

(No. 54.)



1877.

SESSION II.

TASMANIA.

HOUSE OF ASSEMBLY.

S U P R E M E C O U R T.

CORRESPONDENCE BETWEEN HIS HONOR THE CHIEF
JUSTICE AND THE HON. ATTORNEY-GENERAL.

Laid upon the Table by the Attorney-General, and ordered by the House to be
printed, May 16, 1877.



Chief Justice's Chambers, 10th May, 1877.

SIR,

I OBSERVE that, in the *Mercury's* report of last night's debate in the House of Assembly, referring to the discharge of prisoners at the Criminal Sittings of the Supreme Court in January, you are reported to have said, "the Attorney-General did not enter a *nolle prosequi* in consequence of which the Chief Justice was obliged to discharge all the prisoners; but the Chief Justice said he wished at once to discharge all the prisoners, upon which the Attorney-General could do nothing but enter a *nolle prosequi*."

May I request that you will be so good as to inform me whether this is a correct report of what you said on the subject?

I have the honor to be,

Sir,

Your obedient Servant,

FRANCIS SMITH.

The Hon. the Attorney-General.

Attorney-General's Office, Hobart Town,
11th May, 1877.

SIR,

THE report of what I said during the debate in the House of Assembly on Wednesday night, as quoted in your letter of yesterday, is not quite accurate. Upon an Honorable Member blaming me for having entered a *nolle prosequi* and so obliging the prisoners to be discharged, I stated what actually happened, "that the Chief Justice ordered the prisoners to be discharged, upon which I was obliged to enter a *nolle prosequi*."

I have the honor to be,

Yours very obediently,

C. HAMILTON BROMBY.

His Honor the Chief Justice.

Chief Justice's Chambers, 11th May, 1877.

SIR,

IN your letter of this day's date, in reply to mine of yesterday, you say, "I stated what actually happened, 'that the Chief Justice ordered the prisoners to be discharged, upon which I was obliged to enter a *nolle prosequi*.'"

I beg to point out that you are quite mistaken as to what took place on the occasion referred to. I did not order the prisoners to be discharged until after you had intimated your intention to enter a *nolle prosequi*; and it was in consequence of your having taken that course that, upon Mr. Miller's motion, I made the order. I may observe that it was a matter of some surprise to me at the time that you did not apply for a remand; and I was ready to listen to and to consider such an application. The course you adopted, however, relieved me of all difficulty as to how I ought to deal with the prisoners, and left me no option but to discharge them.

You will thus perceive that you have been led to make a serious misstatement in the House of Assembly with reference to my execution in this instance of the office of a Judge; and I must therefore request you to do me the justice to correct that misstatement in your place in the House, or in such other effectual manner as you may think proper.

I have the honor to be,

Sir,

Your obedient Servant,

FRANCIS SMITH.

The Hon. the Attorney-General.

Attorney-General's Office, Hobart Town, 14th May, 1877.

SIR,

My recollection of what took place at the sitting of the Supreme Court at Launceston in January last is distinct. At the conclusion of my argument some discussion arose, and your Honor, in consequence of something I said, I forget what, ordered the prisoners to be arraigned, saying that you would order them to be discharged; I then entered a *nolle prosequi*, and the prisoners were discharged by your Honor. If I misrepresented the order of events, or was misunderstood to be alluding to the final discharge of the prisoners, I shall be very glad to state in my place in the House what I have above written.

I did not apply for a remand because, whether the Jury Act was faulty or not, I felt that it would be unjust that the prisoners should suffer by a further imprisonment before they had been proved to be guilty of the charges brought against them.

I have the honor to be,
Your obedient Servant,

C. HAMILTON BROMBY.

His Honor the Chief Justice.

Chief Justice's Chambers, 14th May, 1877.

SIR,

I REGRET to be obliged to prolong this correspondence; but I really cannot submit to misrepresentation of my judicial conduct by an Official Adviser of the Governor in his place in Parliament. You are mistaken in the statement which you make in your letter of this day's date that I ordered the prisoners to be arraigned, saying that I "would order them to be discharged." I do not understand how you can have fallen into so palpable an error; but I am compelled to affirm that there is no foundation in fact for your assertion, as you will find if you make enquiry of the Judges' Associate, and, as I do not doubt, of Counsel and others who were present. What I said when I ordered the prisoners to be arraigned was, that I was there to deliver Her Majesty's Gaol; and made no mention of their discharge until after you had entered a *nolle prosequi*.

Perhaps you will do me the favour to inform me, before the House meets to-morrow, whether it is your intention to correct your misstatement, in order that, if not, I may take other means of effecting that object.

I have the honor to be,
Sir,

Your obedient Servant,

FRANCIS SMITH.

The Hon. the Attorney-General.

Attorney-General's Office, Hobart Town, 15th May, 1877.

SIR,

I AM quite prepared to admit that your Honor's recollection of what took place at Launceston may be right and that my recollection of the same circumstances may be wrong; and I shall be glad to state your Honor's account of those circumstances in the House to-night.

At the same time your Honor will, I know, admit that positive evidence is worth more than negative evidence; and when I say that I distinctly remember your Honor ordering the Gaoler to arraign the prisoners in order that you might discharge them, I am more likely to be correct than your Honor, who denies that the latter portion of my version is correct.

Your Honor may remember my asking that the prisoners might be called in a certain order to plead. My reason was that, as I expected two of the prisoners to plead guilty, I was anxious that they should be allowed to plead, and not be discharged, as, according to my recollection of the case, your Honor had stated you would proceed to do.

I have the honor to be,
Yours very obediently,

C. HAMILTON BROMBY.

His Honor the Chief Justice.

Supreme Court House, Campbell-street, 15th May, 1877.

SIR,

Your letter of this day's date is just now delivered to me during the short adjournment of the Criminal Court, and I am obliged to answer it hastily.

Although you profess to admit that my recollection may be right and yours wrong, you yet go on to reiterate your misstatement.

I can do no more than request that the House of Assembly may be made acquainted with this correspondence, in order that my contradiction of your very mistaken assertion may be as public as was the assertion.

If the question were one of probability arising from the nature of our respective statements, reasonable inference would support the correctness of mine, inasmuch as it is plain that it never would enter into the mind of any Judge of experience to discharge prisoners arraigned without first hearing what the Attorney-General might have to say against their discharge.

But the question is one of fact; and I affirm that the fact is not as you have stated it,—no doubt from lapse of memory.

I have the honor to be,

Sir,

Your obedient Servant,

FRANCIS SMITH.

The Hon. the Attorney-General.