(No. 99.)

1893.

PARLIAMENT OF TASMANIA.

MR. JAMES BRYANS' CLAIM:

REPORT OF SELECT COMMITTEE, WITH MINUTES OF PROCEEDINGS AND EVIDENCE.

Brought up by Mr. Sutton, September 29, 1893, and ordered by the House of Assembly to be printed.

(No. 99.)

SELECT COMMITTEE appointed on Friday, the 15th September, to inquire into and report upon the Correspondence between Mr. James Bryans, Sandhill, Launceston, the Recorder of Titles, and the Attorney-General, having reference to the title to a piece of Ground in Launceston; with power to send for persons and papers.

MEMBERS OF THE COMMITTEE.

MR. ATTORNEY-GENERAL.
MR. DUMARESQ.
MR. SIDEBOTTOM.
MR. FOWLER.
MR. SUTTON. *(Mover.)*

DAYS OF MEETING.

Friday, 22nd September; Wednesday, 27th September; Thursday, 28th September; Friday, 29th September.

WITNESSES EXAMINED.

Mr. James Bryans; the Recorder of Titles; the Hon. the Minister of Lands and Works; the Hon. A. Inglis-Clark.

REPORT.

YOUR Committee have the honor to Report that they have examined, and duly considered the evidence of Messrs. James Bryans, the Recorder of Titles, the Hon. the Minister of Lands and Works, and the Hon. A. Inglis-Clark, and have carefully perused all available documentary evidence in connection with the case, and are of opinion that Mr. Bryans has failed to establish any claim to a refund of the amount involved—£50.

SAM. J. SUTTON, *Chairman.*

Committee Room, 29th September, 1893.

MINUTES OF PROCEEDINGS.

FRIDAY, SEPTEMBER 22, 1893.

The Committee met at 11 A.M.

Present.—Mr. Attorney-General, Mr. Sutton, Mr. Fowler, Mr. Sidebottom, Mr. Dumaresq.

Mr. Sutton was voted to the Chair.

The Chairman tabled Correspondence *re* Title to James Bryans' land (H.A. Parliamentary Paper No. 132).

Resolved—That the Recorder of Titles be allowed to be present whilst the Committee are taking evidence, and that he be allowed to cross-examine witnesses. (Mr. Attorney-General.)

Mr. James Bryans was called in and examined.

Mr. James Bryans tabled—

(*a*) Written statement of his case.

(*b*) Letter from Messrs. Powell, Lethbridge, and Chambers, Solicitors, Launceston, to himself, informing him that the Commissioners had agreed to grant him a title on certain conditions.

The Recorder of Titles (Mr. James Whyte) was examined, reading a statement in connection with the case under investigation. (*Vide* Question 17.)

The Committee adjourned at 12·45 P.M. until 11 A.M. on Wednesday, the 27th instant.

WEDNESDAY, SEPTEMBER 27, 1893.

THE Committee met at 11 A.M.

Present.—Mr. Dumaresq, Mr. Fowler, Mr. Attorney-General, and Mr. Sutton (Chairman).

The Minutes of the last Meeting were read and confirmed.

The Committee deliberated.

The Committee adjourned at 11·20 until 11 A.M. on Thursday, 28th instant.

THURSDAY, SEPTEMBER 28, 1893.

The Committee met at 11 A.M.

Present.—Mr. Dumaresq, Mr. Attorney-General, Mr. Fowler, Mr. Sidebottom, and Mr. Sutton (Chairman.)

The Minutes of the last Meeting were read and confirmed.

Resolved, That the Hon. the Minister of Lands and Works and the Hon. A. Inglis-Clark be requested to attend and give evidence before the Committee. (Mr. Attorney-General.)

The Committee adjourned at 11·30 A.M. until 11 A.M. on Friday, the 29th instant.

FRIDAY, SEPTEMBER 29, 1893.

The Committee met at 11·5 A.M.

Present.—Mr. Fowler, Mr. Attorney-General, Mr. Dumaresq, and Mr. Sutton (Chairman).

The Minutes of the last Meeting were read and confirmed.

The Hon. the Minister of Lands appeared before the Committee and was examined.

Mr. Hartnoll withdrew.

The Hon. A. Inglis-Clark appeared before the Committee and was examined.

Mr. Inglis-Clark withdrew.

The Committee deliberated.

The draft Report was tabled, read, and agreed to.

Resolved, That the Chairman do present the Report at the next sitting of the House.

The Committee adjourned *sine die*.

EVIDENCE.

FRIDAY, SEPTEMBER 22, 1893.

JAMES BRYANS *called and examined.*

1. *By the Chairman.*—What is your name? James Bryans.

2. You live in Launceston? Yes.

3. You were present at a sale of property held in Launceston in the month of March, 1876? Yes.

4. Two properties were sold on that occasion? Yes; but I think you had better allow me to give a full statement of my case, which I have here in writing.

The following statement was then put in and read by the Clerk Assistant :—

GENTLEMEN,

I MOST respectfully beg leave to place before you the particulars of a claim I have made on the Government for a return of fifty pounds, which has been unjustly obtained from me by the Commissioners of the Lands' Title Department in connection with the issuing of a grant of land under the Real Property Act.

This claim has been the subject of a lengthy correspondence between the Recorder of Titles and myself, and is now the subject of this investigation. The particulars are as follows :—

In March, 1876, a gentleman named Mr. J. K. Mackey, of New South Wales, sold his property in Launceston in two lots : Messrs. Hatton and Laws purchased one lot, and I purchased the other. I purchased mine by public auction, paid the deposit, and signed the conditions of sale, before I became aware there was a flaw in the title. The property purchased by Messrs. Hatton and Laws was the chemist's shop and premises at the corner of Brisbane and Charles-streets, Launceston, mine being a ten-acre paddock in the suburbs.

I may here state that the same defect existed in both our titles, namely, one-eleventh share being missing in each title. Notwithstanding the missing link in 1877, Messrs. Ritchie and Parker applied to the Recorder of Titles for a grant under the Real Property Act for Mr. J. D. Hatton. The Commissioners granted the application without any objection whatsoever, Messrs. Hatton and Laws' purchase then, as well as now, being by far the most valuable. Acting on the advice of my solicitor, I held possession of my property for thirteen years before applying for a grant, but my application was refused on account of the flaw that existed in my title, notwithstanding my solicitor repeatedly called the attention of the Commissioners to the precedent that was already set in granting Mr. J. D. Hatton's application.

After two years' delay, during which time my application had been twice refused, I received a letter from my solicitors, Messrs. Powell, Lethbridge, and Chambers, informing me that the Commissioners had decided to issue my grant on condition that I deposited the sum of £50 in the Assurance Fund of the Lands' Titles Department, the fifty pounds to remain deposited for about five years, then to be returned to me. I paid the fifty pounds into the hands of my solicitors on the 7th of July, 1890, under the impression that the amount would be returned in a few years. The letter I refer to will be found attached to this document. If the Department had refused Mr. Hatton's application as well as mine I would not have had any cause to complain, but to grant one and refuse the other, all things being equal, savours strongly of partiality. I am prepared to prove that Mr. Hatton's title and mine are similar in every respect, being part of the same estate purchased from the same vendor, and each of our titles containing the same defect, yet the Commissioners granted Mr. Hatton's application free of extra cost, and the same Department refused my application unless I paid an extra assurance of fifty pounds before I could obtain my grant. This inconsistency is what I complain of, and on these grounds I base my claim and seek redress.

The objections raised to my claim by the Recorder of Titles is that in 1886 a short Amendment Act (No. 5) was added to the Real Property Act, containing a clause (No. 20) giving the Commissioners power to charge an extra assurance in doubtful cases. My reply to this is, that in 1885 the powers contained in the Real Property Act, known as the "Principal Act," enabled the Commissioners to issue a grant to Messrs. Hatton and Laws for their portion of Mackey's estate, and that the same Act is still in force, and should have been sufficient to enable the Department to issue a grant to me for my portion of the same estate without an extra assurance, or even without applying this isolated clause No. 20, which is only permissive at best. A precedent has been set in issuing Messrs. Hatton and Laws' grant, and the Department cannot deny it. I only want the same justice extended to me as has been given to others. This I have not received, as I am aware. I am the only applicant for a grant that has ever been called upon to pay an extra insurance.

In conclusion, I can truly declare that the above statements are true in every particular.

I beg to remain,
Gentlemen,
Yours most respectfully,
JAMES BRYANS, *Sandhill, Launceston.*

To the Chairman and Members of the Select Committee.

[COPY.]

DEAR SIR, *5th July*, 1890.

Re your Application.

AFTER very considerable difficulty we are now able to aquaint you of the gratifying intelligence that the Commissioners will give you a certificate of title to your land subject only to your depositing the sum of £50 in the Assurance Fund of the Lands' Titles Department. This sum is to remain deposited for about five years, after which it will be returned, provided no one in the meanwhile claims the outstanding interest. Considering the difficulties surrounding the title we feel we can congratulate you on the result,

more especially as only a few weeks ago the Commissioners refused to give you a title. We shall be glad to see you hereon at your convenience.

Yours faithfully,

POWELL, LETHBRIDGE, & CHAMBERS.

MR. JAMES BRYANS, *Sandhill.*

Examination resumed—

5. *By Mr. Attorney-General.*—Were Messrs. Powell, Lethbridge, and Chambers acting as your Solicitors? Yes; they acted for me in Launceston, and Mr. Chambers was their agent in Hobart.

6. They were acting as your solicitors in writing that letter that has just been read? Yes, at that time.

7. You had an interview with Mr. Clark, the then Attorney-General? Yes, with Mr. Clark and Mr. Whyte.

8. What transpired at that interview? The result of that interview was, that they pointed out to me a short Act of Parliament passed in 1886, Clause 20 of which gave permission to the Commissioners to charge an extra insurance in doubtful cases. I reply to that in my statement.

9. What is your reason for wishing to get your property under the Real Property Act? The title was not a good one, as there was $\frac{1}{11}$th share missing, and I only claim the same treatment as has been extended to Messrs. Hatton and Laws. My land was part of the same estate, and the title contains the same defect, as the Recorder of Titles acknowledges. One year after they purchased, Hatton and Laws got their property under the Real Property Act, and I held mine for 13 years or thereabouts before applying. I think there should be some consideration shown for the length of time I have held undisputed possession.

10. What would be the value of this 11th interest that was outstanding? I cannot tell you anything about the value, and I don't think it matters. I only claim the same right as has been given to other purchasers from the same estate. The same law is still in existence as enabled the Commissioners to give a title to Messrs. Hatton and Laws, and I think the same right should be extended to me.

11. *By Mr. Fowler.*—Did you apply to get it under the Real Property Act before Messrs. Hatton and Laws got theirs under it? I did not apply until 1890.

12. *By Mr. Attorney-General.*—In one of your letters you say that you have spoken to several Members of Parliament, and they all admitted that you had been hardly dealt with: who were those members? Mr. Hartnoll was one, and Mr. Von Stieglitz was another.

13. *By the Chairman.*—Can you remember the names of any more Members of Parliament? I told it to several Members of Parliament. I know both these Members sympathised with me, and one of them introduced me to the Attorney-General and Mr. Whyte.

14. *By Mr. Dumaresq.*—Why did you not apply before 1890? When I purchased the property in Bell's auction mart I paid a deposit and signed conditions of sale, and went to a solicitor to draw up the deeds. In about a week's time he told me that there was a flaw in the deeds. I asked him what it was, and he told me there was 1-11th share missing. I replied that I was not aware of it, and asked if it would make any difference. He replied that it it would not make any difference unless I cut it up in allotments. I replied I had no intention of doing that, and asked if I could not get it under Torrens' Act. He advised me to hold the land for 12 years, when there would be no difficulty in getting it under the Real Property Act. I was not aware that Mr. Hatton had got his land under the Real Property Act until I applied to get mine under the same Act.

JAMES WILKINSON WHYTE *called and examined.*

15. *By the Chairman.*—What is your name? James Wilkinson Whyte.

16. What are you? Recorder of Titles.

17. Will you give the Committee what information you can in regard to the case now before them? Mr. Bryans throughout the correspondence admits there was an outstanding claim, and refers to it as follows, in his letter of 30th September, 1892:—"The missing link in Mr. Hatton's title and mine was one-eleventh, not one-ninth." He makes a great point that though he had longer possession than Mr. Hatton he had to pay extra to the Assurance Fund, while the former was not compelled to do so. His possession did not improve his title, for being a tenant in common with the owner of the outstanding share his possession was consistent with his title, and did not run adversely against the other tenant in common. Every tenant in common is entitled to possession, and his possession will not bar the other tenants in common. His solicitors paid the money with a full knowledge of all the circumstances, and in their letter to him on the 5th July, 1890, congratulating him on the result, they write as follows:—"Considering the difficulties surrounding the title, we feel sure we can congratulate you on the result." In his letter of the 9th March he thanks the Recorder for promptitude in the case, and seems quite content, as he ought to be. His title was not marketable, and no solicitor would have advised his client to take it without pointing out that he must do so at his own risk, and I have no doubt this element was taken into consideration by the vendor in deciding what purchase money he would accept. Before he received his grant he had a blot on his title to the amount of £318 by his own valuation of the property, and he has now a marketable title clear of that blot. This, no doubt, was the principal reason for his applying for a title under the Act. His construction of the law as to the effect of Section 20 of the Real Property Act, No. 5, under which the money was paid, is erroneous. If he were correct, he has acquiesced in the decision of the Commissioners instead of appealing from it to the Supreme Court as provided by law. Equally properly might any suitor who has made a false move, or what he considers one, after the event apply to Parliament after the verdict. If his solicitors are to blame he should take his remedy against them for misconducting his business; instead of which he has accepted the grant and paid their bill of costs, at least, I

think, Mr. Lethbridge told me he had paid. I don't know where he got the idea about the money being deposited for five years only from—he did not get it from me. If anyone told him this he misled him, unwittingly, no doubt. This money, like all other contributions to the Assurance Fund, has to be invested by the Treasurer in Government Debentures to meet claims on that fund by persons wrongfully deprived of interests in property by reason of its being brought under the Real Property Act, or who may suffer loss through the nonfeasance or misfeasance of the Lands' Titles officials. Mr. Bryans thought fit to impute partiality to the Commissioners in his letter of 29th August, 1892, and, although this impropriety was pointed out to him far more gently than it deserved, he has never to this moment withdrawn his imputation. In his letter of 30th September, 1892, he says: "Mr. M'Kay (from whom he purchased) purchased the whole of Cobb's estate, except that of Adelaide Cobb, afterwards the wife of George White, her share being one-eleventh." This is the outstanding share. Instead of being harshly treated he has been treated most liberally, and I venture to think that after perusal of the correspondence no solicitor would presume to say that he had any legal or equitable grounds to support the claim he now makes. As to the bond he wishes to give for the £50, there now is not and never was any power for the Department to receive such a document in lieu of assurance contribution. I do not know how this misapprehension has arisen, and I regret its existence, as it has no doubt caused him to think that the Department could have met his views if it would. He quotes the Attorney-General's admission to Mr. Hartnoll on this subject in his letter of 29th August, 1892. If the Attorney-General made such an admission he had no legal authority for the supposition that I could have accepted a bond if tendered in proper time. At any rate, I am not responsible for this view of the law. This is, however, not important, as I submit Mr. Bryans has no claim on the merits of the case. If Mr. Hatton got more liberal treatment in 1877 before a personally differently constituted tribunal, with a different law in force, that is no ground for holding that the present Board of Commisioners, with a changed law, acted either wrongly or illiberally, and on such grounds alone can the present claim be granted. That an extra contribution has not been exacted in any other case is explained by the fact that there have not been suitable cases to apply the law to in this respect,—no other applications that I am aware of, since Bryans', having been dealt with by the Commissioners where there were outstanding interests capable of being made the subject-matter of claims on the Assurance Fund. If such cases do arise, the law will most assuredly be applied in a similar manner to that adopted in this case. There is no way of paying this amount to Mr. Bryans excepting by a special grant by Parliament out of the General Revenue, for I cannot certify that it should be paid out of the Assurance Fund; indeed, it cannot be paid out of that fund without an Act of Parliament, unless he recovers it in an action against me as a nominal defendant, as provided for by the Real Property Act. To succeed in this he must show that I have wilfully caused him loss or damage, or that the money was wrongfully claimed, or that I or my officers have otherwise rendered the Department liable at law. He is, of course, free to take this course if he is so advised. In conclusion, I would respectfully ask the Committee to read the printed correspondence, wherein the whole case is thrashed, I may say, to rags, and on which, I submit, there is no cause shown for repayment of the £50, even on equitable grounds.

18. *By the Chairman.*—You think the fact of there being a flaw in the title to this property induced Mr. M'Kay to take a lower price for it? That is my opinion.

19. Would not that fact bear on the other property that was bought under similar circumstances? Oh, yes, quite so. I presume a higher price would have been asked if the title had been perfect.

20. You say that Messrs. Powell, Lethbridge, & Chambers had no authority for saying to Mr. Bryans, in their letter of 5th July, 1890, "this sum is to remain deposited for about five years, &c."? Not so far as I am concerned. I don't know how they got that idea. When the money is paid into the Treasury by the Recorder of Titles he loses all further control of it.

21. *By Mr. Fowler.*—Can you give any reason why the title should be granted to Messrs. Hatton and Laws and withheld from Mr. Bryans? Of course, the Board of Commissioners was then different, and I assume they were content to take the risk. In the present case there is a provision in the law which enables us to cover the risk, and the Commissioners were of opinion they should not take any risk in this matter.

22. That provision did not exist when Messrs. Hatton and Laws made their application? No. When they got their title the Commissioners had only the option of passing the title or rejecting it. In 1886 power was given to enable them to charge an extra contribution to the Assurance Fund to cover defects or doubtful cases,—such an amount as the Recorder should under his hand certify. That amount was fixed in this case in an arbitrary manner at £50. Mr. Bryans thus got the outstanding share for £50, and in my opinion made a very good bargain of it.

23. *By Mr. Attorney-General.*—Had the then solicitor to the Department good sound knowledge of the Act? I can hardly say. He had only been a few years solicitor to the Department, and was a young man with no experience at all in private practice. His only professional experience after his articles were out was as Acting Judge's Associate. I cannot tell how the idea of the bond could have arisen. There was no authority from me for making such a proposal, and I would have refused it when it came before me as head of the Department.

24. Do I understand you to say that the 13 years' undisputed possession that Bryans held from the time he purchased until he made his application does not strengthen his title in any way? The law of tenancy in common is that every tenant is entitled to possession, and the possession of one is not necessarily adverse to the possession of another. The Chief Justice held that the other day in a case in which Alfred Lord was one of the tenants in common.

25. Do you often refuse to grant applications to bring property under the Real Property Act? No, it does not happen very often, because applicants make their titles as good as they can be made. If the solicitors of applicants are of opinion that titles are not likely to pass the Commissioners they advise their clients so, and very often, rather than have titles rejected, they withdraw the applications.

26. *By Mr. Bryans (through the Chairman).*—Do you admit that Messrs. Hatton and Laws' property contained the same defect as mine in every particular? Yes, I do.

27. Do you admit that my solicitors brought under your notice the precedent established in the case of Mr. J. D. Hatton? I quite admit that it was brought under our notice that the title was the same as Messrs. Hatton and Laws'.

28. And do you admit that the precedent was urged upon you? Yes. [*Mr. Bryans (through the Chairman):* I want to say here that if I had to withdraw my application I would be throwing away £49 18s.] If he had withdrawn the application before it went before the Commissioners all the fees would have been returned, except the application fee and the form, 6s.

29. *By the Chairman.*—Section 20 of the Real Property Act was passed in 1886? Yes.

30. And under that the Commissioners acted in levying the £50? Yes.

31. Don't you think that the application of that Act, in making legislation retrospective, is harsh? I do not consider that it was making legislation retrospective.

32. The Commissioners had no power before that was passed to charge in this way? No; they would have to pass or reject the application on its merits.

33. Well, looking at it now as a business transaction, and in view of all the facts, don't you think that it was rather harsh, especially as the title of part of this property was given to others without any obstruction whatever? No, I do not think so at all. When there was a blot on his property to the extent of £300, and he had only to pay £50 to remove it, I think he did very well.

JAMES BRYANS *re-called and re-examined.*

34. *By Mr. Fowler.*—When you first applied to your solicitor to bring this property under the Real Property Act did he advise you that the title was not good enough? I said I wanted to bring it under Torrens' Act, and he advised me to keep it for twelve years and there would be no difficulty about it. I kept it for twelve years before I had it surveyed. I did not know then about Mr. Hatton's application being granted, and did not know it at all until a search was made. The Recorder of Titles and the Solicitor to the Department refused to allow a search unless Mr. Hatton's permission were first given.

35. When you did apply to get your land under the Torrens' Act, you did not go to your former solicitor, Mr. Alfred Green? No.

36. Had you any reason for not going to Mr. Green? No, not that I am aware of. I had known Mr. Powell since he was a boy. I had no reason for going to one more than another.

37. *By the Chairman.*—What did you give for the property in the first instance? Three hundred, by public auction. Since then I have laid out £1800 on it.

JAMES WILKINSON WHYTE *re-examined.*

Mr. Whyte: I would like to point out that under the Real Property Act I am precluded from showing previous title deeds to land brought under the Act without the consent in writing of the applicant or some one claiming under him, or an Order of the Supreme Court or a Judge. Otherwise, anyone might make a fishing search just to see what flaws he could find in titles.

The Committee then adjourned.

Friday, September 29, 1893.

WILLIAM HARTNOLL *called and examined.*

38. *By the Chairman.*—What is your name? William Hartnoll.

39. You are the present Minister of Lands? Yes.

40. Mr. Bryans states in a letter dated 10th August, 1892, that the then Attorney-General, Mr. A. I. Clark, admitted to you that a bond would have been accepted in lieu of the £50 paid to the Insurance Fund in connection with the bringing of Bryans' land under the Real Property Act? Yes, I know the particulars. I had a fairly long interview with Mr. Clark, who was at that time Attorney-General, and the question of the bond was raised between us, and I think Mr. Clark took up the position that whether the bond might have been received at one time or not, it was at that period altogether too late, as the money had been paid. The general feeling, I recollect, at the interview, was that the trouble occurred largely through the want of caution of Mr. Bryans' solicitor in the matter.

ANDREW INGLIS-CLARK *called and examined.*

41. *By the Chairman.*—What is your name? Andrew Inglis-Clark.

42. Do you remember admitting to Mr. Bryans that a bond would be received in lieu of the £50? I have no recollection of the matter. I feel confident that I could not have expressed the opinion that a bond would be received, as there was no law providing for such a thing, and the Department had no authority to accept it. The question of the bond was suggested to me, it was not spontaneous on my part. I must have said that whether the bond would or would not be accepted, it was too late then to raise the question. I believe it was Mr. Chambers, the solicitor for Mr. Bryans, who first suggested a bond, and Mr. Hartnoll repeated it to me.

43. *By Mr. Dumaresq.*—You could not have advised that a bond would have been accepted? No, certainly not.

WILLIAM GRAHAME, JUN.,
GOVERNMENT PRINTER, TASMANIA.