannot be entertained, and that the Warrant of the Speaker be carried out in its entirety; and that John Stephen Hampton be brought to the Bar of this House by the Sergeant-at-Arms."

10. On the 15th September Mr. Hampton was at his own house in the custody of the Sergeant-at-Arms, and so remained until Tuesday, the 18th, to which day the Council stood adjourned.

11. On the 17th September a Writ of *habeas corpus* was served on the Sergeant-at-Arms, to which no return was made on the 18th instant, as the Sergeant reported to the Speaker on that day. The Sergeant also reported that he desired Mr. Hampton to come with him to the Bar of the House; Mr. Hampton refused, and the Sergeant did not attempt coercion.

12. On the 18th September the Speaker reported to the House that he had yesterday evening been served, by a person employed by the Supreme Court, with a Writ of Summons.

It was then put and carried, "that the Speaker having reported to this House that a Writ of *habeas corpus* had issued from the Supreme Court commanding the Sergeant-at-Arms to bring before that Court the body of John Stephen Hampton, now detained in his own house against the express resolution of this Council, and also that the Speaker and Sergeant-at-Arms had been served with a Summons to appear in the Supreme Court at the suit of the said John Stephen Hampton, this House resolves that the Speaker and Sergeant-at-Arms shall have leave to appear to such Summons and to make the proper return to such Writ; and for these purposes to employ the necessary legal assistance."

13. It was then moved and seconded that an Address be presented to me to the following effect:—"That this House, deeply impressed with a desire to support order and good government, request Your Excellency will order as many of the Police or Military as may be considered necessary to assist the Sergeant-at-Arms in enforcing compliance with the Warrant of that House against John Stephen Hampton for contempt." This motion was carried, after an amendment had been lost. The amendment which was lost was to the effect, "that, as the question of Privilege was now referred to the Supreme Court, it was proper to postpone further action thereon until the decision of the Supreme Court was made known."

The amendment on the motion was lost by 16 votes against 12. The motion was carried by 15 votes against 13.

14. On this result being communicated to me I prorogued the Council in person to the 20th October next, in a Speech of which copy is enclosed.

15. I enclose a letter dated 20th September, from the Comptroller-General, in which he observes that the proceedings now reported have most seriously interfered with the effective administration of the Department under his control,—impaired the efficiency of the management of that Department,—unlawfully deprived him of his personal liberty,—and wantonly assailed the tranquillity of his family; and that it is placed beyond the possibility of doubt that he could not continue to administer the Imperial Department of the Government committed to his charge: and he advises, with as little delay as possible, that the former application of the Legislative Council be complied with, and that the Convict Department be transferred to the Colonial Government.

16. At present I feel it necessary only to report my opinion that such a change is not likely to be conducive to the discipline and efficiency of the Penal Establishments.

One wild proposal submitted to the Council by an elective Member of the Legislature was to abandon the security and seclusion of Port Arthur, on Tasman's Peninsula, for the City of Hobart.

In conclusion, it is my duty to state that I expect for the future frequent difficulties, because of the odium which exists against the Convict Department, and the violent *animus* of the opposition.

I have the honor to be,

My Lord,

Your Lordship's most obedient Servant,

H. E. F. YOUNG.

The Right Hon. LORD JOHN RUSSELL.

*Downing-street, 1st February, 1856.*

No. 81, 16th  
July; No. 119,  
16th August;  
No. 126, 27th  
August; No.  
132, 10th  
September;  
No. 136, 26th  
September.

SIR,

I HAVE to acknowledge your Despatches, of the numbers and dates specified in the margin, on the subject of the proceedings taken by the Legislative Council relative to an enquiry into the condition of the Convict Establishment, ending in the prorogation of that Body by your authority.

2. I am the more reluctant to enter into any detailed discussion of these proceedings from the circumstance that the issue finally raised,—that of the power of the Council to commit for refusing to attend its summons before a Select Committee of Enquiry,—must, as it appears, necessarily abide by the decision of the Legal Tribunals. But I feel that you are entitled to receive the distinct expression of the opinion of Her Majesty's Government on some other leading features of the case.

3. I cannot but think you were wrong in originally objecting to an enquiry by a Committee of the Legislative Council into the state of the Convict Establishment. It appears to me that a Body constituted for the purpose of making laws binding on the whole community of Tasmania must possess the ancillary, and almost inseparable, right of enquiry into all subjects of public interest. The anticipation that such an enquiry might lead to interference with matters placed, from peculiar circumstances, beyond the control of the local authorities, could afford no substantial reason for resisting a proceeding within the strict rights of the Council.

4. But, on the other hand, I consider that you were fully justified in maintaining the principle that the Convict Establishment is under the control of the authorities specially appointed thereto by Her Majesty's Government, and not of the ordinary local authorities. So long as the necessity continues for maintaining that Establishment, which in the course of very few years must come to its natural close, so long the taxpayers of this Country, by whom it is supported, have a right to require that it should be subject to the management of functionaries exclusively responsible to Imperial authority.

5. The dispute about the control over Colonial Convicts in the same Establishment appears to have merged in more serious questions; but I ought to state that Her Majesty's Government have no objection to the Colony's removing these Convicts from the Establishment if it thinks proper, and placing them under strictly Colonial superintendence. But, so long as they remain a part of the Establishment, it would be so inconvenient to place them under any separate jurisdiction from other Convicts that I cannot authorise any fresh rule on the subject.

6. Such are the directions which I think it necessary to give. I cannot, however, but add the expression of a hope that, as the subject will now engage the attention of a new Legislative body, and under a new form of Government, the feelings which appear to have been excited by what has hitherto taken place will not stand in the way of a satisfactory adjustment of the whole matter.

I have, &amp;c.

H. LABOUCHERE.

Governor SIR HENRY YOUNG,  
*Tasmania.*

Ordered to be printed, 11 December, 1856.