

(No. 96.)



1861.

TASMANIA.

---

INSOLVENT LAW.

REPORT FROM THE SELECT COMMITTEE.

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Brought up by Mr. Davies, and ordered by the House to be printed,  
3 October, 1861.



SELECT COMMITTEE, appointed on the 22nd August, 1861, to consider the present state of the Insolvent Law in this Colony, and the desirability of transferring the Jurisdiction of the Insolvent Court to their Honors the Judges.

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M E M B E R S.

MR. PERKINS.  
MR. SHERWIN.  
MR. BUTLER.  
MR. DOWLING.

MR. ARCHER.  
MR. ALLISON.  
MR. DAVIES (*Mover.*)

M E E T I N G S.

- No. 1. 30 August, 1861. *Present*—Mr. Davies, Mr. Dowling, Mr. Sherwin, Mr. Archer, Mr. Butler and Mr. Perkins.  
No. 2. 4 September, 1861. *Present*—Mr. Davies, Mr. Archer, Mr. Allison, Mr. Perkins, Mr. Sherwin, and Mr. Butler.  
No. 3. 12 September, 1861. *Present*—Mr. Davies, Mr. Archer, Mr. Allison, Mr. Perkins, Mr. Dowling, and Mr. Sherwin.  
No. 4. 19 September, 1861. *Present*—Mr. Davies, Mr. Sherwin, and Mr. Perkins.  
No. 5. 26 September, 1861. *Present*—Mr. Davies, Mr. Dowling, Mr. Perkins and Mr. Sherwin.  
No. 6. 3 October, 1861. *Present*—Mr. Davies, Mr. Dowling, Mr. Perkins, Mr. Archer, Mr. Sherwin, and Mr. Butler.
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*THE SELECT COMMITTEE appointed on the 22nd August, 1861, to consider the present state of the Insolvent Law in this Colony, and the desirability of transferring the Jurisdiction of the Insolvent Court to their Honors the Judges, beg to*

R E P O R T.

THAT your Committee have met on six occasions and have fully discussed the subjects referred to them; and they have also availed themselves of an expression of the opinion of the Chamber of Commerce in Hobart Town in regard to the subject; and of their Worships the Mayors of Hobart Town and Launceston on a point which arose in the discussion of the subject in Committee; and they have arrived at the conclusion that the present Insolvent Law does not adequately provide for the protection of the Interests of the Community.

Your Committee have agreed to certain Resolutions, which they believe convey the unanimous opinion of the Committee, and which are as follows:—

1. That it is expedient that the Judicial portion of the Insolvent Court duties should be transferred to their Honors the Judges and the Financial part to an Official Assignee, in each of the Towns of Hobart Town and Launceston, whose duties and emoluments should be defined by Law and who should be appointed by the Judges. That it would be desirable that provision should be made by Law which would secure the treatment of all moneys receivable or payable by such Official Assignee as public moneys, to be paid into a Government Account, and that all moneys transmitted through such Officer should be referred to, and be reported upon, by the Colonial Auditor, and also securing the early distribution of the assets amongst the creditors, by compelling the Assignee to report

upon the state of the Estate committed to him within three months, for the purpose of a fresh distribution; and that the Colonial Auditor should be furnished with the accounts of each Estate and certify to their accuracy, and also that the Creditors at their first meeting shall be entitled to select one of their number as Trade Assignee, to advise with the Official Assignee on the management of such Estate.

2. That it is expedient that a Third Judge should be appointed who should reside in Launceston, and whose duty it would be to take his share in the Circuit and other Courts, at such places as may be fixed by the Governors Proclamation, which places should be extended in number. By this arrangement, the large and annually increasing expence of Witnesses; the great inconvenience and expenses incurred by Jurors, and also the Judges travelling expenses would be reduced. Sufficient accommodation can be afforded in several other Towns for Circuit Courts, to be held similar to those which might at the discretion of the Government be appointed; and could be extended to other localities at a trifling cost.

3. That the Judges, be required to take the present £30 Jurisdiction of the Court of Requests, and that the Jurisdiction of all cases exceeding £30, be vested in the Supreme Court under Regulations analogous to the County Court Jurisdiction in England.

4. That, it is expedient that the selection of a Barrister to fill the Office of Third Judge should not be confined to the Bar of Tasmania.

5. That it would be a positive saving to the Colony, and would considerably improve the efficiency of the various Local Courts, if the Stipendiary Magistrates were dispensed with, (with the exception of the Districts of Hobart Town, Launceston, Franklin, Horton, and Port Sorell,) which are peculiarly situated. The £10 Jurisdiction of the Court of Requests to be undertaken by the Police Magistrates of the excepted Districts, and in other Districts by Courts of Petty Sessions, composed of Resident Justices, with an elected Chairman.

Your Committee beg to append to their Report, the letters they have received from the Hobart Town Chamber of Commerce, and the Mayors of Hobart Town and Launceston, and also a Table showing the financial position of the change by which the sum of £2620 will most probably be saved annually to the Colonial Treasury.

They would also refer Your Honorable House to the Bill now before the Parliament of South Australia, intituled "A Bill to amend the Laws relating to the Civil Jurisdiction of Local Courts,"—an improvement in legislating on the subject which may well be followed by the Legislature of Tasmania.

JOHN DAVIES, *Chairman.*

*Committee Room, 3 October, 1861.*

RETURN showing the present expense of Police and Stipendiary Magistrates in Tasmania, extracted from the Draft Estimates for 1862, and the probable saving to be effected by abolishing all except Six:—

	£	s.	d.
Expense of Salaries and Allowances of Police and Stipendiary Magistrates .....	4535	0	0
Less Hobart Town, Launceston, Horton, Port Sorell, Franklin, Port Esperance.....	2105	0	0
	2430	0	0
Deduct probable Pension to Campbell Town.....	232	0	0
	£2198	0	0

RETURN showing the expense of the present Courts of Request and Insolvent Court (as extracted from the Estimates for 1862), and the probable saving to be effected by transferring the £10 Jurisdiction of the former Courts to the Magistrates in Petty Sessions, and the £30 Jurisdiction to the Judges; and also transferring the Judicial functions of the Insolvent Court to their Honors the Judges:—

	£	s.	d.
Present expense:—			
Courts of Request and Insolvent Court .....	2324	10	0
Proposed new arrangement:—			
Third Judge .....	1200	0	0
Clerk, 1st Clerk.....	280	0	0
Criers .....	100	0	0
Fuel and Stores .....	11	0	0
Stationery .....	15	0	0
	<hr/>	1606	0 0
		718	10 0
Less a Pension to Recorder, Launceston.....		290	0 0
		<hr/>	<hr/>
		£428	10 0

## ESTIMATES, 1862.

	£	s.	d.
Travelling Expenses of Judges, &c. ....	300	0	0
Witnesses' Expenses .....	2400	0	0
Juror's Expenses.....	175	0	0
	<hr/>	£2875	0 0
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Hobart Town Chamber of Commerce, 17th September, 1861.

SIR,

I HAVE the honor, by desire of the Committee of this Chamber, in reply to your communication addressed to the Deputy Chairman, having reference to the present state of the Insolvent Law in this Colony, dated September, 1861, (received on the 6th instant), to inform you that on the 4th July, 1859, this Chamber recommended certain alterations in the then existing law, which were embodied, so far as the Law Officers of the Crown deemed expedient, in an Amendment to the Insolvent Law; and that as the Law of Insolvency in England is still as it was at the above date, in a state of abeyance, that, until some decided improvement is enacted in England, it would be premature to enter upon an entire revision of the Tasmanian Law. I am further instructed to state, that this Chamber, so far as their own experience guides them as well as from what they have at different times learned from professional men, consider that a vigorous administration of the present law is almost all that is now required, and that by the appointment of a third Judge, which addition to the administrative power the Chamber understand is in contemplation, part of whose duty it would doubtless be to administer the Law in question, that object would be attained.

I have the honor to be, Sir,  
Your most obedient Servant,

MICHAEL EVANS, *Secretary.*

To JOHN DAVIES, *Esquire, M.H.A.,*  
*Chairman of Committees re Insolvent Law, &c.*

Council Chambers, 25th September, 1861.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 20th, as Chairman of the Select Committee of the House of Assembly to inquire into the working of the Insolvent Court, requesting my answer to certain questions which accompany it.

I now reply to those questions as I am able, premising that they do not appear to refer to the Insolvent Court.

The first question is—"What is your opinion with regard to the transfer of the Police duties of the Police Magistrate of Hobart Town to the Corporate Body?"

*Answer.*—My opinion is, that these duties could not, with any advantage, be transferred to the Corporate Body of Hobart Town. That body is liable to annual changes; is composed of gentlemen selected chiefly from the middle walks of life, with but little pretension to legal education, which appears to me an absolute necessity—for the Chairman at least—to possess, and which will occupy much labor and time to acquire. All the body of Aldermen are Justices, but they do not consider themselves bound to attend to Magisterial duties oftener than their other personal avocations permit. The Mayor is, besides, charged with the duty of attending to all the Corporate affairs, which he cannot neglect.

As to the second question.—“Could you, or the Mayor for the time being, perform the Bench Duties with the aid of the Justices in and near the City?”

*Answer.*—As this must apply to the Mayor for the time being, who is an annual officer, I do not think he could for the reasons before mentioned, perform these duties satisfactorily. As to myself, after two years attention and continued study and reading, I think it probable that I might, with the able assistance of the Bench Clerk, perform them; but it is impossible to say who will fill my situation. My experience might be useful, but it must be remembered it would not confer on the Corporate Body any qualification requisite for the performance of these duties.

As to the third question.—“Could I in addition to the Bench Duties perform the duty of Chairman of a Court of Petty Sessions, at which, as now in the Court of Requests, small debts up to £20 might be sued for?”

*Answer.*—My opinion is, certainly not; my experience does not lead me to consider myself at all qualified to adjudge cases of law up to £20, frequently requiring the nicest legal discrimination, puzzling even to County Court Judges at home, from among whom the Judges of the great courts are often selected.

I make no observation as to the salary, after having given expression to the above opinions, and

I have the honor to be,

Sir,

Your most obedient Servant,

HENRY COOK, *Mayor.*

JOHN DAVIES, *Esquire, M.H.A.*

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#### MEMORANDUM.

My reply to the annexed questions, will, it appears to me, be best given in one: as the questions really embrace but one subject.

1. I have no doubt that it would be possible for the Mayor for the time being, to perform the Bench duties, and the duty of a Chairman of Petty Sessions which should have adjudication in £20 debts, if the general Revenue subsidized the Municipal salary or allowance: but

2. This arrangement will render necessary great care in the election of Mayor, and will, I fear, limit the selection of the Burgesses to a few persons; not only because the Mayor would require to be a man of some experience in public business, of the kind indicated, but he must have at command a considerable amount of time. Few men have this.

3. The amount of £250 the Mayor's salary in Launceston, and the sum of £300 at Hobart Town, would go far to secure the services of resident Justices.

H. DOWLING.

23rd September, 1861.

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1. What is your opinion with regard to the transfer of the Police Duties of the Police Magistrate of Launceston to the Corporate Body?

2. Could you, or the Mayor for the time being, perform the Bench Duties with the aid of the Justices residing in and near the City?

3. Could you, in addition to the Bench Duties, perform the duty of Chairman of Court of Petty Sessions, at which (as at present in the Court of Requests) Small Debts up to £20 might be sued for?

Receiving for the above extra Duties imposed on you, a Salary equal in amount to that granted by the Municipality.