

(No. 5.)



1866.

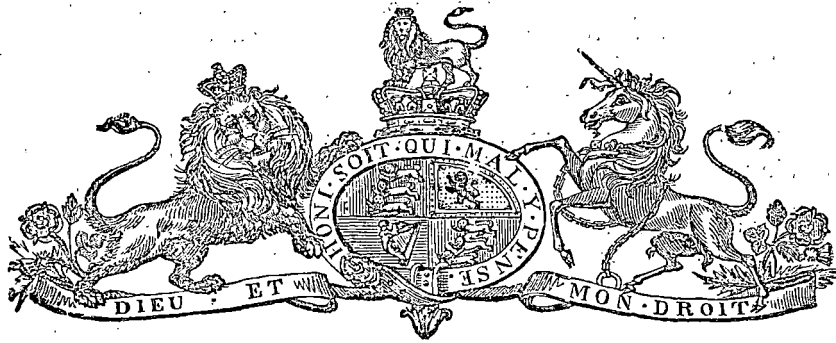
SESSION II.

T A S M A N I A.

PROPERTY ESCHEATED TO THE CROWN.

MEMORANDUM BY MINISTERS TO HIS EXCELLENCY THE
GOVERNOR, AND CIRCULAR DESPATCH FROM THE RIGHT
HON. THE SECRETARY OF STATE.

Laid upon the Table by the Colonial Treasurer, and ordered by the House to be
printed, 23 November, 1866.



Colonial Secretary's Office, 13th June, 1864.

MEMORANDUM.

THE subject of Property escheated to the Crown in this Colony has been brought, by the occurrence of several such cases, under the notice of Your Excellency's Ministers; and we have deemed it our duty to address Your Excellency on this matter, with a view to bringing our representations under the consideration of the Right Honorable the Secretary of State.

As the Law now stands, the Estates in the Colony of all persons deceased intestate, without kin to inherit by descent or as heirs at law, become vested in the Crown, and are disposed of at the will, and in some measure for the profit, of the Imperial Government.

In Great Britain the Crown has long since surrendered all such hereditary estates, with the exception of the Duchies of Lancaster and Cornwall, to the use of the Nation, in consideration of the Civil List settled by Act of Parliament on the Sovereign.

Such Estates in Great Britain therefore, though passing to the Crown and seized upon in Her Majesty's name, are not appropriated to Her Majesty's personal use, but are dealt with by the Lords of the Treasury as miscellaneous receipts, on account of the Consolidated Revenue of Great Britain. Such estates may be granted as of favour to subjects by the Crown, in consideration of peculiar or equitable claims upon the persons deceased intestate, but the Crown has now no personal interest in such forfeitures.

In this Colony the Crown has surrendered the Waste Lands to the use of the Inhabitants of Tasmania, in consideration of a Civil List, fixed by an Act of the Legislature* in accordance with the suggestions of the Crown itself, amounting to an immediate payment in 1856 of £14,500, and an annual grant from that date in perpetuity of £30,300.

We desire to represent to Your Excellency, that the grant by the Legislature, and the acceptance by the Crown of this liberal Civil List, should be held in equity and good faith to place the Colonial Government, with reference to the control and disposal of Escheated Estates, in the same position as the Imperial Government—that is, of the Sovereign personally—to any interest arising out of the application to this Colony of the feudal theory, that the Sovereign is the original owner and lord of the land; and therefore that whatever rights of this kind may be held to exist in the Crown ought to be exercised for the interest of the Colony; and all such forfeitures should be held to be equitably the property of the Colonial Government as representing the Crown, not in its personal character, but as the Supreme Executive authority in the Territory and Trustee of the National interests.

We desire to assure Your Excellency that we feel very strongly the injustice to which the Colony is subjected by the appropriation of this source of Revenue to the uses of the Imperial Treasury. On no equitable construction of the implied Contract between the Crown and the Colony, in the enactment of *The Constitution Act*, 18th Victoria, No. 17, can we admit that the Colonial Treasurer is bound to forego the Crown's interest in these forfeitures. The Colony is under no obligation to the

	£
* <i>Constitution Act</i> .—Schedule B.....	15,300
Schedule C.....	15,000
	£30,300
	£
Schedule D.....	14,500

Imperial Treasury; on the contrary, the policy of the British Government now subjects the Local Revenue to no inconsiderable burdens for the maintenance and control of Prisoners and Paupers, of whom the Colony would gladly be relieved as a worse than unproductive class of the population. Under these circumstances, the source of occasional Revenue which forms the subject of this Memorandum can only be converted to the uses of the British Treasury by the exercise of the Crown's Prerogative, to the loss and wrong of Her Majesty's subjects in Tasmania.

We trust that Your Excellency will urge these considerations upon the Right Honorable the Secretary of State, in the interest of the people of this Colony.

On the Secretary of State's suggestion, the Lords of the Treasury would, no doubt, forego the Crown's claim to these forfeitures; which might then be dealt with by the Local Government as part of the General Revenue of the Colony.

JAMES WHYTE.
CHARLES MEREDITH.
ROBERT BYRON MILLER.
JAMES MILNE WILSON.

His Excellency the Governor.

CIRCULAR.—TASMANIA.

Downing-street, 6th June, 1866.

SIR,

I TRANSMIT to you, for your information and guidance, an extract of a Letter from the Office of the Lords Commissioners of the Treasury, with the copy of a Minute of their Lordships' Board, respecting the disposal of the Casual Revenues arising from Property escheated to the Crown in the Colonies.

I have the honor to be,
Sir,

Your most obedient humble Servant,

EDWARD CARDWELL.

Governor GORE BROWNE, C.B.

Extract of a Letter from Mr. CHILDERS to Sir F. ROGERS, dated Treasury Chambers, 24th May, 1866.

"I am directed by the Lords Commissioners of Her Majesty's Treasury to transmit to you, herewith, for the information of Mr. Secretary Cardwell, copy of a Minute of this Board of the 21st instant, on the subject of the Casual Revenues arising from Property escheated to the Crown in the several Colonies; and I am to request that you will move Mr. Cardwell to cause the necessary instructions with regard to these Revenues to be forwarded to the Colonies."

Copy of Treasury Minute, dated 21st May, 1866.

Read again the Minute of the Board, dated 27th February last.

My Lords have before them the opinion of the Attorney and Solicitor-General upon the case submitted to them as to the power of the Colonial Government to dispose of the Casual Revenues in the several Colonies.

My Lords have also before them the Minute of the Board, dated 30th April, 1857, relative to a question which has arisen with regard to the disposal by the Colonial Government of Barbados of certain unclaimed portion of the Casual Revenue Fund in that Island.

The Law Officers are of opinion that no Colonial Government, with the exception of such as have passed Civil List Acts which have been confirmed by the Imperial Legislature, are justified in appropriating Casual Revenues of the Crown without the consent of this Board.

The terms of the Minute of 30th April, 1857, appear to my Lords clearly to imply that it was the opinion of the Board at that time that it was the intention of the Act 15 and 16 Vic., cap. 39, which had been passed in the previous year, to place the Casual Revenues in each Colony at the disposal of the Colonial Government for public purposes.

Adverting, therefore, to the opinion of the Board at that period, the impression which has been created by the terms of that Minute in some Colonies, and the evident feeling on the part of others that they were warranted in supposing that, having passed Civil List Acts, the disposal of all Casual Revenues would rest with the Colonial Government, although such Acts may only have been confirmed by the Order in Council and not by the Imperial Legislature, my Lords are of opinion, that although legally empowered to withstand, yet in equity they would not be justified in resisting the claims of the several Colonial Governments to deal with such Revenues without the consent of this Board.

My Lords are, therefore, prepared to assent to the appropriation by the Colonial Government of such Revenues as are described in the Act 15 and 16 Vic., cap. 39, in such manner as may seem in accordance with the provisions of that Act.